

# Electric Shock: The Fairest Punishment of All

**Graeme Newman**

*From Graeme Newman,  
Just and Painful: A Case for  
the Corporal Punishment of  
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In the United States, the corporal or bodily punishment of lawbreakers is extremely rare, and many people assume that any such punishments would be "cruel and unusual" and thus in violation of the Eighth Amendment. In this essay, however, Graeme Newman argues that the use of corporal punishment—in particular, the administration of electric shocks to convicted criminals—is a fairer and more effective form of punishment than imprisonment.

The acute punishment of electric shock is easily demonstrated to be superior in every respect to our current punishment practices. Compare a typical occurrence in today's courtroom with what we would have in the future if only we could get it straight that it is pain, pure and simple, that is the essence of punishment.

The judge peers out over his glasses at the pathetic woman who sits across the courtroom. In a violent outburst she has just called him a heartless tyrant or something to that effect. The public defender and a courtroom guard restrain her.

"Mrs. Washington," says the judge. "This is your third shoplifting offense. You leave me no choice . . ."

He hesitates, expecting another outburst. Mrs. Washington's three year old daughter sits next to her, eyes wide and watery. The judge tries to avoid her gaze.

"Mrs. Washington, it is the judgment of this court that you be sentenced to a minimum of six months in the penitentiary and a maximum of one year. Your daughter will be turned over to the care of the Department of Youth, since the pre-sentence report indicates that you have no husband or relatives who could care adequately for her . . ."

The mother is led, crying, out of the courtroom. The child pulls at her mother's skirt, crying "Mama! Mama!" But the hands of the court are upon her, and an innocent child is about to be punished for the crime of having a guilty mother.

Every day, all across America many, many families and relatives of offenders suffer in this way. This means that literally thousands of people are punished for other people's crimes.

Now, an example of what punishment of the future could be like.

Twenty-year old John Jefferson stands beside his lawyer, the public defender.

"John Jefferson," says the judge, "the court has found you guilty of burglary in the first degree. Because this is your first offense, but the damage you did was considerable, I sentence you to . . ." The judge pushes a few buttons at his computer console. The average sentence for similar cases to Jefferson's flashes on the display, ". . . five shock units."

"You will be taken immediately to the punishment hall to receive five shock units. Next case."

The victim of this crime is sitting at the back of the court. He approaches the court clerk, who directs him to the punishment hall where he will be able to watch the administration of the punishment.

Jefferson's wife and child are ushered to the waiting room where they will await Jefferson's return after he has been punished.

Meanwhile, in the punishment hall, Jefferson is seated in a specially designed chair. As part of the arrest procedure he has already received a medical examination to establish that he was fit to receive punishment.

In addition to the victim, a few members of the press are seated on the other side of the glass screen. The punishment technician, having settled the offender in the chair, returns to an adjoining room where he can observe the offender through a one way screen. A medic is also present.

The technician sets the machine at the appropriate pain level, turns the dial to "5," and presses the button.

Jefferson receives five painful jolts of electricity to his buttocks. He screams loudly, and by the time the punishment is over, he is almost crying with pain.

The technician returns and releases the offender. "Stand and walk a little," he says.

Jefferson walks around, rubbing his buttocks. A shade drops over the spectators' screen.

"Do you still feel the pain?" asks the medic.

"Goddam, I sure do! But it's getting better. Can I go now?"

"Just sign here, and you've paid your dues."

Jefferson sighs happily and asks, "Which way to the waiting room?"

"Straight down the passage and second left."

Jefferson enters the waiting room where his wife rushes into his arms, crying, "I'm so glad it's over! Thank goodness you weren't sent to prison."

We see in this example that only the guilty person is punished. The punishment administered is clean, simple, and most importantly, convincingly painful. It is over in a brief time, and the offender is able to return to his family and his job. Punishment is confined only to the guilty. The side effects of punishment are minimized.

There is little doubt that such punishment procedures are more than feasible. Yet . . . a major objection to it has been that, because it is subjective, it would be felt so differently by each individual that it would be an inequitable punishment. Although it is true that people do respond differently to pain, it is also true that in the area of physical pain these differences can be more easily overcome than with other kinds of pain.

Let us look at the evidence.

### MEASURING DIFFERENCES IN RESPONSE TO PAIN

In general, it has been found that individuals vary according to the threshold at which they report pain (that is, the point of severity in the painful stimulus at which they report that it "hurts" or request that it be stopped). . . .

We should make an important distinction here between pain threshold and tolerance of pain.

Pain threshold refers to the point on the scale of severity of the pain stimulus (for example, heat) at which the person reports that he "feels" it as pain (in this case, prickly heat). This may, of course, vary somewhat among individuals, but it should be realized that it is usually only a painful stimulus at a very low level of intensity. As we increase the intensity of the painful stimulus the person will soon decide where along that scale to say "stop."

There is an additional advantage in the administration of physical pain in that one does not need to

rely exclusively on verbal reports to ascertain when it "hurts." Rather, there are physiological reactions such as sweating and pupil dilation, which are good indicators that the painful stimulus is indeed having a painful effect. In this way we are able to eliminate at least one aspect of the complicated process of the person's perception of pain (that is, we do not have to depend on him to tell us when it hurts).

Tolerance of pain is not necessarily related to a person's pain threshold. While a person may call out "stop" relatively early in the application of a gradually increasing amount of pain, he may nevertheless be able to stand certain levels of pain for quite some time. The tolerance of pain refers to the time element in pain. Again, people may vary in the extent to which they can stand pain over time, and it has generally been found that the variations in tolerance of pain are greater than the variations in pain threshold.

### MAKING PAIN THE SAME FOR EVERYONE

Since pain in these experiments is almost always at a very low level of intensity, people will cry out or ask for it to be stopped long before it reaches a point where they can no longer stand it. Thus, we would expect variations among individuals as to the point at which they called "stop." However, if one were to administer a painful stimulus which was, say, twenty times that of the lowest pain threshold, the extent to which this pain was felt differently among individuals would be "levelled." That is, it would be felt the same (very painful) by everyone. And if we used a physiological indicator we could be even more certain.

For example, suppose we have established from our experiments that the range at which people display a high sweat reaction is from a low of 5 volts to a high of 20 volts, with most people at about the middle, that is, 12 volts. We could safely administer 30 volts for a one second duration, and be sure that everyone felt the shock, and that it was very painful. This would have the effect of levelling the punishment in that we could be absolutely sure that the punishment really hurt every person to whom it was applied, and hurt them equally.

The important point about this method of applying an amount of pain is that not only is it of brief

duration, but it is certainly painful. Furthermore, the scientific studies have found that the variations in perceptions of pain are much greater for chronic pain (that is, drawn out pain, or pain tolerance) than for acute pain. We are on much safer ground using momentary application of a painful stimulus that we know will really hurt every person who receives it, than to apply some other form of pain which by its nature requires that it be administered over long periods of time. The longer the time period, the more the concept of pain tolerance will override the notion of pain threshold. And the longer the time period, the harder it is to control the amount of pain administered, and the way it is perceived.

With the application of acute pain, intensity depends much more on the amount of electric shock, the amount of heat, or amount of pressure. Only as a secondary device need time be used to vary the amount of pain. Thus, we may apply our 30 volts of shock for as brief a time as a fraction of a second. And, for some offenses, this may be sufficient.

### **DOES PAIN DIFFER ACCORDING TO SOCIAL AND ETHNIC BACKGROUND?**

There have been a number of studies by various anthropologists and psychologists which claim to have found differential responses to pain and suffering according to religious and ethnic background. . . . In fact, all these studies are irrelevant because they measure tolerance of pain, rather than pain threshold. They simply suggest the obvious: that particular ethnic or religious groups complain differently about pain. They do not show that these groups *feel* the intensity of pain differentially. In fact, the most recent evaluation of all research conducted into the cultural differences in response to pain concluded:

There is no evidence suggesting that the neuro-physiologic detection of pain (i.e., pain threshold) varies across cultural boundaries.

It is reasonable for us to conclude that pain is not differentially distributed in society according to social class or race, as is money. Certainly, if there were any differences, these would be *comparatively* much less than are those of economics. Pain is a great leveller.

In sum, people's physiological reaction to painful stimuli is pretty much the same. The way they deal with the pain varies according to the way they have been brought up. In other words, all people feel pain as pain. The ways they react to this pain may vary.

### **DIFFERENCES IN REACTION TO CHRONIC PAIN**

Are there differential responses to the effects of prison (that is, chronic pain and pain tolerance) according to social and ethnic background? There are drastic variations. Not only do people (including inmates) perceive time differently (and it is time that is the main element of pain in prison), but inmates also experience prison life in widely differing ways. . . .

### **THE FAIRNESS OF ACUTE PAIN**

One can immediately see the inherently attractive features of acute pain such as electric shock, as opposed to prison. It ensures that all persons receive the same amount of punishment. All people, rich or poor, black or white, will suffer the same amount of pain. This surely fulfills the requirements of equity and fairness. People will truly receive the same amount of punishment for the same crimes. No longer will it be possible to claim that the punishment favors the rich or poor, since we know that we have, by the scientific selection of an intensely painful stimulus, ensured that each individual will experience the same amount of pain. And for those purists who would insist that no matter at what level of intensity of shock, each one will feel it differently, one may reply that even if this is so, it is demonstrably clear that in comparison with the punishment of prison, the application of physically acute pain to the body is far more equitable, and far less susceptible to variations in effects. It achieves its object, then stops.

### **WOULD MINORITIES SUFFER MORE THAN THEY DO NOW?**

The number of people in prison has increased over the last twenty years at an astronomical rate, from approximately 177,113 in 1971 to 1.5 million in 1994.

The number of minorities in state prisons has always been disproportionately high: 47.8% in 1979, during a period when there was supposedly more sensitivity to the plight of minorities in the United States. The U.S. Bureau of Justice Statistics reports that in 1993 minorities made up 61.7% of the prison population (44.1% blacks and 17.6% hispanics). When we consider that blacks comprise only about 12% of the total United States population, we see that the proportion of blacks in prison is tremendous. And in some regions of the United States the proportions are even higher. The chances are that every black in the country has at least one relative in prison and probably more. . . .

Clearly, if corporal punishment can become a viable alternative to prison, then blacks stand to gain more than any other group. A reviewer of the first edition of this book castigated me for making this statement. But I stand by it. The biggest challenge to minorities has always been to convince the American public that they are being treated badly. For the entire period I have been involved in criminal justice (longer than I would care to admit) blacks have complained of discrimination and abuse at the hands of the police. Not until the highly public Rodney King beating did this issue become a public (and political) cause. But it is impossible to publicize the tremendous suffering caused by imprisonment because it is by design administered *in secret*. If blacks were punished in public with corporal punishment to the differential extent that they are currently punished with prison, there would be a public outcry. It would be *too much*. It would force us to be accountable for our excesses in punishment. Right now, we are not accountable for the excesses of prison, because it is a secret and silent punishment. The differential rate of black imprisonment is a *silent statistic*.

#### WHAT ABOUT WOMEN AND CHILDREN?

It is a popular belief that women are able to withstand more pain than men, although there is no research data to support this claim.

It is also argued on occasion that the young could withstand severe acute pain more easily than the old, but once again there is no research data to support this claim.

But there is evidence to show that women and children suffer more than do adult men from the punishment of prison. Studies have shown that women suffer the separation from their families much more than do men, and it is a well established fact that the young who are sent to prison are those who are preyed on by rapists, and if they are not raped, they are turned into hardened criminals by older inmates.

Therefore, it would seem to be much more preferable to administer acute pain in the same quantities for women and children as for men. In this way we have truly fair punishments, and all, regardless of race, age, or sex, receive the same penalty. Isn't this politically correct? In addition, the law could be considerably simplified, since in many cases, separate laws have had to be made for children so that they could be given more lenient (and recently more severe) punishments. . . .

I strongly oppose the use of corporal punishment on children within the family, because they have no recourse. It is punishment administered in secret (the sanctity of the home) and thus full of the same dangers of excess as found in the use of corporal punishment in prisons. There is no ready accountability, no "due process" one might say, within the traditional family household. Corporal punishment is a very severe punishment. It should only be used against those who have broken the law. There is no justification for its use otherwise.

#### IN SUM . . .

It is clear that, where appropriate to the crimes, the use of an acute corporal punishment instead of the vague use of prison as punishment is preferable, since the application of acute pain can be scientifically controlled both in terms of duration and intensity. The way it is physically felt does not vary, although reactions to it may: but even these reactions vary far less than reactions to prison.

Prisons conditions vary so much, that there is no reliable way to control their quality or intensity. Convicts are well aware of the ways in which prisons differ from each other, as is well documented in any prison diaries and books about prison. And these variations occur within prisons that are supposed to be of one type, such as "maximum security."

This chapter suggests another defect in the use of prison as punishment. It is difficult to vary the intensity and duration of prison in a clear cut way. The most common way to vary intensity of prison is to vary the length of prison term. But this mixes up duration with intensity. Another way to vary the intensity of prison is to introduce various types or degrees of "security"—such as maximum security down to minimum security prisons. However, such variations in intensity are not specific enough for our purposes, for we wish to control the administration of pain as carefully and fully as possible.

Varying the intensity of prisons also affects the credibility of prisons as a punishment since minimum security prisons are easily portrayed as "re-

sorts for white collar criminals." "Perks" such as gym equipment, TV, or even libraries, convey the (mistaken) idea that prison is not that bad a place. Varying the intensity of prison in this way undermines its credibility as a punishment, and paradoxically feeds the public's demand for more and more punishment, which under the present system can only be prison.

We have seen that we can minutely control both the intensity and duration of electric shock. If we are to control the intensity of prison, we must look closely at the types of pain that occur in prison—diet, hard labor, isolation cells—and consider systematically grading these so that the intensity of prison may be adjusted to the punishment deserved by the crime.

## REVIEW AND DISCUSSION QUESTIONS

1. What's the difference between pain threshold and tolerance of pain? Is it true that people may react to pain differently, but that their physiological experience of it is pretty much the same? Does Graeme Newman respond adequately to the problem of making the pain of electric shock the same for everyone? Is inequality of pain also a problem for the use of prison as punishment?
2. What are Newman's main reasons for advocating corporal punishment—in particular, the use of electric shock—over prison? Assess each of the reasons he gives. How persuasive do you find them?
3. Would corporal punishment be more effective in controlling crime than prison is, or less effective? Would it be more or less fair than prison? In general, what do you see as the advantages and disadvantages of Newman's proposal? Assess the use of corporal punishment versus imprisonment from the point of view of each of the theories of punishment presented in Section 11 of this book.
4. Why does Newman believe that blacks would gain more than any other group from the use of corporal punishment? Explain why you agree or disagree.
5. Should corporeal punishment be inflicted on children either by the law (a practice Newman supports) or inside the family (opposed by Newman)?
6. Assess the contention that the use of electric shock would be a "cruel and unusual" punishment and thus in violation of the Eighth Amendment.
7. Assuming Newman's proposal is basically sound, are there crimes for which corporal punishment would be inappropriate?

## "Three Strikes"

### *Rummel v. Estelle*

In 1964 William James Rummel was convicted of fraudulent use of a credit card, in 1969 of forging a check, and again in 1973 of obtaining money by false pretenses. The sums involved were \$80, \$28.36, and \$120.75, respectively. Like some other states, Texas has a recidivist or "three strikes and you're out" statute, which directs that a criminal convicted of a third felony be sentenced to life imprisonment. In