

T H E C O S T O F C R I M E I S H I G H

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Jan. 4, 1990

Edna Buchanan is a writer for the Miami Herald. In the newsroom of the Herald, there is some disagreement about which of Edna Buchanan's first paragraphs stands as the classic Edna lead. I line up with the fried chicken faction.

The fried chicken story was about a rowdy ex-con named Gary Robinson, who late one Sunday night lurched drunkenly into a Church's outlet, shoved his way to the front of the line, and ordered a three piece box of fried chicken. Persuaded to wait his turn, he reached the counter again five or ten minutes later, only to be told that Church's had run out of chicken. The young woman at the counter suggested that he might like chicken nuggets instead. Robinson responded to the suggestion by slugging her on the head. That set off a chain of events that ended with Robinson's being shot dead by a security guard. Edna Buchanan covered the killing for the Herald and her story began with what the fried chicken faction still regard as the classic Edna lead:

G A R Y R O B I N S O N D I E D H U N G R Y

When a person violates the law there are many things that can happen to them. Like Gary they could be killed in the

process thus avoiding arrest, trial, incarceration etc. For most of the worlds recorded history they would have been put to death.

In 1584, the assassin of William of Orange was put to death after having been found guilty. The arm with which he had committed his deed was immersed in boiling water. The following day, it was cut off. During the next 18 days his flesh was torn with red hot pincers, he was stretched on a wheel, and he was beaten with a wooden club. Finally, the magistrate in charge, out of pity, ordered him strangled. I did find one other example concerning death by being drawn and quartered that is of some passing interest. It seems that a man who was put through this punishment could not be pulled apart by the four horses so the executioner had to take a knife and cut part of the muscle on both arms and both legs. The horses then proceeded to pull his limbs from his body. The man apparently remained conscious throughout this ordeal and by the time his last appendage was pulled off his body his hair had turned totally white. Presumably he died shortly thereafter.

As recently as the beginning of the nineteenth century similar punishments were not unheard of and legally sanctioned atrocities persist even today. In England at the time of the American revolution and for some 60 years thereafter, most felonies were punished by hanging and for certain serious crimes such as treason a person could be drawn and quartered. When Kentucky became a state in 1792 the penalty for all felonies was death. There were no prisons.

Horrible and gruesome punishments have been inflicted on offenders in the name of the law throughout history. Although the aims and methods have changed, society still considers it necessary to punish those who break its rules. For example in Saudi Arabia today according to some new reforms, the hand of a thief is now removed by a surgeon using anesthetic, rather than being chopped off with a hatchet as in the past. An adulteress will no longer be stoned to death, but will instead be shot. This apparently is considered progress.

Today in Kentucky and in every state in this union we use prison as our major punishment for the commission of a crime. We have reached this level of civilization in Kentucky and the United States in part because of changing attitudes by all of us and in part because of the United States Supreme Court. The 8th Amendment of the United States Constitution prohibits the infliction of cruel and unusual punishment. A problem arises, however, because the constitution does not define what is cruel or unusual. In 1947 the Supreme Court in Louisiana v. Resweber held not only that capital punishment was valid but rejected the contention that the state's failure to electrocute the defendant on the first try made subsequent tries cruel and unusual. In an earlier case Witherson v. Utah (1879) the Court held that shooting was not cruel and unusual but suggested the ban would include both drawing and quartering and burning alive.

Society has always tried to find ways of controlling people's behavior. In the interest of self preservation it has

from earliest times tried to maintain some order in people's relationships and transactions with each other.

Even before there were written laws people recognized that it was necessary to protect personal and property rights. In the more structured tribal societies, entire clans had the collective responsibility for avenging wrongs done to individual members by members of another clan. If the offender could not be punished then vengeance was visited upon the entire clan to which he or she belonged.

The carrying out of vengeance was regulated by the ancient code of lex taliones, the principal of an eye for an eye and a tooth for a tooth. A murderer might be executed in the same manner he or she had employed in killing. Although a desire for exact retaliation persisted for a long time it was recognized very early that blood feuds were not very satisfactory in one important respect: there was no means of ending them. Thus the early Germanic and Anglo Saxon peoples eventually developed a system of compensation that could end blood feuds and retaliations. Under this system the injured party was offered compensation and was usually forced to accept it. Money paid in compensation was called bot. The worth of a man was known as wer, the amount depending on his rank and importance. The laws were very detailed and precise in assigning values to all kinds of injuries. For example an injury as long as the first joint of the forefinger was worth a shilling and an injury two joints long was worth two shillings. The elders of the tribe or clan acted

as an impartial third party in settling disputes. Their decisions were not really binding and their function was more that of peace keeper than judge. Still this system of justice did represent an advance because it reduced the endless fighting and killing and made the offender at least try to address any wrongs that had been committed.

Prior to the eighth century the early penal customs surrounding feud and compensation applied only to freemen and to those who were equal in social standing. Obviously only propertied people were able to make monetary compensation. Corporal and capital punishments were reserved almost exclusively for slaves. However between the eighth and tenth centuries punishments such as whipping, mutilation, and death began to be used more frequently for freemen especially for crimes which were considered typical of slaves. These slave punishments were gradually incorporated into the criminal law as it evolved.

During the tenth, eleventh, and twelfth centuries in England when the kings became more powerful and were able to extend their authority, the regulation of criminal punishment gradually ceased to be a private matter. Crime was now considered a public matter, an offense against the king and a breach of public tranquillity. No longer did the victims receive compensation, instead the king exacted tribute and punishment. A penal system was administered by officers and judges in the name of the crown and the heavy fines that were levied were a good source of income for the nobility. The penalties for crime

became very harsh, partly in order to maintain the authority of the king and partly because of the idea that punishment had a deterrent effect. These developments ushered in an era of great severity and cruelty that persisted for several hundred years. Many offenses that might be considered relatively minor today were punishable by death. In Paris in 1761 a servant was condemned to death for stealing a piece of cloth from her employer. In England as late as the end of the eighteenth century there were still more than two hundred crimes that carried the death penalty. Large numbers of men and women went into hiding and lived as outlaws in order to avoid such harsh retribution.

Horrible forms of torture were used not only in determining guilt but also as punishment for serious crimes. Capital punishment ranged from more or less instantaneous death to the slow agonizing means of execution reserved for criminals such as the killer of William of Orange. The Court decided whether the criminal was to die slowly and by what means.

Drawing and quartering, decapitation, strangulation and pressing to death under heavy weights were other popular methods of execution. Lesser penalties included flogging, branding with hot irons, chopping off a hand, nose or lips, cutting out the tongue, public exhibition, banishment or sentencing to the galleys.

Executions and punishments were carried out in public places to set an example, to deter others, and to remind people

of the power of the monarchy. In England the practice of public executions did not end until 1868. It has been pointed out that these displays did not have the desired effect, in fact, executions often had a carnival atmosphere. People considered them entertainment. The last legal hanging in Kentucky occurred in Owensboro in 1936. 10,000 people witnessed the event.

During the Middle Ages and Elizabethan times many captured outlaws and criminals were sent to work on the galleys. By the end of the sixteenth century however sailing ships had replaced galleys and crime was on the increase. What to do with criminals became a problem. England found two ways to solve this problem. Some convicts were sent to work on prison ships which were generally kept anchored at harbors. The conditions on these ships were horrible, filthy, and over crowded. These prison ships were in use for about 80 or 90 years until 1858.

Many criminals or undesirables were sent to the colonies. By 1775, England had transported 2000 criminals to America. Australia was originally settled with British prisoners. Devil's Island off of French Guiana was one of the most notorious of the penal colonies and France continued to use this "prison" until 1945.

Prison as we know it today was not conceived until the nineteenth century. But imprisonment has been used as a means of detention since the beginning of recorded history. In the eighteenth century prisons were used primarily as places for detaining accused persons awaiting trial. Very few people were

kept in prison indefinitely, and most of those confined were political or religious offenders or debtors. Imprisonment as a punishment in itself had only a very limited place in the system of penalties until the nineteenth century.

Under the influence of reformers in the late eighteenth century, physical punishment, torture and public executions finally began to disappear. People began to realize that cruel physical retribution did little to curb crime; more important, society was experiencing changes that would profoundly affect penology. People began to perceive the old penal code and its punishments as not only obsolete and barbaric but also foreign, left over from the hated British. A more just American solution should and could be developed.

The reformers believed that punishment should no longer be directed at the body but should strike the soul. Rather than revenge the object was to reform and to set an example for others. Under the old system of punishment the body of the condemned was the king's property on which the king's vengeance could be taken. The philosophy of the new system was that the criminal had offended society and therefore had to make amends to that society. The 1800s saw a gradual transition from corporal punishment to imprisonment, although the early reformers did not envision imprisonment as a punishment in itself. It was criticized by some reformers for being expensive, it maintained idleness and encouraged vice. Many say the same thing today.

Despite all of these objections imprisonment became within a short span of time one of the most widely used forms of punishment.

The Italian jurist and economist Cesare di Beccaria was one of the most influential reformers. In an essay written in 1764 he advocated imprisonment instead of the death penalty because death was less of a deterrent. He felt that a long and painful punishment such as penal servitude would make a greater impression. France and Austria in revising their penal codes at the end of the eighteenth century substituted imprisonment for the death penalty. Now criminals were incarcerated and made to work like slaves, often chained together wearing heavy iron balls around their ankles and living under horrible conditions.

Prisons are a fact of life in Kentucky and in America. However unsatisfactory and costly they may be we cannot imagine doing without them. They remain such a fundamental bulwark against crime and criminals that we now keep a larger portion of our population in prisons than any other nation except the Soviet Union and South Africa, and for terms that are longer than in many countries. In this country Kentucky ranks 26th in number of adults in prison and 26th in percentage of prisoners as compared to total state population.

Furthermore we Americans invented the prison as we now know it. The motive for prisons, which were to be called penitentiaries, was noble. The name itself means "a place to repent."

In the eighteenth century a study done in a penitentiary in Belgium concluded that idleness was the cause of most crimes. It was therefore reasoned that the teaching of useful work in prison would reduce idleness and crime.

The English added the concept of isolation to that of work. It was thought that isolation would protect the prisoners from bad influences and would enable them to rediscover the good in themselves, thereby undergoing a spiritual conversion. The first English prison to be established on the basis of these new concepts of penology was commissioned shortly after the United States became independent. Of course, at that time, England had just lost the American colonies as a convenient place for the deportation of unwanted criminals.

Punishment in Colonial America did not usually include imprisonment but consisted of banishment, fining, whipping, or confinement in the stocks or pillory. Because towns were small and their populations fairly stable, strangers were easily identified and any suspicious or undesirable characters were banished. Thus each town avoided the problem of crime for itself and passed it along for neighboring towns to deal with. The threat of public humiliation was probably an effective deterrent in these small, closely knit communities; people did not want to be placed on display in the stocks and be ridiculed by their neighbors. Hanging was a punishment reserved for the most serious offenses and was used as an alternative only when the

other methods failed. Jails were only for debtors or for detaining those awaiting trial.

With the growth of large cities, immigration, and the shifting of populations, communities in the United States changed greatly, and these earlier methods of controlling crime became ineffective. Ideas about punishment were also changing and imprisonment was becoming a substitute for capital punishment.

The first penitentiary in the United States was built in Philadelphia in 1790, largely owing to the efforts of the Pennsylvania Quakers who were leaders in the movement in penal reform. The Pennsylvania prison system was based on the principles of hard labor and solitary confinement. Prisoners were isolated from each other at all times and they ate and worked in their separate cells. Communication was forbidden. Work was compulsory and the prisoners were paid. There was constant supervision and every moment of the day was occupied with some task.

One of the most important innovations used in Pennsylvania was the practice of observing, interviewing and counseling all of the prisoners on a regular basis in order to decide on the best method of rehabilitation and to determine who was suitable for release under supervision.

A rival system was instituted in Auburn, New York in 1819 and there was a great deal of controversy over which system was better. At Auburn inmates were confined to their cells only at night; they worked in the prison shops and ate together during

the day. According to those who advocated the Auburn system, its advantage was that it imitated society by having the prisoners associate with each other. Hard labor and strict discipline were the means by which the criminals were to be reformed. Absolute silence was required at all times and the prison was a silent, grim, gloomy fortress. Cells were tiny, cramped, airless, and dark and none had windows to the outside for security reasons.

At first solitary confinement was used as a punishment for breaking the rules but it was found to be too disruptive to prison routine and removed too many prisoners from the labor pool. Physical punishment was therefore instituted. Prisoners were subjected to flogging, stretching on the rack, hanging by their thumbs and countless other tortures. The punishment of criminals had reverted to the same kinds of punishment that the introduction of prison was supposed to have eliminated. These methods persisted into the twentieth century.

Most of the prisons built in the United States during the nineteenth century were modeled on the Auburn system. Of the 133 state maximum security prisons in use in 1973 fully half had been built before 1900. Even into the twentieth century many prisons are still being built according to the same plan as Auburn.

By the middle of the nineteenth century it was obvious that the prison system was a failure. Prisons were brutal, inhumane, and overcrowded. And they were clearly failing in their goal of rehabilitating criminals. There were various

attempts at reform over the years but none were very successful. In the early 1900's there was an effort to normalize the prison environment by abolishing the lockstep, striped uniforms and the rule of silence and some effort was made to rehabilitate prisoners.

Before World War II prisons were very strictly run under an authoritarian system. The primary concern was to keep peace and order. The prisoners as well as the authorities enforced the system and the inmates lived according to a strict code that emphasized keeping out of trouble. The inmates were not rehabilitated and did not learn how to live on the outside. They learned how to do time. About half of them became involved in crime again after release and were returned to prison. During the 1950's and 60's there was a new reform movement spurred in part by unrest and riots in the prisons. This movement resulted in a number of new ideas being implemented. Education, vocational training, psychotherapy and counseling were introduced in varying degrees in order to rehabilitate the prisoners who were considered sick and in need of treatment. The system of indeterminate sentencing was instituted and the terms were to vary from a minimum to a maximum time depending upon the rehabilitation of the prisoner. Parole boards were given the power to decide on the time of release.

Despite the initial optimism, the new system did not lower the rates of recidivism.

The prison system has failed to deter crime or to rehabilitate criminals. There has been little agreement among experts as to possible solutions and no acceptable replacements have been found for prisons.

In Kentucky we have learned some important lessons about prisons, they all seem to be like a self fulfilling prophecy; that is the more prisons we build, the more prisons we need. It has been this way since our first prison was built in 1799, which was the first penitentiary built west of the Alleghany mountains. The public today clamors for a "get tough" policy, longer prison sentences, and more use of the death penalty. There is however, no easy solution to the age old problem of affectively dealing with people who violate the law. The death penalty, and banishment which universally have been the most used punishments for felony offenses are now used infrequently if at all. Many of our 50 states came into the union without a death penalty.

In 1876 at the only prison then in the Commonwealth of Kentucky there were 911 convicts in 648 cells. In order to deal with this overcrowding, Governor James McCreary called for an expansion of the penitentiary, lowering the prison population by raising from \$4.00 to \$15.00 the value of articles whose theft constituted grand larceny or a felony offense. The legislature responded and appropriated \$25,000 for expansion; raised the grand larceny limit to \$10.00 and provided five days per month reduction in sentence for good behavior. By 1881 the prison

population problem had become so severe that Governor Luke Blackburn pardoned 850 inmates and later justified his action by citing overcrowding. In 1880 Governor Blackburn appointed a three man commission to visit penitentiaries in other states and report on a location and plan for a new penitentiary in Kentucky. General H. B. Lyon of Eddyville was on the committee and behold a site on the Cumberland River in Lyon County was chosen for a fortress type prison modeled after the Illinois penitentiary at Joliet. It was to have 320 male cells and 32 female cells and cost \$233,000. The legislature, however, failed to provide funds.

100 years later in 1980 the inmate population had increased to 6,600. There were also 1,200 inmates held in local jails awaiting bed space in state institutions. In 1984 a task force on prison options was appointed by Governor Martha Lane Collins to study ways of dealing with prison overcrowding. Money for building new prisons was requested. The final recommendation of that task force was for emergency release of prisoners through gubernatorial commutation if all else failed to solve the over population problem. The Legislature in 1984 just like the legislature in 1880 failed to provide adequate funds for the building of new prisons.

In 1890 Kentucky branch penitentiary at Eddyville officially opened on Christmas eve. It was almost immediately filled. By 1892 the inmate population at Frankfort was 1,101 and the chapel was converted for use as temporary cell space. At

Eddyville there were 504 inmates but room for only 414. In 1895 a new cell house with 408 cells was completed at Frankfort. Two years later additional cell space was requested.

Many people today suggest very seriously that by returning to a prison sentence of hard labor would deter others from committing crime. They say that it would also ease the crises in the funding of the corrections system in that the inmates could earn their keep. In 1916 however, 234 convicts were sent to work in road camps and 21 escaped. The operation failed to show a profit. In 1919 we have learned that inmates worked on highways in nine counties. Approximately 290 convicts were used. Ninety-four inmates escaped from road camps during this period of time and only 67 were recaptured within the year. This operation also failed to be cost effective. We have also learned that prison industries do not decrease the cost of maintaining prisoners. We know that in 1950-1951 at Eddyville the prisoners crushed 7800 tons of rock. Today Hopkinsville Stone can crush 3000 tons in less than a day.

In 1920 someone in Frankfort had an original thought and the corrections cabinet recommended that anyone paroled must be able to read and write. By 1921 Corrections Cabinet ordered that no inmate could be paroled if illiterate. For some strange reason many of the inmates enroll in school. 100 years earlier Governor John Adair requested that the legislature educate the illiterate inmates. In 1921 the total inmate population is 1,101; by 1930, 3,167; and by 1935, 4,024.

Between 1928 and 1938 49 men were executed at Kentucky State Penitentiary. (162 total) There are many today who would lead us to believe that by increasing the use of the death penalty that we could solve our prison overcrowding problems. History as well as common sense tells us that it couldn't work. First it did not decrease prison population in the 1930's and we now have only 26 adults on death row.

In 1933 2,025 convicts were paroled. However, prison population since 1922 had increased 125%. In 1933 there were still 3,499 adults in prison. In 1936 Governor A. B. Chandler recommended many measures to ease the overcrowding problem as well as to rehabilitate the prisoners. He asked the legislature to modernize Kentucky State Penitentiary, to allow minor offenses to be served in county jails, to raise the grand larceny limit from \$20 to \$50 -

1866 - \$	4.00
1881 -	10.00
1905 -	20.00
1936 -	50.00
1962 -	100.00

to build a new medium security prison; to pass a probation and parole law; to make penalties for theft of livestock limited to value only as late as 1945 if you stole a \$2.00 chicken it was a felony but stealing \$49.00 worth of gold was only a misdemeanor.

The legislature passed into law most of his recommendations - chickens, cows, and horses were still sacred so that request was denied.

In 1876 the Frankfort Correspondent of the Courier Journal stated that there is no need to raise the grand larceny threshold in order to decrease the number of convicts because the state could furnish "plenty of occupation to all violators of the criminal law."

In 1988 the legislature was asked to increase the grand larceny limit to \$500. This was reduced to \$250 in committee and voted down by the full house. No new bill asking for an increase in this level has been pre-filed for the 1990 session. Members of the legislature have publicly stated that to raise the level would send the message that they were "soft on crime."

By 1939 the population of Kentucky prisons was 4,584. In 1939 40% of inmates meeting the parole board made parole. (In 1988 only 27% of inmates were paroled at their first hearing.) In 1963 the National Council on Crime reported that Kentucky institutions were overcrowded and had inadequate treatment facilities. Kentucky at that time had released 39% of its prisoners to parole as compared to the national average of 59%.

In 1976 the Corrections budget was \$15.6 million. By 1982 the budget for Corrections was \$50 million. By 1984 the budget was \$80 million; by 1989 - \$129 million. The General Assembly has been asked by the Corrections Cabinet for enough money to build 3 new prisons which should have already been

built. Requests for new prisons were made in 1980, 1982, 1984, 1986, 1988 and again during this session. The Legislature has known since 1984 that the prison population in the Commonwealth would at least double by 1992 and probably triple. They ignored these facts and only provided funds for 1 new prison. To make matters worse they passed new laws mandating that for certain offenses more time be served.

The average cost per prisoner per day is \$32.37 or \$12,000 per year. The cost per prisoner at Eddyville is \$14,246 per year. This cost of maintaining prisoners comes to more than \$170,000 per day every day of the year. The capital construction cost of new prisons is high. (Almost 60 million per prison) Even if the 3 new prisons are built as requested and completed by 1992 it is estimated that we will still have over 800 prisoners waiting for bed space in the penitentiary.

Even if the new prisons are built and even if there are no more prisoners waiting for bed space we know for an absolute fact that the need for more prisons will only be around the corner. The cost of maintaining all prisons in 1992 will be \$276,000 per day. Even as I speak the legislature is considering doing away with the parole board and setting up the old system of determinate sentencing. It is estimated that simply because of this change the prison population could again double. Where will the money come from? When will the legislature start to find solutions to these problems rather than simply "getting tough" on crime?

We know the cost of crime is high and that there is no solution in sight. Maybe it's time to start doing a better job looking for some solutions.