

The History of Punishment By Lewis Lyons, published by Amber Books, 2003.

The early history of punishment begins with Gildamesh, the Samarian King of Uruk, who reigned around 2700 BC. The early Mesopotamian cultures were perhaps the first organized civilizations with permanent residences. The earliest legal code may have been that of Ur-Nammu, founder of the 3<sup>rd</sup> dynasty of Ur at about 2050 BC. It is interesting that in these early documents there was a reference to the power struggle between the temple and the state. In the Ur-Nammu code there are actually clear statements about if a person does something, what he will have to pay. Usually it has to do with paying a price in silver Mina. In some later Samarian records there was actually a death penalty given at a murder trial. In some early documents “The Laws of Eshunna”, there were different punishments for two social classes, the upper class and the lower class. The Laws of Eshunna appeared to cover every aspect of civil life including marriage, divorce, property, loans, inheritance, breach of contract, disputes and problems with harvest and cattle. Punishments were forms of monetary compensation. There were, however, some capital offenses.

The Code of Hammurabi was written around 1750 BC. Hammurabi Kingdom was centered in Babylon. Hammurabi erected public buildings, supervised irrigation and canal building, tax collection and created a postal service. Hammurabi unified his empire under a single legal code. By this code, the abiding principle was Talio which had to do for mutilating or amputating the part of the body that had committed a crime. There were legal rights and judicial procedures available to all in the kingdom. Cases were compiled and precedent was used as an argument. Still there were slaves and prisoners of war who did not have equal rights. The slaves, however, were paid a salary and could eventually purchase their own freedom. Under the Code of Hammurabi the death penalty was awarded for a vast array of crimes such as thievery, selling or receiving stolen goods, kidnapping, assisting fugitive slaves and for the sale of drink or even keeping a disorderly tavern. The Code of Hammurabi was a source of two other Middle Eastern legal traditions; the Biblical Law of the Hebrews and Sharia, the Law of Islam.

While the Ten Commandments summarized the citizen’s duty under law, they however do not mention any punishment and hence do not constitute a legal code. In the first five books of the Bible, known as the Torah (Law), Biblical punishments follow Hammurabi. Crimes under the Biblical laws were therefore a violation of God’s will and must be punished. The legal tenants of the Torah were complimented by interpretations of the Mishnah (oral law) and the Talmud (an encyclopedic compilation of legal debates). The Mishnah was compiled and edited by Rabbi Judah ha-Nasi by the end of the 2<sup>nd</sup> century BC. The Talmud was compiled between 220 BC and 470 CE. The tenants of Jewish law have three purposes. They are retributive (punishing the criminal for his act), deterrent (severe enough to intimidate others from committing the crime) and expiatory (attempting to obtain God’s forgiveness). Punishments included imprisonment, banishment, sympathetic punishment, flagellation and fines punished non-capital crimes. Imprisonment was reserved for repeat offenders who had been convicted twice before. Offenses against the person were punished by sympathetic punishment; the offender receives the same injury that he inflicted on his victim. “Life for life, eye for eye, tooth

for tooth, burning for burning. The Bible, Exodus 21:23". Flogging was the preferred punishment for a total of 168 offenses including seven types of incest and eight violations of dietary laws. Fines were reserved for property crimes and minor bodily injuries.

Debtors were sold into bondage to pay off their

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debts. There were 36 capital crimes including murder, sexual offenses, idolatry, blasphemy and desecration of the Sabbath. Witchcraft was also a capital crime. The Bible lists three methods of execution; stoning, burning and decapitation. Stoning was the most common method used mainly for crimes that affected the well being of the whole community including sex crimes. Death by burning was the punishment for nine categories of incest and one of adultery-that of sex with a married daughter of a priest. Decapitation was reserved for willful murderers and those convicted of communal apostasy (the renunciation of religion). Capital cases had to be tried by at least 23 judges who needed a majority of at least two to convict.

Arabia eventually became the cradle of Islam and these people were known as Arabs since the 1<sup>st</sup> century, CE. The word, Islam, means submitting or surrendering. Islam is a conservative religion that requires total obedience to God and Islamic Law. In about 570 Mohammed ibe Abdullah was born in Mecca. In 610 Mohammed saw a vision of the Angel Gabriel who told him that he was the apostle of God. Mohammed began preaching that Allah was the only God. In 630 Mohammed's followers captured Mecca. Sharia means the clear path or highway and is the law of the Islamic world. These laws, as in Judaism, are considered to be of Divine origin and governs ritual, belief and actions down to the last detail of life. Sharia is based primarily in the Koran which is the Revealed Word of God. In Sharia the judges often have discretionary punishments which allows them to make various punishments for the same crime. In the Islamic Law there are crimes with specific punishments (Hadd), crimes whose punishment is at the judges discretion (Ta-Zir), crimes that deserve retaliatory action (Kisas) inflicted by the victim's family or blood money paid by the offender or his family, crimes against the policy of the state deserving administrative penalties (Siyasa) and crimes that are corrected by acts of personal penance or expiation (Kaffara). Punishments may be death by stoning, fines, lashes, amputations. Apostasy, renouncing Islam by word or deed, is detrimental to the faith of other Muslims and the penalty is death.

It has been said of the Romans that their greatest legacy was their law. The Romans acquired much of their law from the Greeks. The Greek Laws often had their background in the Code of Hammurabi. In Athens, the poet Hesiod, agitated for a written code that would protect the rights of all citizens. Pressures in 621 BC led Draco to compile a legal code promoting stability and equality. Draco, whose name is the origin of the word "draconian", embraced the notion of state punishment rather too enthusiastically. His code mandated the death penalty for virtually all crimes even minor ones such as petty theft. Salon reformed Draco's code in 594 BC. Rome eventually constructed "Twelve Tables" in 450 BC. The aim of the TT (Twelve Tables) was to ensure the rights of the average citizen. The Twelve Tables mandated the death penalty for a number of crimes

including theft by night in the city and treason. Debtors could be punished by being sold into slavery but had to be sold abroad. The Twelve Tables set out trial procedures that were followed throughout the years for the republic and the empire. It was compulsory for witnesses to attend trial when summoned. A later provision called for honesty and impartiality among judges and stipulates the death penalty for judges found guilty of accepting bribes. These Roman laws changed over the years as the empire grew. In the 3<sup>rd</sup> century BC a police force was introduced and in the 2<sup>nd</sup> century BC a permanent court system began to develop. When the

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Roman Empire was split in the 5<sup>th</sup> Century of the Christian era between Constantinople and Rome. The Byzantine emperor, Justinian, (483 CE to 565 CE) compiled a body of civil law called the Code of Justinian. Much of these laws lasted to the end of the 19<sup>th</sup> century in Europe and were the model for the French Code of Napoleon and the laws of Germany. One tenant of the Codex Justinianus was “The burden of proof is upon the party affirming, not the party denying”. The main punishments in the republic and the empire were execution, exile, corporal punishment, imprisonment and fines. The method of execution included burning, stoning, crucifixion, the furca (hanging from a large fork until dead) and being thrown to the animals. Crucifixion was the standard method of execution for slaves and low ranking foreigners. Torture was not permitted against high ranks but was used judicially against slaves.

The legal traditions of India and China developed independently of those of Europe and the Mideast. Common documents of Indian Law, called the Laws of Manu, compiled in the 1<sup>st</sup> or 2<sup>nd</sup> century CE and the Chinese Tang Code written in the 8<sup>th</sup> century. The Laws of Manu were never universally applied all over India but the Tang Code was a blueprint for the Imperial Codes for one thousand years all over China and was supported by a vast empire-wide civil service. When the Aryans from Persia invaded India shortly before 2000 BC they brought with them a social structure which divided society into four classes. Each class had its own rules and position within society and there was limited movement between the classes. Hinduism helped to harden the distinction between the castes. The system was designed to maintain the racial purity of the Aryan noble and Brahman castes. Treatment of a criminal was inextricably bound up with the circumstances of his or her birth.

The Laws of Manu evolved from about 500 BC into the 2<sup>nd</sup> century CE. Sutras were manuals of instruction composed by religious teachers for their students. The Sutras expounded the correct rules, laws, customs and rights for every aspect of life. Punishment of a crime was essential for a soul’s passage through life and afterlife. It was crucially important to make sure that justice was properly done. “He who raises his hand or a stick shall have his hand cut off; he who in anger kicks with his foot shall have his foot cut off”. Laws of Manu. In cases where there were no witnesses, trial by ordeal was used to determine guilt. Trial by ordeal might include hot water and even boiling cow dung where a person was asked to bury his arm in the dung. If he escaped being burned he was innocent. In trial by poison the accused was blindfolded and made to retrieve a ring from

a basket containing a poisonous snake. In trial by fire he had to walk through fire or carry a hot, iron ball. The courts were supported by a police force. The most gruesome corporal punishments were only carried out on repeat offenders when it was considered that the gentler punishments had no effect. Flagellation of the body was carried out for incorrigible recidivist.

For many years China developed in isolation. The Great Wall was begun in the 3<sup>rd</sup> century BC and this as well as natural boundaries kept China apart from the rest of the Asia. The first Chinese legal code was called the Canon of Laws (Fa Jing) compiled in the 4<sup>th</sup> century BC. The Canon of Laws permitted 5 corporal punishments such as tattooing of the forehead, cutting off of the nose, amputation of one or both feet, castration and death. Legalists in 200 BC believed that

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the sole unifying factor in society was the force of the state as expressed through law. The Qin Legal Code of 200 BC was adopted as a starting point for legal codes of later dynasties. With the Tang Dynasty of 600 to 900 CE China became the largest, richest and most populous empire on Earth extending to Iran, Tibet, Manchuria and most of the Korean peninsula. The Tang capital, Modern Xian was the greatest city in East Asia with over 2,000,000 inhabitants and crowds of foreigners coming to seek their fortunes. Printing began around 800 CE. A huge bureaucratic system was created which allowed any Chinese citizen to demonstrate his aptitude for government work and to compete for government jobs. The Tang Code stated that laws are man made and created out of necessity. Confucius (Kong Fuci) 551 to 479 BC stated that a stable and orderly society depends on every individual knowing his place in the social and family hierarchy and acting accordingly. Punishments for the same offense varied according to the offender's status. Slaves, commoners, masters and nobles were treated differently with nobles and other privileged groups exempt from most punishments. The Tang Code was divided into two parts: The first section expounds the general principles of criminal law and the 2<sup>nd</sup> part enumerates the offenses covered with corresponding punishments for each one. 502 articles attempted to list every possible crime and punishment and predict every set of circumstances. Article 1 lists 5 punishments such as light stick, 10 to 50 blows, heavy stick 60 to 100 blows, penal servitude 1 to 3 years, life exile specifying the amount of distance away from one's residence and death by strangulation or decapitation. There were 10 abominations listed such as plotting rebellion, plotting great sedition, plotting treason, depravity and incest. These abominations were generally attacks on the system by inferiors and were the most serious crimes. Punishment according to status was the rule such as a husband who hit his wife committed no crime, the wife who hit her husband faced a year in prison. Punishment for many crimes could be avoided by payment of a fine or by loss of rank. Punishments were mitigated for women, the very young, the very old or the mentally or physically disabled of all social classes. Those under 7 or over 90 years of age would usually escape the death penalty.

Corporal punishment is a punishment of the body and the most common methods have been flogging, mutilation and amputation. Historically corporal punishment has been

reserved for the low born and often carried out in public. People at the time of Christ's birth seemed to be especially fond of flogging their slaves. Romans started the tradition of public flogging. Flogging was popular through Europe and especially during the Inquisition. People in the 17<sup>th</sup> and 18<sup>th</sup> century utilized flogging for a whole group of offenses and the flogging practice was brought to America. Jeremy Bentham actually invented a machine that would make flogging uniform. Flogging has outlasted Imperialism and in places such as Singapore the number is still applied in certain criminal acts. Paddling was a similar device used in school systems up until recent times. In Iran and Saudi Arabia flogging is still utilized as a criminal punishment. Branding was first used by the Babylonians as a way of not only punishing criminals but warning others. Different letters corresponded to different crimes, such as T for thief, B for blasphemer, SL for seditious libeler, P for perjurer, F for Fraymaker (someone who caused a disturbance in church).

Mutilation was a step further from branding by disabling an offender as well as inflicting a permanent and visible reminder of his crime upon him and those around him.

Mutilation has

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been used since at least the 1<sup>st</sup> century when it was set down in the Indian laws of Manu for crimes committed by lower castes against their superiors. Mutilation was generally carried out in public providing a deterrent and somewhat blood thirsty day out for the watching crowd. Between 1999 and 2002 12 states in Northern Nigeria adopted Sharia and began to impose sentences of amputation. Amputation is most routinely carried out in Saudi Arabia.

Shaming via the use of the pillory and the stocks probably originated in England in the 13<sup>th</sup> century. The criminals were publically displayed and humiliated so that all could see the guilty party. The Chinese used a version of the pillory called the Cangue, A which was a wide-hinged wooden board with a hole for the offender's neck and sometimes hands too. A scroll proclaiming the offense was pinned to the Cangue and the victims were paraded through street for public scorn and ridicule. Shaming was a way of humiliating criminals though not necessarily inflicting punishment on the body. Having people apologize to the public or placing signs in the front yard reading, "Danger, Registered Sex Offender Lives Here" are ways of shaming criminals. Shaming allows for harassment and violence from neighbors and so far has not been ruled as cruel and unusual punishment.

Although imprisonment has been used as a punishment since ancient times the most common means of dealing with offenders has been execution and corporal punishment. The 18<sup>th</sup> century heralded a gradual reversal of this trend and the beginnings of the modern European penal system. Michel Foucault in "Discipline and Punishment" examined how the rise of prisons in the 18<sup>th</sup> century contributed to the formation of the modern world view. Enlightened philosophers such as Voltaire and Jean Jac Brusseau and Jean Loc fueled social change with their belief in human potential, free will and the

innate goodness of man. These new schools of philosophers spoke out against torture and capital punishment which to them represented the barbarism of a bygone age that was contrary to all reason and humanity. Prison sentences became uniform so that capricious judges could not punish those who they wished to be more severe with. Cesare Beccaria (1738 to 1794) published a book called, "On Crimes and Punishment" that reasoned for radical reform of the punishment system and ending torture and capital punishment and the adoption of punishment that was swift and proportionate to the crime. Focused on the criminal individual giving up freedom but still keeping the social contract. Beccaria argued that the certainty and not the severity of punishment should act as a deterrent. Jeremy Bentham (1748 to 1832) formed the English legal system. Bentham argued that the strength of the penalty should outweigh the pleasure gained by committing the crime. Bentham proposed a 'hedonic calculus', a method of measuring the total pain and pleasure produced by an act which could then be used to determine the minimum deterrent needed to prevent a crime. According to Bentham human beings act according to enlightened self interests and attempt to maximize their pleasure and minimize their pain. Bentham also designed the Pentopticon which was a circular cell block around a central observation tower. The pentopticon was used so that the inmate was constantly and permanently visible so that the authority could monitor his behavior. The first pentopticon was built in London in 1842. The prisons of the 18<sup>th</sup> century were horrid and it was estimated in 1759 that one in four prisoners died in jail each year. Imprisonment actually had begun much earlier but was generally focused on the poor. In the 16<sup>th</sup> century every jurisdiction in England

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was obliged to provide a house of corrections for the troublesome poor. By the 17<sup>th</sup> century the boundary between prison and houses of correction had become blurred. An expose about the horrible conditions in prisons shocked the enlightened society of the 18<sup>th</sup> century. In many prisons forced labor was required and the first treadmill was installed in London's Brixton Prison in 1817. Treadmills were used to bring up water and in one case to turn a fan. The window shaped fan on the ceiling earned the feudal task with a nickname of grinding the wind. In the early years of the United States there was no prison system but sentences consisted of fines, whippings, public humiliation, banishment and in some cases the gallows. The reform movement focused on the issue of freedom which had been the basis of the American Revolution. Different states enacted laws to reduce the brutality of incarceration and developed procedures to turn the offender into a law abiding citizen. Competition between New York and Pennsylvania focused on the activities of prisoners. In the New York prisons at Auburn and in Ossining prisoners slept alone one to a cell. They were forbidden to speak or engage in any form of contact. In the Pennsylvania system the prisoner was isolated with his only reading material being the Bible. His only diversion was work to complete in his cell, usually the spinning of wool. In the 1860's and 1870's the habit of handing down long sentences had begun and helped to create the huge and over crowded system that still exists. The US prison system is not only the largest but probably the first large prison system which today comprises some 2 million inhabitants.

Torture has been used for thousands of years. It was generally based on the idea of confession before sentences could be passed. The belief was that truth was locked in the witnesses body and could be released by inflicting pain on the body. While torture was declared illegal in Scotland in 1708, Prussia in 1740, Denmark in 1771, Spain in 1790, France in 1798 and Russia in 1801 it did not vanish. The Mayan civilizations in the 4<sup>th</sup> to 8<sup>th</sup> centuries used torture and rituals in ceremonies to demonstrate piety and appease the Gods. Different measures of torture have been used in attempts to get at truth. Torture was declared illegal by a UN convention of 1984 when a recent estimate was that there were 123 countries around the world still using torture but that they do this behind closed doors and it is sanctioned by the state.

The more recent procedure in prisons has been re-education or brainwashing. In the 20<sup>th</sup> century the belief persisted that it was possible to change the mind of criminals and that this would reduce their criminal potential. With the rise of psychology and pseudopsychology, films such as the Manchurian Candidate and Clockwork Orange focused on the mind as the instrument of change.

The death penalty probably began in the 18<sup>th</sup> century BC which codified 25 capital crimes. In the Babylonian code of Hammurabi it says, "Whoever shall shed man's blood, his blood shall be shed; for man was made in the image of God" (Genesis 9:6). The Hebrew legal code prescribed the death penalty for a wide range of offenses. Hanging and stoning were the most common methods utilized. The Romans tended to utilize burning as a common execution procedure. Crucifixion was first used by the Phoenicians in about 1000 BC and was later imported by the Greeks, the Syrians, Egyptians, Persians, Romans and was also used in Japan. The guillotine was conceived as an humane, quick and painless procedure. This was utilized during the French

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Revolution. In Anglo Saxon England hanging was the official means of capital punishment. The first gallows were probably built around the 5<sup>th</sup> century. Poison was the usual method of execution for Athenian free men. The philosopher, Socrates was condemned to death for opposing the Gods and corrupting the youth in 399 BC. Modern methods of execution include electrocution first used in the Auburn, New York prison in 1890, lethal injection introduced in the United States in 1977 in Oklahoma and Texas, shooting which is by far the most common method of execution in the world today. Opposition to the death penalty began in the 18<sup>th</sup> century with philosophers such as Voltaire, Montesquieu and Beccaria. According to Amnesty International in 2001 there were 3048 prisoners executed in 31 countries. The true figures are certainly higher. In 2001 90% of all known executions took place in China, Iran, Saudi Arabia and the United States. China executes more people than any other country on Earth.

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