So first let me begin with a simple question: Given the choice between five years in prison and ten brutal lashes, which would you choose?

Yes, flogging is a severe and even brutal form of punishment. Under the lash, skin is literally ripped from the body. But 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 gaol, wouldn’t you choose to be flogged and released?

Consider your answer to that question. Then consider the fact that the United States 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. Despite our ‘land of the free’ rhetoric, we deem it necessary to incarcerate more of our people than the world’s most draconian regimes. We have more prisoners than China, and they have a billion more people than we do. We have more prisoners than soldiers; prison guards outnumber Marines.

It wasn’t always this way. In 1970, just 338,000 Americans were behind bars. There was even talk of abolishing prison altogether. That didn’t happen. Instead, fear of crime led to ‘tough-on-crime’ politics and the war on drugs. Crime has gone up and down since then, but the incarceration rate has only increased, a whopping 500 percent in the past 40 years.

In truth, there is very little correlation between incarceration and the crime rate. 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. Is there something 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?

Today’s prison reformers – and I wish them well – tinker at the edges of a massive failed system. We need much more drastic action. To bring our incarceration back to a civilized level, one we used to have, and one 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.

Perhaps, as a law-abiding citizen, with all there is to worry about in the world today, you don’t have the fate of convicted criminals in our prison system at the top of your list of concerns. But who hasn’t, at some point, committed a crime? Perhaps you’ve taken illegal drugs. Maybe you once got into a fight with a friend, stranger, or lover that came to blows. 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. Perhaps you accepted a ‘gift’ from a family member and told the IRS (tax office) it was a loan. Or did you go for the white-collar big leagues and embezzle millions of dollars? If your luck runs out, you can end up in gaol for almost anything, big or small. Even if you have done nothing wrong, imagine that in a horrific twist of fate you are convicted of a crime you did not commit. It’s not inconceivable; it happens all the time.

As you sit in court on sentencing day, you begin to wonder what prison will be like. Are there drugs, gangs, and long times in solitary? Will you come out stronger – or broken? Will you be raped? Will it be 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 system of containment. 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, inhumane form of punishment, how can offering criminals the choice of the lash in lieu of incarceration be so bad? If flogging were really worse than prison, nobody would choose it. Of course most people would choose to be caned over incarceration. 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?

Sometime in the past few decades we seem to have lost the concept of justice in a free society. Now we settle for simple efficiency of process. We tried rehabilitation and ended up with supermax and solitary confinement. Crime, violence, and drug prohibition help explain why so many are behind bars. 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.

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I am not proposing to completely end confinement or shut down every prison. Some inmates are, of course, too violent and hazardous to simply flag and release. Pedophiles, terrorists, serial rapists, and murderers, for example, need to remain behind bars – but they are relatively few in number. They are being kept in prison not only to punish them, but also because we don’t want them to hurt us. We’re afraid of them. But for the millions of other prisoners – particularly those caught up in the war on drugs (which I for one would end tomorrow if I could) – the lash is better than a prison cell. Why not at least offer the choice?

That prisons have failed in such a spectacular manner should matter more than it does. But it should come as no surprise, since prisons were designed not to punish, but to ‘cure’. Just as hospitals were for the physically sick, penitentiaries were created – mostly by Quakers in the late eighteenth century – to heal the criminally ill. A stated goal of the early prison advocates was nothing less than the complete elimination of punishment. The penitentiary would be a kinder and gentler sentence, one geared to personal salvation, less crime, and a better life for all. Like so many utopian fairy tales, the movement to cure criminals failed. Early prison reforms may have had the best of intentions, but today we should know better.

The disastrous consequences of prison became clear as soon as the first one was built, in Philadelphia in 1790: inmates began to go crazy. When Charles Dickens toured this prison, he noted with despair, “I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body.” Today violent offenders are mixed with immigrants who may have committed no crime other than crossing our border. Lifers are thrown in the same cellblock as people who serve 12 months. Kids get raped. The mentally ill are left to fend for themselves in some antipsychotic-medicine haze. And given the impossible task of total control, some guards inevitably abuse their authority.

Because one stint in prison so often leads to another, millions of criminals have come to alternate between incarceration and freedom while their families and communities suffer the economic and social consequences of their absence. When I was a police officer in Baltimore’s rough Eastern District, I don’t think I ever arrested anybody for the first time. Even the juveniles I arrested all had a record. Because not only does incarceration not ‘cure’ criminality,
This would not only save money, it would also save prisons for those who truly deserve to be there. And if you think that flogging isn’t punishment enough, that prisons are necessary precisely because they torture so cruelly and horribly – then we’ve entered a truly bizarre world of unparalleled cruelty. Flogging may be too harsh or too lenient, but it can’t be both.

Make no mistake: this is punishment, and punishment must by definition hurt. Even under controlled conditions, with doctors present and the convict choosing a lashing over a prison sentence, the details of flogging are enough to make most people queasy. Those receiving lashes have described the cane cutting through layers of flesh and tissue, leaving “furrows that were … bloody pulp.” Even if these wounds were attended to immediately, a full recovery could take weeks or months. In some cases, the scars would remain as permanent reminders of the ordeal.

The lash, which metes out punishment without falsely promising betterment, is an unequivocal expression of society’s condemnation. For better and for worse, flogging would air the dirty laundry of race and punishment in America in a way that prisons – which, by their very design, are removed from society – can never do. To highlight an injustice is in no way to condone it; quite the opposite.

Without a radical defense of flogging, changes to our current defective system of justice are hard to imagine. The glacial pace of reform promises only the most minor adjustments to the massive machinery of incarceration. Bringing back the lash is one way to destroy it – if not completely, then at least for the millions of Americans for whom the punishment of prison is far, far worse than the crime they have committed. Yes, flogging may seem brutal and retrograde, but only because we are in mass denial about the greater brutality of our supposedly civilized and progressive prisons.

1 Incarceration rates in the USA are approximately 743 per 100 000 according to the International Centre for Prison Studies. In Australia in 2013, according to the Australian Bureau of Statistics, the prison population is 170 per 100 000, up from 157 in 2003.

2 According to the Australian Bureau of Statistics as at December 2013, over half (58 per cent) of all prisoners have served a sentence in an adult prison prior to the current episode.