

Lesson G

The Whipping Post

Delaware Social Studies Benchmarks

History One 9-12a: Students will analyze historical materials to trace the development of an idea or trend across space or over a prolonged period of time in order to explain patterns of historical continuity and change.

Essential for Grade 11

Civics 9-12b: Students will understand that the functioning of the government is a dynamic process which combines the formal balances of power incorporated in the Constitution with traditions, precedents, and interpretations which have evolved over the past 200 years. **Essential for Grades 9 and 11**

Lesson Essential Question

How can has the legal interpretation of just punishment changed over time?

Documents

1. *Lesson G, Delaware Public Archives, 1935 Whipping Post Photograph (Image Gallery)*
 2. *Lesson G, Delaware Public Archives, The Whipping Post and Pillory (Image Gallery) Scribners Monthly, 1872*
 3. *Lesson G, Delaware Public Archives, Governor Terry Letter, RG 1302.7*
[back to back with]
Lesson G, Delaware Public Archives, Liehr Letter, RG 1302.7
- 3) How many lashes for each offense? (Code of 1915) Worksheet

Instructional Strategies

Strategy One: Gathering Information

Graphic Organizer

Display the *Whipping Post Photographs*. Ask students to complete the Photo Analysis Sheet from the National Archives:

http://www.archives.gov/education/lessons/worksheets/photo_analysis_worksheet.pdf

Ask students to hypothesize *when* these photographs were taken. Have students explain their answers.

Strategy Two: Gathering Information

Setting Criteria

Distribute the included list of offenses from the *Revised Code of 1915*.

Ask students to highlight the worst crimes and fill in the number of lashes they believe each crime should warrant.

Ask students to consider if corporal punishment is ever appropriate. Why or why not?

Strategy Three: Extending and Refining

Document Analysis

Ask students to analyze the two letters by completing the Document Analysis Chart (below).

- Why did Mrs. Liehr condemn the use of the whipping post?
- Why did the Governor want to continue its use?

Strategy Four: Application

Ask students to review the Eighth Amendment of the Constitution. Ask students to consider what “cruel and unusual punishment” means.

Ask students to read the following documents concerning the use of corporal punishment:

- “Hugging Red Hannah: The Story of Delaware’s Pillory and Whipping Post”
<http://www.delawareonline.com/blogs/2007/08/evil-punishment-delawares-pillory.html>
- Ingraham vs. Wright (1977) Supreme Court Case on corporal punishment in schools <http://supreme.justia.com/us/430/651/>
- Current articles on corporal punishment, such as “Corporal Punishment in U.S. Schools” In Time Magazine, August 12, 2009:
<http://www.time.com/time/nation/article/0,8599,1915820,00.html>

Have students construct a graphic organizer that compares the documents. How has their definition of “cruel and unusual” punishment changed after viewing these documents?

Check for Understanding

- To what extent has the interpretation of “cruel and unusual punishment” in the Constitution changed over time? Use specific historical evidence to support your answer.

Rubric

2 – This response gives a valid explanation with accurate and relevant historical evidence.

1 – This response gives a valid explanation with inaccurate, irrelevant, or no historical evidence.

Primary Document Analysis Chart

| | |
|-----------------------------|---------------------------------------|
| Title and Author: | Date: |
| Intended Audience: | Purpose: |
| Facts included in document: | Interpretations in document: |
| Summary of Document: | An Important Quote from the Document: |

HOW MANY LASHES FOR EACH OFFENSE?

(Revised Code 1915)

- _____ Poisoning with Intent to Murder
- _____ Maiming by Lying in Wait
- _____ Assault with Intent to Ravish
- _____ Wife Beating
- _____ Robbery, on Highway or Dwelling House
- _____ Burning Court House or place of record
- _____ Burning Vessel, Mill, Granary, Church, School, etc.
- _____ Burglary with Explosives - Person in building
- _____ Same - No person in building

- _____ Breaking and Entering a Dwelling House with Intent to Commit a Felony other than Murder, Rape or 1st Degree Arson

- _____ Breaking and Entering Dwelling in Day time with Intent;
Entering by day or night without breaking with intent;
Committing felony in and breaking out at night; Breaking and entering warehouse, etc. by night with intent to commit larceny

- _____ Larceny of Horse, etc.; Picking lock and stealing money, goods, etc.
- _____ Bringing stolen horse into state and selling it, etc
- _____ Knowingly buying or receiving stolen horse, etc.
- _____ Larceny
- _____ Embezzlement by carrier, porter.
- _____ Making or possessing plates, etc. for forgery; Having unfinished notes, with intent
- _____ Perjury or subornation of perjury
- _____ Embezzlement by cashier, servant or clerk

HOW MANY LASHES FOR EACH OFFENSE? Answer Key
(Revised Code 1915)

| | |
|-----------------|---|
| <u>60</u> | Poisoning with Intent to Murder |
| <u>30</u> | Maiming by Lying in Wait |
| <u>30</u> | Assault with Intent to Ravish |
| <u>30</u> | Wife Beating |
| <u>40</u> | Robbery, on Highway or Dwelling House |
| <u>60</u> | Burning Court House or place of record |
| <u>20</u> | Burning Vessel, Mill, Granary, Church, School, etc. |
| <u>20 to 40</u> | Burglary with Explosives - Person in building |
| <u>15 to 25</u> | Same - No person in building |
| <u>20 to 40</u> | Breaking and Entering a Dwelling House with Intent to Commit a Felony other than Murder, Rape or 1 st Degree Arson |
| <u>20</u> | Breaking and Entering Dwelling in Day time with Intent; Entering by day or night without breaking with intent; Committing felony in and breaking out at night; Breaking and entering warehouse, etc. by night with intent to commit larceny |
| <u>20</u> | Larceny of Horse, etc.; Picking lock and stealing money, goods, etc. |
| <u>20</u> | Bringing stolen horse into state and selling it, etc |
| <u>20</u> | Knowingly buying or receiving stolen horse, etc. |
| <u>20</u> | Larceny |
| <u>20</u> | Embezzlement by carrier, porter. |
| <u>39</u> | Making or possessing plates, etc. for forgery; Having unfinished notes, with intent |
| <u>40</u> | Perjury or subornation of perjury |
| <u>20</u> | Embezzlement by cashier, servant or clerk |

Transcription

February 12, 1968

Governor Charles Terry
Legislative Hall
Dover, Delaware

Dear Governor Terry:

I am sure that if you were asked if you believed in torture, particularly as a government policy, you would say no. However, the whipping post is an instrument of torture. Deliberately inflicting pain on a fellow human being, whatever his faults, is torture.

Can we, as Americans, condemn the methods employed by the Nazis, the Japanese in World War II, the Communist Work Camps, the North Koreans, and the Viet Cong, if we enact and enforce a law which demands the same methods?

I believe the whipping post of Delaware is not only a blot on the reputation of the "first state," but a serious detriment to our great country and all for which it stands.

I urge you to reconsider your stand on this issue.

Respectfully Yours,
Nancy T. Liehr
(Mrs. Kenneth C.)

Document Background

The two letters are part of the Governors Papers Collection, Record Group 1302.7, and can be found in Box 132952, Correspondence, Folder 3-1, Capital and Corporal Punishment. This collection holds the general administrative files created by the Office of the Governor reflecting the operations of that office. This collection dates from 1874 to 2001. Charles L. Terry, Jr. served as Governor of Delaware from 1965 to 1969. Both of the whipping post photographs can be found in the General Photograph Collection, Subject: Government and Politics, Box One.

Background Information

Historically, corporal punishment has been used worldwide as a deterrent to misdeeds. Long ago, use of stocks, pillories, and whipping posts were routine in English common law, and in other European countries such as Sweden and Holland. Specific numbers of lashings with cat-o-nine tails, rawhide straps, or tree branches were meted out according to legal codes, connecting lashings with categories of crimes. The European tradition of corporal punishment appeared in North America, and thus in Delaware, with colonization.ⁱ

According to a letter written by Delaware archivist Leon DeValinger in 1936, codification of the use of corporal punishment in Delaware was accomplished in the year 1713. William Keith was Governor of the colony, and during this time the General Assembly of the Three Lower Counties of Pennsylvania passed legislation identifying punishments for specific crimes. Capital crimes were punishable by death while larceny “and a number of similar offenses ‘are to be punished the same as provided by the laws of England.’” In England documented crimes were punished by whipping and thus it can be assumed that the intent of the law along with the specified crimes and punishments of England transferred to colonial Delaware.ⁱⁱ

Reformist and religious groups, such as the Quakers, recognized the inhumanity of this form of punishment early. By 1794, pressures from penal reform movements brought about great changes in Pennsylvania and public displays of punishment, such as the whipping post, were declared illegal. Delaware lawmakers, however, asserted their right to determine their own system of punishment for its residents and continued its use.

Each county had its own whipping post, and those assigned lashings were said to “hug Red Hannah,” the citizens’ familiar name for the state’s whipping posts. Use of the color red in the name was from the color of paint once applied to the post.ⁱⁱⁱ In New Castle County, Thursdays were picnic days on the public green, and citizens were “treated” to witnessing public whippings of those convicted of crimes. Such corporal punishment was assigned to both men and women until 1889 when the General Assembly passed legislation that prohibited flogging of women.

Delaware continued its use of public punishments for a long time after other states ceased its application. For example, the Congress of the United States prohibited use of the pillory (stocks) in 1839. Once again, however, Delaware asserted its state’s right to determine punishment for its citizens and continued use of the stocks to humiliate and, it was hoped, “deter those engaged in larceny, forgery, highway robbery, and those pretending to practice the art of witchcraft, fortune telling, or dealing with spirits” until 1893. The pillory was abandoned and officially outlawed by the legislature in 1905. Public punishment for men still continued through the use of the whipping post and legislation defined crimes and mandated procedure: “punishment of whipping shall be inflicted publicly by strokes on the bare back, well laid on.”^{iv}

According to Robert Caldwell’s book *Red Hannah: Delaware’s Whipping Post*, 1,604 prisoners received whippings. Fully 66% of those subjected to the Post were African Americans, underscoring the racially based assignment of public punishment. As time passed, only two whipping posts remained in use in the state, one in Wilmington and one in Dover. Delaware and Maryland were the only two states still using the whipping post as late as the 1950’s.^v The last public whipping occurred in Delaware on June 16, 1952 when an African American man was punished for breaking and entering. It was not, however, until July 6, 1972, that the General Assembly passed legislation officially ending the potential for use of the whipping post.^{vi}

ⁱ Delaware. *The 1911 Encyclopedia*. [Online:

<http://49.1911encyclopedia.org/D/DE/DELAWARE.htm>].

ⁱⁱ DeValinger, Leon. Letter to Dr. Walter Stack. October 27, 1936. Mr. DeValinger quoted from Scharf's *History of Delaware* p. 609. Letter is in the General Reference Collection, File #781, at the Delaware Public Archives.

ⁱⁱⁱ Red Hannah: Delaware's Whipping Post. [Web page] [Online:

<http://www.dca.net/jreid/hannah.html>]

^{iv} Delaware, *ibid.*

^v Hoffecker, Carol E. *Delaware: a Bicentennial History*. New York: Norton, 1977.

^{vi} Whipping Post and Hanging Statistics. General Reference Collection, File #781, Delaware Public Archives.
