

## Flogging

by Sherman McCall

“Boys had been beaten since history began and it would be a bad day for the world if ever, inconceivably, boys should cease to be beaten.” So said C.S. Forester in *Lieutenant Hornblower*.

Clarence Davis, a black Democratic member of the Maryland House of Delegates, courageously proposed restoring judicial flogging in Maryland last year. Courts would give up to ten lashes with a rattan cane for minors at least 14 years old who commit theft or vandalism worth more than \$300. In the past, such a proposal would have met with derision. But in the wake of the caning case in Singapore, a conservative resurgence at the polls, and increasing frustration with crime at home, flogging’s time may have come again.

Except for keeping incorrigibles off the street, ever longer prison sentences are costly and unlikely to provide additional deterrence. More important is the probability, immediacy, and type of punishment. Corporal punishment might serve admirably. Citizens modify behavior in fear of crime. Why wouldn’t criminals modify theirs in fear of punishment? This seems logical, but we must be cautious. A logical fallacy plagues social science; the fact that one event follows another is no proof of causation. While favorable to countries practicing corporal punishment, simple crime rate comparison doesn’t account for other social factors. Neither is the surge in crime since the abolition of flogging in the United States conclusive.

Davis proposed a four-year experiment with corporal punishment. However, the experiment has already been made. There were no judicial floggings in the United States during World War II, while we harnessed the violent impulses of our young men overseas. Flogging resumed sporadically after 1945. Let us compare the change in population-adjusted FBI crime rates for each state that imposed corporal punishment to the simultaneous national trend.

Arkansas lashed three men in June 1946 for burglary and grand larceny. It

was a tonic. While the postwar crime wave receded marginally in 1947, Arkansas enjoyed precipitous declines compared with the rest of the country: robbery (AR, -45 percent; U.S., -5 percent), burglary (AR, -22; U.S., -2), larceny (AR, -11; U.S., -1), aggravated assaults fell six percent in Arkansas; they rose seven percent nationally.

Last employed in 1940, Delaware imposed two flogging sentences in 1945 and 1946. The following year saw a miraculous fall in violent crime compared to 1945: robbery (DE -23; U.S., +9) and aggravated assault (DE, -58; U.S., +19)—this despite the return of thousands of battle-hardened soldiers that drove up crime nationwide. Property crimes rose much less than the average, particularly burglary (DE, +5; U.S., +20) and larceny (DE, +15; U.S., +21).

Maryland’s last flogging came in 1948 for wife-beating. An immediate improvement in crime rates occurred over 1947, even while crime rose nationally: robbery (MD, -11; U.S., -6), aggravated assault (MD, -11; U.S., +5), burglary (MD, -4; U.S., +1), and larceny (MD, -3; U.S., +2).

In 1952, Delaware imposed the last judicial flogging in the United States. Crime in 1953 was down in Delaware and up everywhere else: robbery (DE, -10; U.S., +7), aggravated assault (DE, -26; U.S., +4), burglary (DE, -22; U.S., +5), larceny (DE, -1; U.S., +3). When the floggings ceased, crime rose again in 1954. Governor McKeldin commuted a flogging sentence for wife-beating in Maryland in 1952, arguing that he wouldn’t commit a “crime” against the criminal. His crime was against Maryland citizens, who in 1953 endured an increase in crimes to ten times the national average: robbery (MD, +24; U.S., +7), aggravated assault (MD, +4; U.S., +4), burglary (MD, +18; U.S., +5), larceny (MD, +30; U.S., +3).

While flogging’s deterrence did not extend to rape and murder, flogging clearly “beat” the national average. Flogging adds efficiency to the virtue of effectiveness. Consider that corrections spending has outstripped inflation by two to one for 20 years. Incarceration now costs \$59 per prisoner per day; new prison space costs \$60,000 per bed. In the present circumstances, the cost of punishing the offender often exceeds the cost of the vandalized property.

Flogging is also more egalitarian than fines. Like a regressive tax, the limits on

fines fall unevenly. The rich consider them a nuisance; the criminal a business expense. Viewed objectively, flogging is also *more humane* than incarceration. In all four of the 1946 cases, the convicts chose flogging in lieu of jail terms ranging from one to three years. When the accused is employed, fines and flogging may allow him to keep his job, while he is certain to lose it after imprisonment. This may keep his family off the welfare rolls, and it preserves his self-respect. Keeping first offenders away from career criminals might even lower the rate of recidivism. With the occurrence of male rape in prisons and an HIV incidence among male prisoners as high as eight percent, any time in jail can be a *de facto* death sentence. The AIDS epidemic and cramped conditions also make prison ideal for the spread of antibiotic-resistant strains of tuberculosis.

In 1978, the European Court of Human Rights overturned a flogging sentence in the Isle of Man, but not because it constituted “torture” or “inhuman punishment.” The court merely found the punishment “degrading” because it was applied by strangers to the bare buttocks. Our constitutional test is “cruel and unusual,” not “degrading,” and the state laws allowing flogging were repealed by legislatures, not overturned in court.

Given the wide contemporaneous use of corporal punishment, the intent of the constitutional convention was clearly not to ban it. The Fifth Amendment implies the legality of corporal punishment when it states, “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.” Public flogging for 25 different offenses in Delaware was not abolished until 1972, and 16 countries still employ flogging worldwide. The pillory and the stocks could combine milder discomfort with social opprobrium. Corporal punishment is not cruel; we should see to it that it is not unusual. We bomb Serbs, Iraqis, Vietnamese, Koreans, Chinese, Italians, Germans, and Japanese to defend other people’s cities; why do we recoil from corporal punishment to defend our own? The only problem with the legislation that was proposed in Maryland is that it does not apply to violent or adult crime. It should be the criminal, not the citizen, who turns the other cheek.

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# The Hundredth Meridian

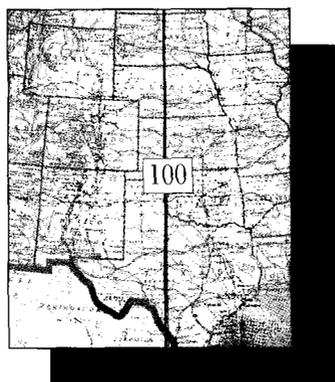
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by Chilton Williamson, Jr.

## Hunters and Gatherers

The carcass lay across a slab of rock at about the level of my knees. I estimated its undressed weight to have been around 700 pounds: substantial for a two-year-old elk. I had managed to position it so that when I drew the guts out they fell clear of the slab onto the rocks below. The rocks, already unstable, were now slippery with blood, gastric juices, and the bile-colored contents of the maw. Moving carefully to avoid breaking an ankle, I sawed through the pelvic bone to spread the hindquarters, then drew back the near fore and hind legs and tied them off to a couple of uphill rocks. In this warm weather I wished to ventilate the carcass while using the rib cage and hide for shade. The spike had been in fine condition, with a shiny thick coat that was good to touch and half an inch of fat on the brisket. When I had him fixed the way I wanted him I picked up the organs and the stomach contents and threw them farther downhill to draw the flies. Then I wiped the blade of my knife and saw on my pants leg, and scabbarded them. My rifle, the magazine stripped of shells, lay against a log on a patch of grass 15 feet from the edge of the rock slide. I shouldered it, and looked back at the elk. He had his eyes open still, but I didn't care about him as an animal anymore. He was just a huge piece of dead meat needing to be cut up, loaded, hauled off the mountain, and back to town for butchering.

It was warm in town all the next day, and I thought of the meat. The morning after I rose at five, brought the horses from the ranch, and picked up Larry Reed, who had offered to help with the carcass in exchange for a share of it. A cover of gray cloud had moved in overnight, and heavier clouds edged in paler gray and white like ocean waves were breaking over the mountains to the north. It started to rain, and almost at once the clay road commenced to be slick. "Do you have chains?" Larry asked. "Yes. But I think that it will clear now. There's no wind driving those clouds and the sky is clear everywhere except above the mountains." As we went into



the switchbacks going down to Fontenelle crossing I was aware of the trailer fishtailing slightly, and downshifted to compound low. "I hope we don't have to take this thing off the hill in a blizzard." "Well." Larry shrugged. "If we do, we do." A strong wind blew through Fontenelle gap, but the sky above Indian Ridge was lightening and the clouds evaporated into blue as they came sailing off the mountains. We saddled quickly. I rolled the panniers and tied them behind the saddle and put the sandwiches and two poly bottles into the saddle bags. Finally I gave Larry the mare and stepped up to the gelding who, spooked from wind and the weather change, sidestepped me on my first attempt to mount him.

The farther in we rode above West Bear Trap Creek and the higher we climbed the more the sky cleared, until it felt almost like a day in summer when we reached the base of Indian Ridge at a quarter before noon. We turned aside from the talus fall and rode on uphill among young pines before dismounting and leading the rest of the way. The carcass after two days was undisturbed, but an odor of decay lingered above the front quarter, which was still warm. I had neglected to remove all of the trachea, and once we had that out the meat smelled wholly fresh and clean. In spite of the warm weather, its coldness stiffened our fingers as we skinned out the haunches, shoulders, and barrel, and cut flesh in great slabs and rounds from the white bones. Larry's Green River knife, for which he said he had paid eight dollars, cut much better than my own knife; when I admired it, he offered to give me his other one when we got back to town. We had the animal boned by two

o'clock, and the mare loaded in 15 minutes. The carcass resembled the old man's great fish after the sharks had been after it, but we had beat the bears to the meat and it was safely secured now in the panniers. "Lunch?" I inquired. We were both covered in blood, hair, and tissue almost to the shoulders. "Why don't we go down as far as the creek," Larry suggested, "and wash up?"

Two days later a cold front moved in bringing snow and high winds. When the weather cleared Mary Thoman phoned, wanting me to help gather the last of Dick and Susie Thoman's cows for trucking to their winter pasturage north of La Barge. I was at the ranch a little past eight the next morning and we caught the horses we needed out of the corral and saddled them in the shadowy barn and loaded them into the trailer hitched to the flatbed truck. Dick and Susie had gone ahead with most of the family in the semi, and we had with us the elder daughter Dixie, Mickey Thoman, and a schoolteacher come from Green River with her saddle and blanket. Mary had packed a good lunch and we were in almost a holiday mood as we started up the ranch road to the highway, looking to make the most of the closest thing ranchers know to a holiday. We drove south to the Farson Cutoff and the highway bridge across the Green River where we split up, Mickey and Linda, the teacher, riding downstream on the west side of the river and Mary, Dixie, and I crossing the bridge on horseback to pick up some cows that Mary had spotted the day before from her airplane. The day was windless and mild, the sun present but remote as if sealed behind a pane of smoked glass. We kicked the cattle out of the bottom and set them moving south on the bluff above the river in the direction of Big Island, unfastening layers of clothing as we rode. We had not ridden far before Dick Thoman's blue truck appeared out of a prairie swale, laboring doggedly across the sagebrush in our direction. Mary galloped away to speak with him, and on her return explained that Dick now proposed to truck the cows rather than drive them to Big Island. We turned the herd, pushed it back over the bluff, and followed it down