

AN EYE FOR AN EYE

A GLOBAL HISTORY OF
CRIME AND PUNISHMENT

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REAKTION BOOKS

Contents

Introduction 7

1

Crime and Punishment: In the Beginning 17

2

The Rise of Legal Traditions 48

3

Crime in a Changing Landscape: From Feudalism
to the City and the State 81

4

The Transformation of Punishment and the Rise
of the Penitentiary 107

5

Highwaymen, Bandits, Brigands and Bushrangers: Bands
of Thieves and Early Organized Criminality 144

6

Prohibitions, Pirates, Slave Traders, Drug Smugglers and
the Internationalization of Criminality 171

7	
The Face of Modern Murder	197
8	
Crime and Punishment in a Post-colonial World	225
9	
Crime and Punishment in the Twenty-first Century	260
References	300
Select Bibliography	326
Acknowledgements	331
Index	332

Introduction

The past is never dead. It's not even past.

William Faulkner, *Requiem for a Nun*, Act 1, Scene 3 (1951)

The past is a foreign country; they do things differently there.

Leslie Poles Hartley, *The Go-Between* (1953)

In 2006 the international media was once again abuzz with the goings-on in several prison systems. Usually one would expect what follows to be a sad story of deprivation and despair. Has one ever heard of a 'feel-good' prison story? In most instances the first reaction would be appropriate, since there is little disagreement that prisons past and present are too often associated with poor food and hygiene, overcrowding and riots, violence and degradation, gangs and other bad actors. But this time it was a relatively anomalous episode revolving around three Israelis locked up in Sweden. In most cases, prisoners, particularly Israeli prisoners locked up abroad, jump at the chance to be transferred home from foreign jails. But this was not the case here. When offered this arrangement all three prisoners rejected the offer citing the more favourable conditions of the Scandinavian prison, where they could enjoy 'steaks, sex and private television airing World Cup games for free'. If this does not sound enticing enough, read about the other perks available in these jails-cum-'five-star hotels'. For starters, the aforementioned steaks, free cable tv and three-day conjugal visits in a luxury apartment provided on the prison grounds. Add to this the fact that not only does each prisoner have his own cell but along with numerous other amenities, twice a year he gets to traverse the streets of Stockholm (accompanied by a police car).¹

This story was selected because it demonstrates on a micro level the diversity of just one form of punishment in two very different countries during the same time period. Both are at the higher end of the developed world. The point is that if there is this much discrepancy between penal sanctions at this level and time, one would expect the distinctions to be even more glaring when contrasting crime and punishment across a temporal and global perspective. The birth of the penitentiary and the introduction of incarceration during the eighteenth-century Age of Reason was a landmark in the global history of crime and punishment. While the infliction of pain on the human body had its limits, the notion of imprisonment continues to evolve and experimentation in various forms of detention continues around the world, limited only by financing, technology and the imagination. The examples of twenty-first-century Swedish and Israeli prison decorum offer just a fleeting glance into the global story of crime and punishment. But we are getting ahead of our story.

An Eye for an Eye takes the reader on a sometimes uncomfortable tour through the continuum of crime and punishment. It is not the type of tour a time traveller would probably sign up for, what with all of the beheadings, hangings, stonings and other gruesome accounts of penal sanctions of times past and present. There are a number of fine books examining the history of crime and punishment in specific countries, religions, regions and continents, but as of yet, except for multi-volume reference books, none have attempted to tackle this topic from a global perspective. The historical narrative that follows surveys the wide range of crimes and punishments that have developed over the millennia.

For the purposes of this book, punishment is defined (in the historical/written record) as a penalty imposed, usually by a state, on an offender who has violated a law. Historically, the concept of crime developed along the same lines as sin. The Bible, the Quran and the Torah were among the watershed developments contributing to the rationalization of crime through notions of sin and moral propriety. What distinguished crime from sin (breach of moral law), both of which deemed unacceptable behaviours, was that crime is generally understood to violate a written law. As the responsibility for handling crime passed from theological authorities to the state, and as clergies were replaced by police officers, 'sin has seemed to disappear by having been given it a new name and new monitor'.²

There is no definitive answer to the question, 'What is crime?' Popular conceptions equate crime with bad behaviour, or what one

might today refer to as anti-social behaviour. But for the purposes of this book and to offer coherence to its structure, crime will be regarded as a legal concept, that is, what is or is not against the law. Readers will find that a society's criminal laws give vast insight into what a society and its rulers regard as its core values, morals and principles. In fact, for some cultures their earliest writings or literature come to us in the form of rules of behaviour and codes of conduct, often along with an accompanying set of punishments. It is pretty much accepted that the criminalization of behaviour is a gradual process and it is only in relatively sophisticated societies that we can apply the category of crime or distinguish between interpersonal transgressions and state violence. In prehistoric societies offenders were judged and punished by the community, due to the belief that their actions had endangered the entire community. From a global perspective crimes have differed as widely as the societies that defined them and continue to do so today. This work benefits from the amount of attention given to the history of crime and punishment over the past twenty years and therefore should be considered a synthesis and survey of this topic over the millennia, rather than a comprehensive reference work, which would be beyond the scope of a single volume.

One can only hypothesize about the prehistory of crime and punishment in the earliest stages of the development of human communities. Some disciplines have attempted to bridge this divide by interpreting the dark past by drawing inferences from observations of traditional cultures just before European contact and basing their assumptions on these observations. Prior to fourteenth-century England, there is little in the way of data about murders and other interpersonal crimes in the rest of the world. By most accounts, it was only with the advent of England's twelfth-century eyres, which brought periodic visitations by king's justices into the shires to record the minutiae of criminal activities, that a systematic study of homicide and other crimes can begin.³ Naturally, the history of crime and punishment becomes easier to write with the accretion of more written documentation. It is then that the historian needs to winnow the deluge of material, in contrast to the mining of whatever scant sources are available.

Societies tend to develop methods of punishment that fall in line with their cultural beliefs. For example, Asian society often used exhibitory public punishments, which were considered a 'humiliation worse than death'. No form of death was more feared than one that interfered with the somatic integrity of the body. Thus the ultimate punishment

consisted of beheading (often along with other physical mutilations), since it was believed that the body needed to be buried intact for the soul to make the proper passage.

Contrary to media sensationalism and popular culture's fixation on legions of serial killers and mass-murderers, long-term evidence suggests that the world is actually becoming a safer place.⁴ Since the dawn of civilization, humans seem to have demonstrated a remarkable predisposition for committing mayhem against one another, as well as coming up with novel sanctions to punish those who transgressed community standards of propriety. Every culture has developed its own understanding of crimes and punishments, and human behaviour has been remarkably consistent over the millennia in its response to bad behaviour, limited only by technology and the imagination. Long before the creation of written law, societies developed rules and customs for keeping order and developed sanctions to protect the community from malefactors who violated them. Researchers refer to this early period with a variety of monikers, all seeking to avoid the pejorative 'primitive'. More neutral in spirit and much less judgmental, scholars prefer more seemly descriptors, such as 'prehistoric', 'tribal', 'preliterate', 'pre-colonial' and so forth. Examining how societies define crimes and come up with punishments for each is at the crux of what follows. Temporal and global variations in attitudes towards crime and punishment offer an excellent prism from which to view the march of mankind.

The history of crime and punishment is a work in progress as new discoveries periodically turn accepted notions on their heads. Picture the understanding of Babylonian law prior to the discovery of the Code of Hammurabi in 1901, or Egyptology before the Rosetta Stone was found in 1799, allowing a major breakthrough in deciphering hieroglyphics. Writing any type of 'global history' has to take into account the fact that for most of the human record there is no written documentation. Even in the twenty-first century, it is a challenge to acquire meaningful data on crime and punishment from vast heavily populated swathes of the world. So, if it is almost impossible to gather meaningful crime-related data in such nations as China, Vietnam, North Korea, Saudi Arabia, Sudan and Cuba, consider the challenges in finding sources for constructing a historical record from the preliterate past. Like the primordial past, the present is sometimes 'a foreign country', a daunting cipher when measuring patterns of crime and punishment in furtive societies and authoritarian regimes. So, researchers are often left to inference, deduction, anecdotes and speculation when chronicling global

history of any subject over long periods of time. However this can sometimes be overcome by turning to folklore, oral history, anecdotes, mythology and classical literature, archaeological and anthropological evidence that can sometimes yield unexpected results to fill in the missing gaps in the historical and prehistorical record.

When one speaks of prisons and fines, the gallows and guillotine, beheading or whipping with the knout, it is obvious we are referring to various forms of punishment. However, when it comes to crime it is much more complicated since not every culture considers the same activities crimes. Theological regimes have been known to discipline adultery, fornication, blasphemy, citing the Lord's name in vain, apostasy and other acts as forms of criminal activity. But if the overwhelming majority of secular countries do not subscribe to these proscriptions, what is one to make of the fact that adultery is still a crime in 24 American states?

A number of fundamental axioms concerning global crime and punishment hold true over time. For example, as societies develop there is a tendency for them to shift sanctions from physical punishment to financial compensation and imprisonment. But no premise is more universal than the fact that over the historical record the status of victim and perpetrator was the main deciding factor over the outcome of a criminal case and the main determinant for punishment. From antiquity through the feudal era and into the present, it always helped to have been born into the privileged classes if one needs to appear before the justice system. From the first written legal code, law became a rich man's preserve. Hammurabi's Code clearly stated that punishment falls heaviest on the lower classes, repudiating any notion of equal favour under the law. For most common crimes wealthy malefactors could expect to suffer less pain and lower fines if the victim was a commoner or of a lower caste, as in the case of India. Punishment by status can be found in India's ancient *Laws of Manu*, among the Ifugao of the Philippines, and in Tang era China. But there are always curious anomalies, such as in the case of the Aztecs, who expected better behaviour from the nobility; thus the reverse was true, and members of the elite could expect more punitive sanctions than were meted out to commoners. Other constants include the fact that perpetrators of crime, particularly violent crime, have overwhelmingly been young males over the centuries. It would also follow that the most punitive punishments were directed at them as well. For example, there are no cases of women being hanged, drawn and quartered in the English experience.

Another pattern that has existed throughout the recorded history is the incessant search for more humane forms of execution. From Athenian use of the poison hemlock and simple beheading, to the technological marvels of the guillotine, the electric chair, and gas chamber and finally (for now) lethal injection, penal reformers have played an important role in determining how we execute the supposedly worst among us. The modern world has even intruded into some of the most primitive penal sanctions in use today. While in times past prisoners went to the headsman with little in the way of preparation, in places such as modern Saudi Arabia they are often tranquillized before being beheaded in a public square and those facing hand and foot amputations in Sharia-dominated countries are soothed prior to the process with a healthy dose of anaesthesia.

Taking a global historical approach demonstrates not just the universality of certain crimes and punishments, but also beggars the notion that primitive sanctions were more brutal than modern ones. Yes, penalties were harsh and unforgiving, and rarely all but certain, but in most cases ancient tribal sanctions paled in comparison with Western penalties of being broken on the wheel, burned alive or disembowelled while alive just several centuries ago.

All works of history, especially those intended to be global in scope, are subject to limitations of content and length, inclusion and exclusion. This work is no exception. A deliberate decision was made to focus on certain crimes and punishments over others. Selection of what is and is not covered is predicated on whether there are specific criminal statutes directed at the offence. While global histories could be devoted to such topics as prisoner-of-war and death camps, genocide, terrorism, internecine conflict between religious sects, ethnic and political groups, and the Spanish Inquisition and other religious crusades against misbehaviour, it is beyond the scope of this historical survey.

When it comes to the historical record, children and women are frequently missing when it comes to crime and punishment. As mentioned earlier, most crimes have long been the purview of young adult males. When women enter the discussion, the farther back in history we go, they tend to be linked to 'gender-specific' crimes of witchcraft, fornication and infanticide. Children for the most part are even less obvious in historical chronicles since they are typically treated informally by justice systems, leaving few records in their stead. The crimes and punishments that follow are culled from those that have had the most

continuity over time in many different cultures. For example, crime such as kidnapping is excluded from the coverage, although there are several fine books specifically devoted to it. But for a global history of crime and punishment the conceptual underpinnings of the act are rather new. In America, for example, kidnapping did not become 'a fully constructed public issue' until the Charley Ross case in 1874.⁵

Another topic that would be worthy of an entire book would be the history of financial crime. Probably the signature crime (thus far) of the twenty-first century, economic crimes have been with us since the first coins were cast, the first taxes invoked and the first financial crimes promulgated. For most of the historical record, financial crimes have consisted of counterfeiting, smuggling, tax evasion, bribery and so forth. Today, when the topic is broached it typically hinges on discussions of billion-dollar frauds perpetrated by the likes of Bernard L. Madoff. New technologies have facilitated frauds that were once unimaginable. Large-scale frauds have occurred with seeming regularity since the rapid expansion of commerce in the seventeenth century, but they are far from a universal pox on mankind, and thus have been mostly omitted from this work.

In order to weave a broad and interesting tapestry featuring the twin themes of crime and punishment, the author has delved into the dark corners of a number of diverse national historiographies. In most related books on the topic, the subject-matter is typically Western-centric, due in no small part to the greater number of sources available. This book attempts to broaden the discussion by shedding light on lesser known and less chronicled portions of the world, which have heretofore been missing from the historical discussion of crime and punishment. In order to accomplish this I have selected what I consider are a number of illuminating themes, events and stories in order to offer some type of chronological momentum and consistency.

Chapter One takes the reader from prehistory into the ancient world of criminal codes and punishments. Before the jury, the prison and the court system, preliterate cultures relied on unwritten customs more rigid than the written law. This chapter will examine what is known about some of these cultures before venturing into the earliest written codes of the Near East, Egypt, India, China and elsewhere.

Chapter Two examines the development of various influential legal traditions. More than a dozen legal traditions have come and gone over the historical record, leaving perhaps four legal traditions for the modern era. Some systems have survived, as in the case of Islamic, common, civil

and socialist legal traditions, while many more have either disappeared or survived as hybrid systems. Most attention is focused on the common and civil legal traditions, probably due to the fact that European colonial powers spread them across the globe through conquest and colonization.

Chapter Three examines developments in crime and punishment in a variety of societies as they progressed towards state building. This chapter covers the way feudal societies were organized and how they implemented justice, before the rise of centralized bureaucracies and the creation of authorities for collecting taxes, creating laws and keeping the peace. Feudal societies flourished in regions as disparate as Japan and Western Europe, and the system remained an important organizing force for societies well into the nineteenth century.

Chapter Four chronicles the transformation of punishment and the development of the modern penitentiary. It is crucial to the story since a society's penal regime tells us much about a state and how far it has progressed towards reaching higher standards of civilization. As countries unevenly adopted the penitentiary there was a tendency for them to move beyond public capital and corporal punishments as they made the radical departure towards the use of imprisonment sanctions.

Chapter Five surveys the development of more organized forms of criminality prior to the globalization of crime. Until the nineteenth century, crime was mostly a local concern. Early bands of criminals appeared where governments were weak, policing ineffective and the population stratified. There was an amazing diversity of outlaw bands, popping up in virtually every society. Some of the earliest accounts come from Asia. Thirteenth-century Japan's shogunate featured the *akuto*, or 'evil bands'. Various permutations of the outlaw stereotype have ranged from India's dacoits, Scottish reivers to Mexican *plateados*, Brazilian *cangaceiros* and other variations. There were even Jewish and gypsy bandits in Europe. But what they all had in common was that they prevailed only in vicinities where they had some type of popular support, usually in rural districts. Moreover, their days were typically numbered once governments became better organized and policing more adequate. It was with the rise of more organized criminal organizations, such as slave traders, maritime pirates and drug traffickers that criminal activities began to transcend national boundaries concomitantly with advances in transportation and communication and the opportunities made possible by various global prohibition regimes.

Chapter Six tracks the roots of international criminal gangs and takes off from the previous chapter which highlighted local and regional

organized criminal activity. The rise of globalization, made possible with improved transportation and communication developments, along with the passage of poorly conceived commerce prohibitions stimulated the rise of transnational criminal gangs that continue to blight the modern world.

Chapter Seven explores the history of murder, focusing on forms of multiple murder and related sex crimes. A similar chapter could have been devoted to robbery, rape, bribery and other crimes that have had staying power over the centuries. But no crime serves as a template for measuring crime better than murder, which continues to be probably the most reported of all types. Murder has been a subject of interest in the world's literature from the ancient Greeks and the Bible to Shakespeare and to the current popularity of the true crime genre. Despite all of the scientific and cultural advancements of our species, we still kill each other at alarming rates. By one estimate, more than 1 million Americans were murdered in the twentieth century (not including victims of war). As old as mankind, murder plays a recurring role in this survey. Over a century ago, Frederic William Maitland remarked that 'if a fairy were to offer him the opportunity of personally witnessing the same type of scene across societies, he would choose a murder trial, because it reveals so many matters of the first importance'.⁶ One crime historian even suggests that the very word 'murder' has the advantage of belonging to everyday language. Unlike such crimes as blasphemy, manslaughter, parricide and paedophilia, it is doubtful that anyone hearing the word 'murder' would misidentify it as anything other than taking a life. As historian Roger Lane put it, 'Murder is in fact the easiest of crimes to track through time: always taken seriously, almost always subject to law, never common enough to be completely tolerated or overlooked.'⁷ Perhaps no form of murder is studied more than serial murder. Contrary to popular notions that serial murder is a modern phenomenon, there is evidence that serial killers have always been part of the human experience. One needs look no further than fairy tales, stories of witchcraft and the purported existence of werewolves and vampires over the centuries. From Africa to western Europe, shape-shifting stories of leopard men, wolfmen and the like were probably inspired by actual mutilation murders in a time of superstition before the birth of modern policing and forensic investigation.

Chapter Eight examines the role played by colonialism and other state building processes in the spreading of penal sanctions across the globe. Societies in close proximity to one another tend to develop similar

philosophies about crime and punishment. However, societies that evolve in relative isolation, such as China and Egypt, often produce vastly different conceptual models of crime and punishment. But one of the most powerful vehicles for the transmission of notions related to crime and punishment has been the process of European colonialism. For centuries world powers have established colonies in the far-flung reaches of the world, in the process transmitting their penal philosophies and sometimes borrowing from indigenous traditions as well. Later, as these colonies, territories and protectorates made the transition to statehood, much of their penal philosophy was grounded in the hybridization of colonial and indigenous penal practices.

Chapter Nine completes the saga of crime and punishment, demonstrating the cyclical nature of crime and punishment as well as the remarkable continuity between ancient and modern criminal behaviours. This chapter shows that at the same time that high-tech crimes are evolving and increasing, ancient misbehaviours such as blasphemy, heresy, adultery, piracy and witchcraft continue to flourish alongside the age old punishments of executions, shaming and banishment. This chapter also demonstrates a willingness of societies to go back to the historical record when it comes to crime and punishment, adapting crime control strategies from the past, while calling into questions former penal regimes heavily predicated on capital punishment and imprisonment.

A global history of crime and punishment reveals that despite amazing advances on every level of the human experience, there is a remarkable continuity in what crimes are committed as well as the sanctions used to punish them. Although the means for committing crimes are quite different in the digital post-industrial world, the goals and motivations of criminals and criminal justice systems have not strayed too far from their antecedents. Ultimately, *An Eye for an Eye* demonstrates that the history of crime and punishment remains an inconsistent chronicle of experimentation – borrowing, adapting and finding new alternatives – often finding penal officials going back to history books to retool ancient sanctions for a new world. Although empirical evidence regarding their success is meagre if not suspect, the past decades have seen the return of shaming, chain gangs and exhibitory punishment, sanctions once thought relics of a penal past.