

# Corporal Punishment\*

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Corporal punishment, from the Latin *corpus* or body, refers to physical punishments causing pain or disfigurement to the body, as opposed to systems of punishments based on a deprivation of liberty by holding the body. Regimes of imprisonment do cause discomfort to the body and potentially subject it to violence (such as rape), but contrast with corporal punishments like whipping or flogging where the judicial sentence requires acute pain (rather than it resulting from a failure of prison to provide a secure custodial setting). Capital punishment, or death sentences, formerly involved aspects of corporal punishment, although current 8<sup>th</sup> Amendment jurisprudence requires that executions not involve torture or unnecessary pain and suffering.

Non-western nations are currently more likely to use corporal punishments like whipping or amputation than Western nations, which occasionally see politicians attempting to reintroduce corporal punishment as part of a 'tough on crime' agenda and debate whether public school teachers should be allowed to spank students for disciplinary reasons (Farrell 2003). Both the U.S. and Europe have extensive experience in earlier times with corporal punishments in the form of whipping, flogging, stocks, pillories, brandings, bridles and gags, and various tortures related to executions. The transition from corporal punishments to imprisonment is central to Foucault's *Discipline and Punish* (1979), in which he argues the transition had less to do with an evolving civilizing spirit of humanitarianism than the system of surveillance and discipline being a more efficient political economy of power.

The most important current advocacy of corporal punishment is Graeme Newman's *Just and Painful* (1995), which argues for a system of electric shocks instead of prison for many minor offenses. Newman argues that they can be matched more closely with the harm of the crime than a prison term, and shocks are experienced more similarly across people than imprisonment, and shocks do not have spill over effects onto family that incarceration does by removing a person from the community.

## History of Corporal Punishment

Corporal punishments predate the use of prison and early uses of imprisonment were limited to holding the criminal until the corporal punishment could be carried out. Specific corporal punishments could vary in terms of the level of humiliation, pain, and disfigurement, for example from throwing garbage at an immobilized offender to branding to cutting out someone's heart. Such punishments tended to be focused on the lower classes, with an "exemption of the aristocracy from bodily punishment" (Earle 1896/1995, 75). Certain corporal punishments like the dunking stool and scold's bridle were reserved for women for gendered crimes like gossiping or

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\* This file was downloaded from <http://paulsjusticepage.com/cjethics/5-penology/corporalpunishment.htm>. The original page has links to additional information on many key points.

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being argumentative. Some conservative or religious communities might also not whip women or try to avoid 'unseemly' public spectacles of topless women being flogged and bloodied.

Some of the more common methods of corporal punishment are discussed below. Held's book (1985) provides numerous illustrations and woodcut prints of many corporal punishments; Newman (1985) provides an interesting social history and analysis of these punishments.

Bilboes are similar to shackles for the ankles of an offender, but made of solid iron and sometimes attached to a post where the offender would be secured with his feet above his head. Originally used during the 1500s aboard ships, their use spread to Europe and New England during the 1600s.

Ducking stool (1600s to early 1800s) was a punishment for women for being argumentative or displaying a temper that men thought inappropriate; it was also used occasionally for men accused of slander or quarrelsome married couples. The stool often resembled a see saw, with the offender placed in a chair then plunged into cold water "in order to cool her immoderate heat" (Andrews 1991, 4).

Bridles and gags (branks), especially scold's (or gossip's) bridle, were frequently used on women for reasons similar to the ducking stool. The bridle was "a sort of iron cage, often of great weight; when worn, covering the entire head; with a spiked plate or flat tongue of iron to be placed in the mouth over the tongue" so "if the offender spoke she was cruelly hurt" (Earle 1896/1995, 96). This device locked in the back, and women would either be lead around town or attached to a post. The bridles depicted in Held (1985, 151) have ornamentation that gives the wearer's face a bestial appearance and he notes that the women staked out in the public square could expect "painful beatings, besmearing with feces and urine, and serious, sometimes fatal wounding – especially in the breasts and pubes" (1985, 150).

Stocks are hinged heavy timbers with holes cut in them to hold arm and/or legs, so that the restrained offender "was powerless to escape the jests and jeers of every idler in the community" (Earle 1896/1995, 37). Just as every community now has a jail, stocks were ubiquitous in earlier times: "So essential to due order and government were the stocks that every village had them" (Earle 1896/1995, 29). They could be used to hold offenders as well as a form of punishment itself.

The pillory (1600s to early 1800s) is similar to stocks in design (and ubiquity) but holds "the human head in its tight grasp, and thus holds it up to the public gaze" (quoted in Earle 1896/1995, 44). The significant aspect of the pillory is humiliating the offender, which the public did by throwing "rotten eggs, filth, and dirt from the streets, which was followed by dead cats, rats" and "ordure from the slaughter-house" (Andrews 1991, 85, 86). Some communities put offenders in the pillory during times of public market to increase exposure, with occasional deaths because of what was thrown by an angry mob. Other variations included nailing offenders' ears to either side of the head hole or cutting them off ('cropped') as additional ridicule.

Whipping posts are similar to the pillory in design, although they also could be literally a post to which the offender was secured. Some communities tied an offender to a whipping cart and walked through town "till his body became bloody by reason of such whipping" (Earle 1896/1995, 70). Whipping, popular until the 1800s, could be done with a variety of implements like reeds, birch rods, and whips; a significant chapter in the history of whipping involves the British Navy

maintaining military discipline with the cat-o'-nine-tails (rope that is unraveled and knotted at the ends).

Branding and maiming both have more permanent effects than other punishments. Branding is a more enduring version of the scarlet letter, which offenders had to display to publicize their misdeeds. Maiming could take many forms, usually aimed symbolically at addressing the crime: a blasphemer would have his tongue cut out or fixed to the side of his cheek; thieves could have a hand cut off, etc

### **Corporal Punishment and Executions**

Although contemporary executions are done with a pinprick as part of lethal injection, until the 1800s abuse and torture were commonly aspects of the death sentence. An English sentence for treason in 1691 required the offenders to be

Hanged by the neck, to be cut down while ye are yet alive, to have your hearts and bowles taken out before your faces, and your members cut off and burnt. Your heads severed from your bodies, your bodies divided into quarters... and disposed of according to the king's will and pleasure; and the Lord have mercy upon your souls" (quoted in Johnson 1998, 14)

Among the types of corporal punishment employed as part of executions are burning to death; breaking on the wheel (breaking the major bones of the body with an iron rod while tied to a large circle symbolizing eternity); impaling; disemboweling; beheading; and drawing and quartering (offender is tied to four horses that pull in different directions). Such punishments were intense, but Newman (1985) argues that they need to be seen in the context of a time where life was shorter, harsher, and without many of the comforts of modern day life.

After executions, the corpse might be gibbeted and displayed hanging in chains (Held 1985, 38-41). As medical schools realized the need for corpses to teach anatomy and improve surgical success, poor offenders were sentenced to be dissected, sometimes in a public hall. The previous practice of robbing graves for cadavers provoked hostility in villages, which occasionally burned down medical schools in retaliation for the digging up the recently deceased and the "deliberate mutilation or destruction of identity, perhaps for eternity" that dissection entailed (Richardson 1987, 29). The strong reaction reveals how dissection and the potential evisceration of identity was seen as punishment even while involving no physical pain.

#### **Foucault and the Birth of Prison**

The transition to prison from corporal punishments and the spectacle of execution is the subject of *Discipline and Punish* by French Philosopher Michel Foucault (1979). It starts with a gruesome description of the 1757 execution of Damiens for regicide. The execution involved the offender's flesh being torn with red hot pincers, burning, and an extended unsuccessful effort at drawing and quartering. The executioner finally had to cut the body apart then burnt the pieces. The second scene is a 'House of young offenders' eighty years later, based on a strict timetable or schedule. Between 1760 and 1840, Foucault argues that "from being an art of unbearable sensations, punishment has become an economy of suspended rights" (1979, 11). These examples define larger penal styles, and he investigates the process whereby public spectacle disappeared, pain is downplayed, prison replaces corporal punishment, punishment becomes hidden and part of 'abstract consciousness'.

Foucault posits that spectacles of pain were rooted in the sovereign's power to wage war against enemies and intended to terrorize citizens into obedience. Such displays were inefficient systems of social control – what he calls political economies of power – and with the rise of capitalism, states sought to find better ways of appropriating bodies rather than eliminating life. The new goal of creating 'docile bodies' advanced through mechanisms embodied in Bentham's model Panopticon prison, a system of omnipresent surveillance where subjects disciplined themselves. Foucault states that technique of domination overflowed the prison walls to become a model for many social institutions, so "prisons resemble factories, schools, barracks, hospitals, which all resemble prisons" (1979, 228).

The result is generalized surveillance and the formation of a disciplinary society (Foucault 1979, 209) based on spacialization, timetables, normalizing judgments [performance standards], repetitive exercises and drills (Fillingham 1993, 120- 129; Foucault 1979, 141-194). The end of corporal punishment is thus not seen as a humanitarian step but a transformation to more totalizing form of power and domination. Foucault ominously states:

Historians of ideas usually attribute the dream of a perfect society to the philosophers and jurists of the eighteenth century; but there was also a military dream of society; its fundamental reference was not to the state of nature, but to the meticulously subordinated cogs of a machine, not to the primal social contract, but to permanent coercions, not to fundamental rights, but to indefinitely progressive forms of training, not to general will, but to automatic docility (1979, 169).

### **Contemporary Arguments About Corporal Punishment: Newman's *Just & Painful***

Because many non-Western countries practice corporal punishment, Westerners tend to see the practice as primitive or barbaric, but Newman (1995) points out the ethnocentrism of that thinking. His book *Just and Painful* makes a case for corporal punishment that also serves as a critique of prison, which he sees as overused, violent, and expensive -- a place the public sees as too comfortable to have credibility as punishment even though criminologists see them as deplorable places.

Newman's suggestion is to implement corporal punishment in the form of electric shocks to be used instead of prison for minor offenses; he sees the combination of shock and prison to constitute torture, which is not the case for a one time infliction of pain. Shocks would be done in a public punishment hall, after which the offender would be released. For Newman, the pain of punishment can be matched to the severity of crime by controlling the number of shocks, the voltage and duration of the jolts – with plea bargains over the details no more or less problematic than negotiations over the length of time someone is to spend in a violent warehouse prison.

In addition, Newman argues that acute physical pain is experienced more similarly by people than the chronic pain of a prison sentence, which will vary between institutions and even for individuals in the same prison. While men, women, whites and minorities "respond to and interpret pain differently, there is every chance that they actually feel pain in about the same way" (1995, 60). Newman further argues that minority overrepresentation in punishment is a "silent statistic" but if blacks were punished in public to the differential extent they are now, "it

would be *too much*. It would force us to be accountable for the excesses of prison” (1995, 62 – emphasis original).

While some see Newman’s system as humiliating to the offender, he argues that many forms of punishment like boot camps are built on degrading activities like cleaning toilets with toothbrushes. He sees corporal punishment as being painful and thus a credible punishment for which society takes responsibility, in contrast to prison violence and rape that happen, but which society pretends is not its responsibility. Corporal punishment in the form of electric shocks can be administered more cheaply than prison, and it also does not have spillover effects such as what happens to families when a primary wage earner or parent is imprisoned.

Newman notes that his book is “a polemic, intended to inflame and provoke” (1995, 2). The point is thus less political advocacy of corporal punishment than an attempt to have people think more deeply about why and how society punishes offenders. He fears that many who say they support his position do so for the wrong reasons, while others reject it because of complacency with mass incarceration or cultural arrogance about ‘barbaric’ Islamic countries that practice corporal punishment.

Newman, however, agrees with criticisms from human rights organization about practices in non-Western countries that combine corporal punishment with incarceration. For example, Amnesty International notes, “caning is used in Malaysia as a supplementary punishment for at least 40 crimes even though it contravenes international human rights standards” (2002a). Newman would not support such sentences, because he believes the criminal should be incarcerated *or* experience corporal punishment; it is the combination of the two that he sees as torture, which is a process and different from a one-time infliction of pain. Thus, he would also agree with Amnesty in condemning Saudi Arabia for sentencing two defendants charged with drug crimes to “to 1,500 lashes each, in addition to 15 years’ imprisonment. The floggings were scheduled to be carried out at a rate of 50 lashes every six months for the whole duration of the 15 years” (Amnesty 2002b).

## Conclusion

Corporal punishment has been involved in some of the spectacular excesses of the criminal justice punishment, but it is a type of punishment of interest to people across schools of punishment. Retributivists are attracted by the increased ability to create ‘just deserts’ by matching the crime with a wide range of corporal punishments. Utilitarians, going back to Bentham’s vision of a spanking machine (Farrell 2003), see potential for more uniform and precise punishments than incarceration can offer.

In spite of widespread ‘tough on crime’ rhetoric, the public has ambivalent feelings about the deliberate infliction of physical pain as the official sentence. Additionally, sentencing women, especially white women, to corporal punishment would present another barrier. Women’s demands for equal rights have sometimes resulted in a backlash in the form of harsher sentences, a phenomenon referred to as ‘equality with a vengeance.’ Yet executions of women are more troublesome to many than the execution of men. And, the Alabama prison Commission was fired by the Governor in 1996 when he suggested women join the predominantly black men on the state’s chain gangs (Gorman 2001, 405).

Corporal punishment, like the chain gang, will continue to attract interest because there’s something about the notion of “punishment for punishment’s sake, that appeals to an electorate scared of crime [and] fed up with what it sees as coddling” (quoted in Gorman, 2001, 406). Both,

however, are inconsistent with the trend described by Foucault as moving away from spectacle to the surveillance-based society.

Readers interested in pursuing more information about corporal punishment may turn to the internet, although they should be aware that many searches are likely to turn up pornographic sites whose content ranges from erotic spanking to sexual torture. Farrell's World Corporal Punishment Website <http://www.corpun.com/> is an excellent starting point, and the topic can be further pursued safely by using an internet search engine that filters out adult sites.

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