

The Cruel and Unusual Prison Condition

The American prison system does not work. At least it does not work to deter crime entirely, or work in the way that it was originally intended. Jeff Jacoby, a columnist for the *Boston Globe*, argues these points in his essay “Bring Back Flogging” and offers corporal punishment as a suitable alternative to the current system for dealing with crime in America today. The main problem with his argument is that there is no evidence as to how flogging a criminal would realistically be more effective than sending a criminal to jail. However, in order to prove his point, Jacoby makes appeals to two freedoms that are ingrained in American society today; our freedom from cruel and unusual punishment and our freedom to pursue happiness. Though he is unable to prove that corporal punishment would be as an effective deterrent to crime as the prison system is, he is able to show that the prison system is flawed and a suitable alternative must be developed.

Cruel and unusual is an inherently vague term. It is mostly determined by precedent and current social values. We “believe” that physical punishment is cruel because our society condemns it as violent. Jacoby defines his view by comparing the cruelty of both corporal punishment and the penal system. He asks, “Why is it more brutal to flog a wrongdoer than to throw him in prison—where the risk of being beaten, raped, or murdered is terrifyingly high” (Jacoby, 189). His reasoning here tells us that it is not more brutal or cruel to submit a person to physical punishment than it would be to place them in an environment where the potential for harm is much greater. He claims

that “more than two hundred thousand prison inmates are raped each year” (Jacoby, 189). By providing such a universal number he wants us to believe that the likelihood of these rapes is high for “young inmates, particularly those who... are convicted of nonviolent offenses” (Jacoby, 189). If this figure is even remotely accurate, then he is correct in drawing the conclusion that being thrown in prison may be much worse than the “short, sharp shame of corporal punishment” (Jacoby, 189).

Jacoby defines corporal punishment by providing examples and setting limits on how much is too much. In his opening paragraph he gives us the example of Joseph Gatchell to show how corporal punishment was practiced while it was still being readily used. Later Jacoby explains that “the ordeal suffered by poor Joseph Gatchell—the tongue ‘pierced through’ with a hot poker—be regarded today as anything less than torture” (Jacoby, 189). He uses this example to show what would be considered too much in the ways of physical punishment for a crime. He wants the audience to believe that if some criminals “say, thieves, and drunk drivers” were “horsewhipped in public” or subjected to “a humiliating and painful paddling”, it would be both an effective deterrent of future crimes and not cruel or unusual (Jacoby, 189). By showing what he thinks would be an effective alternative to the prison system for minor offenders; Jacoby shows us that we are in fact not free from cruel and unusual punishment. Comparing “paddling” to being raped in prison is a bit of a stretch, and this is why he must prove that a “paddling” could keep criminals from repeat offenses and in turn keep our society safe.

Public safety is the means of guaranteeing our right to pursue happiness, for if we are not safe then we can not reasonably pursue happiness due to the potential danger that

is imminent when we are not. Jacoby warns us of this problem in two ways. Jacoby claims that most offenders, due to the overcrowding of the prison system, are allowed to walk free. He states that “Fifty-eight percent of all murders do *not* result in a prison term” as well as “98 percent of all burglaries” (Jacoby, 188). Those figures seem unreasonably high; some of that 58 percent could be because convictions result in the death sentence. Burglaries could also be unreported petty theft. In both cases the high number of criminals who walk free could be a result of understaffed police forces that can’t handle the amount of cases they are given. There are a number of possible factors that could contribute to high crime that are not a result of our dependence on the penal system for justice. The fact remains that so long as crime is present, we can not presumably guarantee safety for everyone. There is no guarantee that corporal punishment will change the number of free walking criminals or, as Jacoby claims, “a lot more educational than ten years’ worth of prison meals and lockdowns” (Jacoby, 189). Jacoby’s second concern with sending criminals to prison is that they are becoming “a graduate school of criminal studies” (Jacoby, 189). As convincing this statement is, it is not backed up with any evidence or proof. If he were to provide an example as he does elsewhere in his essay, he would be far more effective in showing us that prisons are able to take “amateur thugs” and turn them into “career criminals” (Jacoby, 188). If he were to prove this he would have been able to show us that these criminals have a definite negative impact on our safety.

This sort of thought process is the greatest flaw in “Bring Back Flogging”. Jacoby does not explicitly define his terms in his essay. Instead he chooses to provide examples. His evidence and examples are not appropriately cited or necessarily accurate. He makes

claims such as “the prison system is choked to bursting” (Jacoby, 188) without factual evidence. His examples do not provide the concrete evidence needed to prove that corporal punishment that is neither cruel nor unusual would be effective enough to keep our society safe from harm. Many of his conclusions may even be true; the problem lies in his inability to prove them properly. Jacoby is unsuccessful in convincing us to “bring back flogging”. Despite these faults in his reasoning, the examples Jacoby provides do show that the prison system is not entirely effective in keeping us safe or merciful either. Jacoby is correct in telling us that in order to ensure public safety and our freedom from cruel and unusual punishment, the prison system must change.