



**Y**ou're about to get whipped.

Mentally more than physically. It's going to hurt—but it's supposed to. Flogging is a series of hard, cracking lashes intended to cause jolting pain. Once the experience is over, you'll never be the same. I write in defense of flogging, something most people consider too radical for debate, not worthy of intellectual discussion. But please, don't put down this book and move on, upset that I even broached the subject. If that's your temptation, bear with me for just a bit longer. 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. And that, ultimately, is my goal. There are 2.3 million Americans in prison. That is too many. I want to reduce cruelty, and flogging may be the answer. My opening gambit is simple: Given the choice between five years in prison and ten brutal lashes, which would you choose?

I won't dispute that flogging is a severe and even brutal form of punishment. Under the lash, skin is literally ripped from the body. But very little could be worse than years in prison—removed from society and all you love. Going to 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 jail, wouldn't you choose to be flogged and released? Think about it: five years hard time or ten lashes on the behind? You'd probably choose flogging. Wouldn't we all?

Having to make this choice isn't as abstract as you may think. After all, who hasn't committed a crime? Perhaps you've taken illegal drugs. Maybe you once got into a fight with a friend, stranger, or lover. 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. Maybe you're outdoorsy and were caught hunting without a permit.

Or maybe you're a boss who knowingly hired illegal immigrants. Perhaps you accepted a "gift" from a family member and told the IRS it was a loan. Or did you go for the white-collar big leagues and embezzle millions of dollars? In truth, you may be committing some crimes you don't even know about. If your luck runs out, you can end up in jail for almost anything, big or small. And even if you're convinced that you're the

most straitlaced, law-abiding person in the world, imagine that through some horrific twist of fate, you were accused of a crime. It's not inconceivable; it happens all the time.

We send thousands of people to jail and prison every day, and each one experiences something similar to this. Imagine you're in court, even though you never expected to be in this position. Maybe things got out of hand and one thing led to another, or maybe you're even innocent. No matter, because now you're standing in court, behind the defense table, looking up to the judge. He (because this isn't a TV show, the judge will probably be a white man) looks at you tiredly, says "guilty," sentences you to five years in prison, says a few more words, and bangs his gavel. You're in shock. Your lawyer shrugs, trying to look sympathetic. But he doesn't seem early as bothered as you are. You try to ignore the obs of your family as a court officer cuffs your hands behind your back.

You're guilty as charged. So whether you did it or not—it strangely doesn't matter anymore—you're officially a criminal. Five years in prison is a long time. Where were you five years ago? Perhaps you've accomplished a lot in the past half-decade. Perhaps you had ambitious plans for the next five years. Whatever your plans were, they're not going to happen now. Before they lead you out the back of the courtroom to a holding room, you seriously ponder many things about prison you've tried hard to avoid. Your lover or spouse may leave you (or at least have an affair). Whatever you're needed for, you're not going to be there. If you have kids, they're going to miss you, and be missed by you. Over the coming years, will your friends visit? And if they don't, what can you do? There's a very good chance that, when you emerge after your time is up, you're going to be alone and unemployed.

Taking away a large portion of somebody's life through incarceration is a strange concept, especially if it's rooted not in actual punishment but rather in some hogwash about making you a better person (more on that later). But what about prison itself?

Prison is first and foremost a home of involuntary confinement, a "total institution" of complete dominance and regulation. It's a very strange home indeed that holds 2.3 million people against their will. But what is it like? Will you have to learn prison lingo? Will you be forced to wear funny striped pants and make friends with characters like the Birdman of Alcatraz? No, of course not. That was years ago, and a movie. But what's it like today? Are there drugs, gangs, and long times in solitary? Will you come out stronger—or broken? Will you be raped? Hopefully it's not 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 detention system. 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, inhuman form of punishment, how can offering the choice be so bad? If flogging were really worse than prison, nobody would choose it. So what's the harm in offering corporal punishment as an alternative to incarceration? But of course most people would choose to be caned over being sent to prison. 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?

If you think the choice between flogging and prison is a false choice, that there should be a third option, go right ahead and propose it. Perhaps there is another way neither incarceration nor flogging— that punishes the guilty, provides the convicted with a halfway decent chance of a future, expresses society’s disapproval, and satisfies a victim’s sense of justice. It’s possible, but I doubt it. Do not let eternal optimism damn the future.

Prisons don’t work, but unfortunately neither does traditional opposition to them. Without more radical debate, preachers for prison reform will never be heard beyond the choir. There is no shortage of ideas on such things as rehab, job training, indeterminate sentencing, restorative justice, prison survival, and reentry. A search for “prison” books on Amazon.com yields 23,000 results (and almost none are pro-penitentiary). By contrast, a similar search for “flogging” reveals 247 books (and most are about sex). There are many, many books out there about the evils of prison—and to what end? Over the past decades reformers have preached with rational passion and barely controlled anger about the horrors of prison growth; all the while, the government has not so quietly built the largest prison system the world has ever seen.

If we wish to punish criminals, and we do, flogging a man—shaming him and hurting him briefly—is better than the long-term mental torture of incarceration. Over the past two centuries, flogging has gradually disappeared from our criminal code. Although sixty years have passed since the last legal judicial flogging in America, corporal punishment has a long history in American criminal justice.

Many undoubtedly see the demise of flogging as a sign of progress—the end of one more barbarity. Flogging may indeed be barbaric, but maybe barbarism has a bad rap. To the ancient Greeks, after all, barbarians were just foreigners who talked funny: “Bar-bar-bar!” Athenians howled, politically incorrect before their time. Similarly, my defense of flogging may sound barbaric and otherworldly to modern Western ears. But barbaric or not, if we don’t discuss flogging, we’re stuck with something far worse. In the world of punishment, we’re lost; it’s time to admit as much and ask directions. For now, let’s at least backtrack from this horribly mistaken journey we’ve taken into the Bizarro World of mass incarceration.

I don’t want to add caning to an already brutal system of prison; instead, I propose an alternative to incarceration, what might be called “flog-and-release.” Deciding between prison and the lash is truly a choice between the lesser of two evils, but at least it is a choice. No matter what you would choose, if you would want that choice for yourself, why, in the name of compassion and humanity, would you deny that choice to others? So no, in case you were wondering, this discussion of flogging won’t be anything kinky. Outside of an intellectual game, more thought experiment than policy proposal, there’s very little pleasure here. My intention is to shock the elite and shake up the debate. My argument is painful and meant to be, but I hope we’ll have some fun along the way. And if you’re not careful, you may learn something before it’s done. Allow me to defend flogging.



Let’s return to your day in court. Before you’re led out of the courtroom, the judge calls for order and offers you the flogging option. “Five years or ten lashes,” he says. If

you choose flogging, an appointed state flogger will cane you immediately. Ten lashes, a little rubbing alcohol, a few bandages, and you'd be free to go home and sleep in your own bed. No holding cell. No lock-up. A quick and painful caning, and you'll be on your way. Would you choose years in the joint over a brief punishment, however cruel? Before you started reading, you probably couldn't imagine wanting to be flogged. But now, I assume, to avoid prison, you've chosen it for yourself. Though it's strange to conceive of being sentenced to a legal flogging, you can probably imagine what it would be like to be caned. Hopefully you've never seen anybody flogged or experienced this personally, but it's not hard to imagine the process.

Consider the case of Aaron Cohen, a New Zealander arrested with his drug-addicted mother for possessing heroin in Malaysia. His mother was sentenced to death and Aaron was sentenced to six lashes plus life in prison. Ultimately, in 1996, five years after Aaron was flogged, his mother's life was spared, and they were both released. In a magazine interview, Aaron described being flogged:

I got six. It's just incredible pain. More like a burning—like someone sticking an iron on your bum. . . . Afterwards my bum looked like a side of beef. There was three lines of raw skin with blood oozing out. . . . You can't sleep and can only walk like a duck. Your whole backside is three or four times bigger—swollen, black and blue. I made a full recovery within a month and am left with only slight scarring. Emotionally, I'm okay. I haven't had any nightmares about that day, although I'm starting to dream about the prison.

The actual flogging I propose is based on the Singapore and Malaysian models, but it's different in several important ways. Once you consent to be flogged—a luxury you don't have in Singapore or Malaysia—you'd be led into a room where an attending physician would conduct an examination to make sure you're physically fit enough to be flogged, that you won't die under the intense shock of the cane. The punishment would not be a public spectacle but would not be closed to the public. There would be perhaps a dozen spectators, including bailiffs and other representatives of the court, a lawyer, a doctor, perhaps a court reporter, and maybe a few relatives of both parties, including the victim.

After the doctor's approval, a guard would tie your arms and legs to a trestle-like whipping post designed specifically for this purpose. This strange piece of furniture resembles a large and sturdy wooden artist's easel, but in place of a painting or canvas, you would be tied somewhat spread-eagle to the front. Once the guard takes down your pants and adds a layer of padding over your back (to protect vital organs from errant strokes), the flogging would begin. An expert trained in the use of the cane would lash your rear end for the prescribed number of times. This flogging description from a Singapore newspaper captures the quick brutality of the procedure:

When caning, a warder, wielding a half-an-inch-thick and four-foot-long cane, uses the whole of his body weight, and not just the strength of his arms, to strike. As a result the skin at the point of contact is usually split open and, after three strokes, the buttocks will be covered with blood. All the strokes prescribed by the court . . . are given at one and the same time, at half minute intervals. . . .

The stroke follows the count, and the succeeding count is usually made about half a minute after the stroke has landed. Most of the prisoners put up a violent struggle after each of the first three strokes. Mr. Quek [the prison director]

said: "After that, their struggles lessen as they become weaker. At the end of the caning, those who receive more than three strokes will be in a state of shock. Many will collapse, but the medical officer and his team of assistants are on hand to revive them and apply antiseptic on the caning wound."

Your ten strokes would be over in about five minutes. My defense of flogging gives you a minute for every year you would otherwise have served in prison. You'll likely be in shock and perhaps even unconscious as the doctor treats the deep, bloody furrows left in your behind. Then, once they've patched you up, you'd be allowed to leave the courthouse a free man—no striped pajamas, no gangs, no learning from other criminals, no fear. You'd never have to find out what the inside of a prison is like.

If that deal seems too good to be true, well, at least we've moved beyond the facile position that flogging is too painful or cruel to consider. Indeed, if you think that someone subjected to this punishment is getting off too easy—that a man with five years left to serve should not be freed after submitting to *only* ten brutal, skin-bursting, scarcreating lashes—if that's your reaction, then consider this: It would be ironic (actually quite disturbing) if prisons were to remain as they are precisely because of their unparalleled cruelty.

If, however, you think I'm a monster for even hypothetically considering flogging, think of this worse reality: 2.3 million Americans already live behind bars. That's more than 1 percent of our entire adult population. And if that doesn't sound like a lot, let's put this number in perspective. At a sold-out baseball game in Chicago, forty-one thousand people can watch the Cubs at Wrigley Field. Two-point-three million is more than fifty six sold-out ballgames. Two-point-three million is roughly the total number of American military personnel—army, navy, air force, marines, coast guard, reserves, and National Guard. Even the army of correctional officers needed to guard 2.3 million prisoners outnumbers the US Marines. If we condensed our nationwide penal system into a single city, it would be the fourth largest city in America, with a population greater than Baltimore, Boston, and San Francisco combined.

America 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 country. Stalin, at the height of the Soviet gulag, had fewer prisoners than America does now (although the chances of living through US incarceration are quite a bit higher). Despite our "land of the free" motto, we deem it necessary to incarcerate more of our people than the world's most draconian regimes. Think about it: We have more prisoners than China, and they have *a billion* more people than we do.

It didn't used to be this way. In 1970, before the war on drugs and a plethora of get-tough laws increased sentence lengths and the number of nonviolent offenders in prison, we incarcerated 338,000 people. There was even talk of abolishing prison altogether and the hope that prisons would be left on the ash heap of history. But that didn't happen. The prison-abolition movement seems to have died right after a 1973 Presidential Advisory Commission said, "No new institutions for adults should be built, and existing institutions for juveniles should be closed," and concluded, "The prison, the reformatory and the jail have achieved only a shocking level of failure." Since then, even though violent crime in America has gone down, the incarceration rate has increased a whopping 500 percent. Some have linked this drop in crime to the increase in prisons.

To oversimplify a bit, if more muggers are behind bars for longer periods of time, they can't mug you as much. Granted, if everybody were in prison, there would be no crime on the street. But this extreme, appealing though it may be for its logical simplicity, fails for several reasons. Between 1947 and 1991 the prison population increased from 259,000 to 1.2 million. During this time the homicide rate nearly doubled, from 6.1 to 10.5 per hundred thousand. Today the homicide rate is back to where it was in 1947—and yet now we have two million more people behind bars than we did then. Even if prison were responsible for some of the recent crime drop, we're not getting much bang for the buck.

To understand the uselessness of incarceration—to appreciate just how specious the connection between increased incarceration and decreased crime really is—consider New York City. Not only did New York drastically cut crime, it did so while incarcerating fewer people. New York has seen the most significant crime drop of any big city in America: real, substantial, sustained, and, over the past two decades, twice the national average. In 1990 there were 2,245 murders in New York City. In 2010 there were 532. During this period of decreasing crime—and while the city's population increased by more than a million people—the number of incarcerated New Yorkers actually *decreased* by eleven thousand. Less crime should equal fewer prisons. This seems obvious, but it's not the case in the rest of the nation. Had New York followed national patterns and increased its incarceration rate by 65 percent, the city, with an additional fifty eight thousand prisoners, may very well have bankrupted the state. To incarcerate that many more people from New York City would cost roughly \$2 billion per year, nearly doubling the size and cost of the entire state's Department of Corrections. Better policing and massive immigration—not increased incarceration—contributed to New York's crime drop. In the 1990s the NYPD got back in the crime *prevention* game: Drug dealers were pushed indoors, and crack receded in general. Also, police focused on quality-of-life issues, the so-called "broken windows." At the same time more than one million foreign immigrants moved to New York City. Whether due to a strong work ethic, fear of deportation, traditional family values, or having the desire and means to emigrate in the first place, immigrants (nationwide and in New York City have lower rates of crime and incarceration than native-born Americans. Astoundingly, today more than one in three New Yorkers are foreign born. Although policing in New York City deservedly received a lot of credit for the city's crime drop, strangely, few people credit immigrants and almost nobody seemed to notice the winning strategy of "decarceration."

Looking elsewhere in the United States, we can see even more refutations of the connection between imprisonment and crime rates. Crime rates have spiked and fallen quite independent of prison rates, which have only gone up. If we were to give increased incarceration credit for the crime drop of the past two decades, we could just as easily give it credit for the crime increase in the two decades before that. 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. So what's 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? Because the incarceration rate has only gone up since 1970, we could correlate anything with this increase. We could just

as easily credit incarceration with the collapse of Communism or the Boston Red Sox winning the World Series.

One reason prison doesn't reduce crime is that many prison-worthy offenses—especially drug crimes—are economically demand-motivated. This doesn't change when a drug dealer is locked up. Contrast that with, say, pedophilia: An active pedophile taken off the streets means fewer raped children. A child victim doesn't go out searching for another criminal abuser. But that's exactly what a drug addict does.

An arrest in the war on drugs usually creates a job opening. Arrest thousands of drugs dealers (and pay millions of dollars for their incarceration), and other needy or greedy people will take their place. Nothing else will change. As long as dealing drugs is profitable, which it can be, there will be a never-ending supply of arrestable and imprisonable offenders. The war on drugs may have started as a response to a drug problem, but it's created an even larger and entirely preventable *prohibition* problem. Prison reformers—and I wish them well—tinker at the edges of a massive failed system. I'm all for what are called "intermediate sanctions": House monitoring, GPS bracelets, intensive parole supervision, fines, restitution, drug courts, and day reporting centers all show promise and deserve our full support. But we need much more drastic action. To bring our incarceration back to a civilized level—one we used to have and 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.

There might be other ways to reduce the prison population, but none of these seem particularly viable. We could legalize and regulate drugs and also get soft on crime, but that's also not likely to happen anytime soon. And we can't and shouldn't just swing open the prison gates and shout, "Olly olly oxen free!" We need to maintain some balance of justice, punishment, and public safety.

As ugly as it may seem, corporal punishment would be an effective and, believe it or not, comparatively humane way to bring our prison population back in line with world standards. To those in prison we could offer the lash in exchange for sentence years, after the approval of some parole board designed to keep the truly dangerous behind bars. As a result, our prison population would plummet. This would not only save money but save prisons for those who truly deserve to be there: the uncontrollably dangerous. Let us not confuse a need to incapacitate—because someone *will* commit a crime—with the concept of punishment because someone *has* committed a crime.

Certainly mere drug offenders should not be kept in prison, nor should white-collar criminals. Bernard Madoff, famously convicted in 2009 for running a massive Ponzi scheme, is being incarcerated and costing the public even more money. Why? He's no threat to society. Nobody would give him a penny to invest. But Madoff did wrong and deserves to be punished. Better to cane him and let him go. Punishment is, after all, a vital goal of the criminal justice system. Even if the successful rehabilitation of criminals were always possible, it wouldn't be enough. When people commit a crime, they should be punished.

To understand how important punishment is to the notion of justice, imagine being the victim of a violent mugging. The last thing you remember before slipping into unconsciousness is the mugger pissing on you and laughing. Such things happen.

Luckily, police catch the bastard, and he is quickly convicted. What should happen next? What if there were some way to reform this violent criminal *without punishing him*? In *Sleeper*, Woody Allen's futuristic movie from the 1970s, there's a device like a small walk-in closet called the "orgasmatron." A person goes in and closes the door, lights flash, and three seconds later, well . . . that's why they call it the orgasmatron. Now imagine, if you will, a device similar to the orgasmatron called the "reformatron." It's the perfect rehabilitation machine for criminals. Upon conviction, felons enter this box and close the door. Three seconds later they come out slightly disheveled and "cured" of all their criminal tendencies. Your mugger, therefore, would be ushered into the reformatron, which is conveniently located right in the courtroom. In he goes: The door closes, the lights flash, and three seconds later . . . success! The cured criminal thanks God, kisses his baby's mother, and walks out of the courtroom a free man to go home, relax, and think about job possibilities.

For many reformers in the criminal justice system, the reformatron is the ideal. But along with being fiction, the concept is disturbingly lacking in justice. If you were the victim of a violent mugging—if you had been beaten, pissed on, and robbed of your money, health, and dignity—would the reformatron satisfy your sense of justice? The fact that the criminal wouldn't commit another crime is nice, but shouldn't a criminal be punished—not only for his sake but also for ours?

Retributive justice is part of every society and deeply rooted in American culture. Consider the death penalty, which has always had strong public support in America. There is almost no evidence, despite what many Americans want to believe, that the death penalty deters crime. Yet even among those who know the death penalty does not deter crime, support for the death penalty still runs three to one. Deterrence and punishment are separate issues. Punishment is about retribution. Reformers have a tough time grasping this. The problem—and our shame—is that prisons, though never designed for this purpose, have become the only way we punish. In an ironic twist, we designed the prison system to replace flogging. The penitentiary was supposed to be a kinder and gentler sentence, one geared to personal salvation, less crime, and a better life for all. It was, in short, intended to serve the function of a reformatron. Needless to say, it didn't work.

Before we had prisons, those who violated laws were generally subject to pain, exile, shame, or death. Whipping, fines, and the stocks were common criminal punishments in British colonies. Though people could receive the death penalty for many minor crimes, including such vague offenses as "malicious mischief," people, or at least the intellectual elite, considered flogging barbaric and primitive. Despite the harshness of the justice system, none of these punishments seemed to work: They didn't deter crime. It isn't difficult to imagine the history of our present prison system—throwing criminals into cages for substantial portions of their adult lives—as a process of steady evolution away from corporal punishment. Perhaps first one person was kept in a cage instead of being flogged or put in the stocks, and then another person was thrown in too. But perhaps the cage was kind of small, so the guards built another cage. And then the authorities would have built big walls and more cages. One could imagine this transition toward the modern prison, but that's not how it happened. Before we had prisons, harsh confinement was used alongside corporal punishment. But such incarceration generally had another purpose, such as holding a person until trial, or until



a debt was paid. Confinement was a means to an end: People weren't sentenced to confinement; they were held until something else could happen. And jails of the day were different—often communal affairs in which men and women mingled, sometimes with the lubrication of free-flowing liquor. Friends and family could visit, too, and often needed to because they might be the sole providers of a prisoner's necessities, food included. Jail wasn't meant to be longterm or especially sustainable, so inmates without money or friends could—and sometimes did—die from illness or the elements.

Political prisoners and prisoners of war were often locked up to keep them out of commission. This is similar in practice to a modern prison, but generally the actual numbers involved were quite small. One exception, however, was during the American Revolution. One historian estimates that some 17,500 American soldiers and sailors—more than double the number killed in actual battle—died of disease and starvation aboard British prison ships docked in New York City. Even our own George Washington sent a few prisoners to a horribly bizarre jail. Months after taking control of the Continental Army, the general and future president packed off a few “flagrant and atrocious villains” to a Connecticut dungeon fashioned from an abandoned copper mine. The convicts arrived with a letter from Washington stating rather tersely that the men had been tried and found guilty by a court martial (the letter did not specify the actual crime). General Washington informed the jail keepers that they would “be pleased” to secure the prisoners in their jail or anywhere else “so that they cannot possibly make their escape.” As for payment, Washington asked for credit. In these cases there was no pretense of punishment (which could easily have been meted out in other manners) nor any desire to “cure” the criminal; prisoners were simply left to rot.

Given the gruesome history of confinement, in the late 1700s the concept of a penitentiary was truly radical and cutting-edge. The study of criminals was a growing academic field, one that reflected new notions about medicine and science emerging at the time. People believed, somewhat naively, that no healthy man would choose a life of crime. And if new medicines could cure physical ailments, well then why not cure criminal ailments as well? Just as doctors in hospitals were healing the physically sick, could not trained prison professionals cure criminal illness? And just as today we would never consider beating Satan out of a schizophrenic.....

.... that's the end of the free sample. I hope you've enjoyed reading the beginning of *In Defense of Flogging* and want to read more.

