

Solitary Confinement – A Cultural Evolution of Punishment

The criminal sanctions (Punishments)

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Introduction:

"**Punishment**" is a concept; criminal punishment is a legal fact. There can be no dispute that the criminal justice system hands out punishment at mass equations. The fact that the United States leads the world in mass incarceration rates establishes the fact that you have a better chance of being jailed or imprisoned in the United States than anywhere else in the world. The term punishment is hardly ever used and replaced with terms like penology and has gone out of fashion, replaced by the word "corrections." Hence, the department of corrections.

At the heart of all attempts to handle offenders are systematic images of human life and culture, including knowledge, beliefs, and attitudes regarding the human condition and the meanings, purposes, and ethical foundation and rationale of punishment. In reality, you will find that the cultural influences override the rationale of punishment beyond the boundaries that are ethical and in many cases, lawful deliveries of infliction beyond reasonable limits of human beings locked up under the guise of **administrative segregation – a lawful term for solitary confinement.**

Under traditional guidelines, incarceration these ideologies or philosophical approaches provide explanations for the past behavior of the offender, guidelines as to what ought to be done with or to him, and bases for predicting his future after return to the free world. However, the use of solitary confinement drifts away from these traditional guidelines and imposes punishment in a very draconian method commonly known as **torture.**

A sentence is an authorized judicial decision that places some degree of penalty on a guilty person. The responsibility for administering this judicial decision is placed with corrections.

A sentence or administrative decision to placement inside a segregation unit is far from a legitimate judicial decision as it lacks the proper steps of due process in such systems that are used against the offender as there are limited recourse or appeals for such placement keeping mind that most placements are security related issues based on the writings of a subjective misconduct report. Hence, we are dealing with a due process designed to be limited and controlled by a central location that relies on documents relayed by institutional staff to be accurately and unbiasedly provided.

When you discuss the elements of the criminal justice system, we are given a historical and global view that is actually unrealistic and inapplicable to the prison administrative views or positions. Some rare exceptions are found but in general, punishment inside a prison is often instantly imposed, cruel and brutal for the person without consideration of his or her physical and psychological abilities.

Traditional philosophy of punishment has been embodied in **four major theoretical** positions: **vengeance, deterrence, rehabilitation, and prevention.**

These positions overlap and intertwine with each other, but a degree of evolution is also evident. An evolution that is hampered and altered by cultural dynamics that impede or stall the intended sanction or position of punishment. The comments made below on these four positions must be understood simply as broad generalizations.

When punishment is justified on the basis of **vengeance or retribution**, two major concepts are involved:

1. Punishment is an end in itself.
2. The act committed deserves punishment.

If punishment is an end in itself, then it cannot be considered a means of reforming the criminal. Inside the prison, the act of punishment is not limited to the law. As a general justification to the imposed action, burden or act, it goes beyond the normal parameters of punishment.

If the primary justification for punishment is that the act deserves punishment, then we **eliminate two important factors: any gain for society and any gain for the individual.**

Hence, solitary confinement must not be used for rehabilitation and prevention of a prisoner who is targeted for a short term of incarceration under seven years. It will only defeat all legitimate rehabilitative and prevention intentions.

There are five criteria, all of which must be fulfilled in order to impose criminal punishment of solitary confinement or administrative segregation:

1. Imposed on an actual or supposed offender for non-political, biased or social reasons
2. Issued out for an offense against legal rules; not fabricated or manufactured charges or offenses against the state or staff
3. Imposed by an authority constituted by the legal system against which the offense was committed,
4. Intentionally but not maliciously administered by human beings other than the offender, and
5. Inflict pain or other consequences normally considered unpleasant.

The latter embodies the idea that an offender becomes chastised, chastened, rehabilitated, and hence corrected, and that punishment for its own sake, as an imposition of suffering without a correcting function, as solitary confinement rarely teaches the person anything constructive and useful when released from such a placement after a prolonged period of time. Let it be identified as a place not conducive to an educational or learning environment.

In the United States, where prisons were originally established for the express purpose of being houses of penitence and hence were called penitentiaries, and where people have been confined for the purpose of being rehabilitated or reformed and hence have been kept in places called reformatories.

This type of environment should be sought by corrections departments as a reasonable environment for learning and behavioral modification practices without coercion or use of torture and force. Example of such an environment is the maintenance and importance of social contact, not isolation and sensory deprivation.

There are **three major categories of punishments** within the criminal justice system:

First – there are legal punishments:

Consists of legal punishments, which provided by law and imposed by lawful representatives of a state, community, or group according to the directives of law. Examples of official criminal penalties are fines, prison terms, and probation.

Second – there are extralegal penalties:

These punishments, though not illegal, are not provided for by law, and not designated as punishments to be applied by officials of the state. Extralegal criminal penalties are diverse. Examples are refusal to marry someone because of his or her criminality and harassment of a prisoner by a correctional officer or jail guard.

Third – there are illegal penalties:

These are punishments that are themselves illegal (such as torture) or that are applied illegally (such as the lynching of a convicted murderer). This paper deals exclusively with the illegal penalties imposed while incarcerated by a system and culture that has turned violent and toxic towards these offenders within our prison systems.

Punishment can be defined as any action designed to deprive a person or persons of things of value because of something that a person is thought to have done. Criminal Sanctions (punishments) is a formal means by which society deals with the guilty offenders of a crime.

Examples include liberty, civil rights, skills, opportunities, material objects, less tangible forms of wealth, health, identity, life, and perhaps most crucial significant personal relationships i.e. non-contact visitation.

The Purpose of Criminal Punishment within the penal (prison) system:

It is difficult to imagine a prison setting without a system of criminal punishment as its population is comprised of convicted felons and criminals. In a long-range, broad sense, punishment, it is hoped, will diminish crime inside the prisons. Statistically, the prisons are filled with **violent and non-violent offenders**. However, that is not realistic as data shows that violence is prevalent inside of prisons. On average, a prison population consists of 70 % of the population being violent offenders.

The main objectives for correctional administrators would be to balance the need for additional punishment without imposing an excessive sentence and separate the two groups of offenders and to identify which individuals can be chosen for such work identified as a form of reform or rehabilitation.

This has to be conducted within the setting of containment or incapacitation while retaining elements or principles of retribution; denunciation; reparation; individual deterrence and general deterrence in addition to cultural and political inferences or influences.

Individual deterrence and general deterrence to commit crimes or unlawful acts inside prisons are dealing with a host of sanctions that includes loss of time, privileges and higher custody levels. The more severe the infraction, the higher the sanctions. The higher the custody level, the more isolation is imposed on the offender. Sadly, these sanctions are often imposed without regard to the mental capacity or abilities to recognize such infraction for any type of corrective action.

Hence, they are swept up with others and placed in an administrative segregation unit for interim placement in a detention setting also identified to be a maximum-security setting. This is when they are most vulnerable to suicides and homicides within the settings of a disruptive unit where violent offenders are generally kept before a transfer to a maximum-security unit for long term placement.

Alternative housing should be considered for those who are mentally and physically disabled or unable to understand or comprehend the sanctions imposed on their acts.

It has been a common thought that individual deterrence and general deterrence could be brought about by making the anticipated punishment for a criminal act sufficiently severe, and the possibility of being apprehended sufficiently certain, that a person would weigh the probable pain of punishment against the latter. This is based on the image of a rational and calculating human behavior. The current use of solitary confinement proves this to be not working or being practical to apply.

The severity of punishment should fit the crime, but solitary confinement exceeds all logical expectations **of fair punishment** for anticipated crimes and violations. Once solitary confinement is imposed, it stops being a deterrence for any crime or violations of institutional policies as it no longer serves as a deterrence after surviving such an ordeal.

The **use of solitary confinement** and its growing prohibition for such placement is a testimonial to the fact that the application does not work. It recognizes the fact that punishment was not accomplishing its stated objectives in most cases. A more politically correct vision of solitary confinement was the concept of treatment without any actual treatment for behavioral or criminal behaviors.

All these developments within this concept have an impact on the development of any reformative viewpoints. It is believed that if you treat someone as a subhuman being, then they, in turn, will treat their altered views of the human being as the

same creating a new moral affirmation that they are justified in doing what is now the new moral norm for them. Keep in mind the culture that drives this ideology.

Solitary confinement affirmed to them that what the system did to them by imposing a punishment so severe that it has been violated by making the offender a symbol of the consequences of violating the law or rules by this way, draw new moral boundaries between the good and bad of societies inside prisons.

While the ideology of punishment calls for revenge or retribution, it does not neglect deterrence either individually or as a group.

In order for punishment to serve as a deterrent, professionals who are punitively oriented maintain that it must be visible to potential perpetrators, swift and certain, so closely linked to the crime or institutional violation that it is perceived as punishment for its perpetration, and categorical (i.e. applied so that all persons committing a certain crime receive approximately equal punitive treatment).

When it comes to imposing administrative segregation, the state must uphold its moral and legal obligations to follow the law and uphold superior values and .behave as examples of expected behaviors and conduct

Coming out or being released from a **term of isolation and confinement** the prisoner will see a new moral confirmation of a gross disparity as what was considered to be as a form of torture altering their own moral affirmation what is good or bad and refining their own action to resume or recommit a similar action or crime that landed them in solitary confinement

It can be argued that there are individuals or groups of people, whose probabilities of committing future or new crimes are quite diverse. The social fabric of group and society, hence, so committed to noncriminal behavior, and so dedicated to the moral order, that almost under no circumstances would they even consider a criminal act, much less perpetrate one.

However, this would be the exception to the rule. This is a category of persons generally believed to be easily deterred, although little is known as to who these people are, how to identify them, and what proportion of the total population they represent. Those persons coming out of solitary confinement have experienced a new moral affirmation that what was done to them was the new standard for behaviors and that it was acceptable in the population where they reside. _

Potential violators could be characterized as marginal persons who occasionally perpetrate crimes but draw their main livelihood from basically illegitimate enterprises. Their potential for criminal violation theoretically contracts or expands in response to societal pressures or cycles, perceived presence of correctional security officers, availability of victims, and perception of risk of detection.

These types of offenders can be characterized as persons whose primary source of livelihood is predatory criminal behavior. They appear to be slightly or hardly deterred by security presence, administrative practices, length of segregation placement or sentence, or efforts of victims to protect themselves.

Regrettably, these are exactly the type of offenders who should be placed in solitary confinement as a management tool. In order to provide a safe and secure prison setting, the deterrence must be severe enough to disallow repetitive behaviors and actions. Therefore, we are talking about punishment for the convicted offender who does not learn from being punished.

A **special deterrence unit (SDU)** is required to address such person or persons to be said to have special needs to be individually deterred to refrain from committing future crimes and implement special preventive capabilities to stop their violations at this point. It would have to be a single act of punishment that could provide both general and special deterrence.

The focus on these types of offenders should be on repetitive violators inciting disruptive behaviors, validated gang leaders who actively recruit members into their respective gangs and promote violence, drug contraband, and abuse, and extortion activities, hostage-takers, and individuals who have demonstrated a history of threats to the facility including escapes, rape, assaults and posing a threat to the orderly operation of the institution.

The department of corrections would have to establish new policies for individual and special deterrence programs. It should focus on individuals as well as group rehabilitative and treatment programs identified in their ITPs for treatment purposes instead of punitive purposes

The first step of special deterrence would have to be a mission change where the department of corrections would have to adjust and or revise and amend all policies and procedures. All policies and procedures regarding the placement in the **SDU** unit also labeled as **administrative segregation** must address these dynamic

changes and no person should be admitted without an exit plan or individual treatment plan

The second step should be the placement process or procedure. it must remove all political and personal biases from recommending such a placement and it must be done as a last resort. Most behaviors can be managed at the interim or lower custody level facilities or detention units for a short term imposed for disciplinary reasons for more than thirty (30) days with a term of no more than sixty (60) consecutive days in the **SDU**

The third step is the housing assignment. The prison system should allow discretionary decision making to ensure placement is proper and appropriate based on facts and actual events or documented reason factors should include severity of the violation, the medical and mental health profile, security requirements, length of confinement and a due process in place to ensure timely entry, duration, and exit strategies

Cell assignments should be considered as the least restrictive as security and classification risk tools mandates. Examples of cell time should include reform initiatives that include in and out of cell activities, pod activities, yard, and general recreation periods. Staff should be recruited to work such high-stress areas and trained with highly skilled communication and interpersonal conflict resolution skills or techniques

There is no need for employees to be specialized in special weapons or other use of force techniques other than what is required as certification for the use of those tools or equipment. Those services should come externally from the specialized training resources within the designated first response teams of the institution unless training involves the use of force suitable for legal and non-lethal use of force, not the existing extreme or excessive force in nature that is traditionally found in such isolation units

The fourth step should be the establishment of a treatment team consisting of the unit deputy warden, chief of security, chief classification officer, mental health ,and medical staff with weekly held meetings to discuss serious incidents: suicides disruptive behaviors, escapes, use of force incidents, cell activities i.e. program participation, medical and mental health concerns, and review individual treatment plans identifying those persons in compliance and preparing for their release from the SDU unit

The decisions of the unit treatment team do not override statewide policies and procedures regarding classification, security and program eligibility. Director's orders and policies and procedures must be changed to allow best practices to be exercised and implemented

The fifth step should be tracking and observing behaviors while in the SDU

The agency should develop and implement individual treatment plans (ITP) to track offender progress in regards to employment opportunities, evaluations, wages earned as well as disciplinary, grievances filed and other activities as it relates to their term of standards in the SDU. The focus of this tracking and recording behaviors should be the release of the persons when programs are completed successfully without any additional punitive measures or methods imposed by the staff of the unit

In the example of the theory of a simple deterrence, a citizen refrains from committing an offense because the pleasure that could be obtained would be more than offset by the risk of great unpleasantness communicated through the law. This simple deterrence applies equally to both the previous criminal and non-criminal citizens.

Summary –

General deterrence refers to the effect that the threat of punishment has in inducing citizens to refrain from illegal activity. The impact that the threat of law has on all individuals other than those who are being punished is general deterrence. A citizen who refrains from the criminal activity for fear of incarceration or other punishment is said to have been deterred by the law.

Corrections is a concept that rejects punishment for its own sake and for what it may do in dissuading people from committing crimes or future crimes. It takes a look at tasking the government to begin to rehabilitate, reform, treat, cure, or correct the lawbreaker, changing the person into a law-abiding citizen or resident.

There are various philosophical ideologies and underpinnings that are at the basis of the reaction to crime and to the offender. These may not be mutually exclusive, although one or another is usually dominant in an era, in a country, or among groups of criminologists. The implementation of reforms and principles of rehabilitation is required and needed to change the course on solitary confinement.

The shift to a reformatory or rehabilitative attitude toward criminals did not come about because of any one event or idea. Perhaps the most influential factor was the development of the scientific viewpoint and its application to the behavioral sciences.

The detachment and objectivity of the physical sciences were increasingly used in the examination of crime and criminal behavior. Evidence-based correctional based programs implemented in the last decade has developed both scientific and empirical evidence models.

Punishment and social control- The early criminologists failed to understand that uniform punishment is not as effective as specialized and selective punishment. This may have been largely responsible for the failure of prisons, based as they were upon the ideology of punishment, to fulfill their missions of deterrence or rehabilitation.

In fact, excessive punishment has a little deterrent effect. When punishment continues after compliance is achieved, many offenders react to negatively. Punishment is also relative in terms of its imposition and the sorts of deprivations involved. There are variations in the degree to which certain punishments are used. Some are used more frequently than others, and there are variations in the amount of deprivation depending on time, place, and situation.

Like crime, punishment is affected by law, politics, culture, social structure, and situation. Solitary confinement is the purest form of deprivation as it includes methods of punishment that is harsh and toxic to the human mind and body.

There is some agreement that punishment can be effective if applied in the right amount at the right time in the right place. When this ideology is widely practiced in an institutional setting, however, the result is generally negative for both the keeper and the kept.

The excessive use of punishment in a social order that purports to be free and open creates a paradoxical situation in which the punished may perceive their punishers as their persecutors and usually persecutors of the poor, the disadvantaged, and the helpless thus diverting attention from their own crimes.

References –

Gregory Zilboorg, M.D., *The Psychology of the Criminal Act and Punishment*, Greenwood Press, New York, 1968, p. 97.

- Ernest van den Haag, *Punishing Criminals*, New York: Basic Books, Inc., Publishers, U.S.A, 1975, pp. 14-15.

- Gary Becker, "Crime and Punishment: An Economic Approach," *Journal of Political Economy*, March/April 1968, pp. 169-217.

Jack Gibbs, "Crime, Punishment, and Deterrence," *Southwestern Social Science Quarterly*, March 1968, pp: 515-30.

Chris Eskridge, Richard Seiter, and Eric Carlson, "Community Based Corrections," in *Critical Issues in Corrections: Problems, Trends, and Prospects*, eds. Roy R. Roberg and Vincent J. Webb (St. Paul, MN: West Publishing Company, U.S.A,1981,p:186.

- National Institute of Law Enforcement and Criminal Justice. *Community-Based Corrections in Des Moines*, Washington, D.C.: Government Printing Office, 1974,p:125

Gary Becker, "Crime and Punishment: An Economic Approach," *Journal of Political Economy*, March/April 1968, pp. 169-217.

- Gregory C. Krohm, "An Alternative View of the Returns to Burglary," *Western Economic Journal*, 11 September 1973, pp. 364-370.

- Jack Gibbs, "Crime, Punishment, and Deterrence," *Southwestern Social Science Quarterly*, March 1968, pp: 515-30.

- Louis N. Gray and J. David Martin, "Punishment and Deterrence: Another Analysis of Gibbs' Data," *Social Science Quarterly*, September1969, pp:389-395.

- Frank D. Bean and Robert G. Cushing, "Criminal Homicide, 1) Arleen Smigel Leibowitz, "Does Crime Pay: An Economic Analysis" (unpublished Master's thesis, Columbia University, 1965, p:67.

-Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies, and Theft," *Western Economic Journal*, 5 June 1967, pp. 224-32.

- Morgan Reynolds, "Crimes for Profit: The Economics of Theft" (unpublished Ph.D. dissertation, University of Wisconsin, 1971).

- Michael Sesnowitz, "The Returns to Burglary," *Western Economic Journal*, 10 December 1972, pp: 177-181
Punishment, and Deterrence: Methodological and Substantive Reconsiderations," *Social Science Quarterly*, September 1971, pp. 277-289.

Karl Menninger, *The Crime of Punishment*, The Viking Press, Inc., New York, 1968, p: 206.

Petersilia, Joan and Paul Honig. *The Prison Experience of Career Criminals*. Washington, D.C.: U.S. Department of Justice, 1976.

- National Institute of Law Enforcement and Criminal Justice. *Community-Based Corrections in Des Moines*, Washington, D.C.: Government Printing Office, 1974 pp: 125 -130.

Jack Gibbs, "Crime, Punishment, and Deterrence," *Southwestern Social Science Quarterly*, March 1968, pp: 515-30.

- Louis N. Gray and J. David Martin, "Punishment and Deterrence: Another Analysis of Gibbs' Data," *Social Science Quarterly*, September 1969, pp:389-395.

- Sheldon Glueck and Eleanor T. Glueck, *Predicting Delinquency and Crime*, Cambridge, Mass.: Harvard University Press, 1959, pp:433- 439.

Petersilia, Joan and Paul Honig. *The Prison Experience of Career Criminals*. Washington, D.C.: U.S. Department of Justice, 1976, p:38.

- Gibbons, Don C. *Changing the Lawbreaker: The Treatment of Delinquents and Criminals*. Montclair, N.J.: Allanheld, Osmun, 1981, p: 116.

- Louis N. Gray and J. David Martin, *op. cit.*, pp:389-395.

Frank D. Bean and Robert G. Cushing, "Criminal Homicide, Punishment, and Deterrence: Methodological and Substantive Reconsiderations," *Social Science Quarterly*, September 1971, pp. 277-289.

- Petersilia, Joan and Paul Honig, *op. cit.*, p:38.

- Gibbons, Don C., *op.cit.*, p: 116.

- Louis N. Gray and J. David Martin, *op. cit.*, pp:389-395.

Sheldon Glueck and Eleanor T. Glueck, *Predicting Delinquency and Crime*, Cambridge, Mass.: Harvard University Press, 1959, pp:433- 439.

- Gibbons, Don C. *Changing the Lawbreaker: The Treatment of Delinquents and Criminals*. Montclair, N.J.: Allanheld, Osmun, 1981, p: 116.

The President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Corrections* (Washington D.C.: Government Printing Office, 1967, p: 30.

- Robert M. Carter, Richard A. McGee, and E. Kim Nelson, *Corrections in America*, Philadelphia, PA: J. B. Lippincott Company, U.S.A, 1975, pp: 103-104.

- National Advisory Commission on Criminal Justice Standards and Goals *Corrections*, Washington, D.C.: Government Printing Office, U.S.A, 1974, P: 222.

Gregory Zilboorg, M.D., *op. cit.*, p. 97.

- Ernest van den Haag, op. cit., pp. 14-15.
- Gary Becker, Gary Becker, op. cit., pp. 169-217.
- Karl Menninger, op. cit., p: 206.
- Gibbons, Don C., op. cit, p: 116.
- Jack Gibbs, op.cit., pp: 515-30

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