

Restorative Justice in America's Prisons: The Scourge of Solitary Confinement

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“Restorative justice provides a respite from something that is the norm. For those who are incarcerated, that norm is the disrespect, violence and victimization that characterize the prison experience. Interestingly, these norms are similar to the norms that have shaped offenders. . . . [T]he violence of prison is an attempt to undo the injustice of the crime. Sadly, just as the offenders’ violence rarely, if ever, achieves justice, prison and its violent atmosphere are unlikely to promote justice, particularly in forms of accountability, restoration and healing.”¹

One of the most dramatic examples of the violence of the American prison experience – and the need for restorative justice – is the overwhelming use of solitary confinement. It is also a poignant example of justice that harms.

It should be horrifying to learn that 80-100,000 American prisoners are in solitary confinement.² This means that they are housed in cells the size of a parking space for 23 hours per day. For that one hour prisoners are released into a small, private exercise area. Meals are delivered by prison guards through a slot in the door. Prisoners are permitted no contact with other prisoners and phone calls and family visits are limited or take place by video camera. Some prisoners remain in solitary confinement not for days or weeks but for years. A report on solitary confinement in the Pelican Bay State Prison in California estimated that 248 prisoners had been in solitary confinement for 5-10 years, 218 for 10-20 years and 90 prisoners had been in solitary confinement for over 20 years! Recently, the longest-standing solitary confinement prisoner was released from prison. He had been held in a 6 by 8 cell for 42 years!!

Prison officials argue, quite plausibly, that segregation of dangerous prisoners is sometimes necessary to maintain discipline and safety for prison guards and other detainees. Importantly, however, solitary confinement is not limited to the most dangerous prisoners. For example, it is used to punish minor prison rules and to segregate prisoners who may be associated with a gang based on non-behavioral factors such as tattoos. Moreover, in supermax prisons in the United States, solitary confinement is the norm for all prisoners housed there.

The dramatic, negative effects of solitary confinement upon the human person are well known. We need look no farther than the reports of our own prisoners of war who experienced prolonged isolation at the hands of our enemies. Senator John McCain, who spent five years as a

¹ Barb Toews and Jackie Katounas, *Have Offender Needs and Perspectives Been Adequately Incorporated into Restorative Justice* in CRITICAL ISSUES IN RESTORATIVE JUSTICE (Howard Zehr and Barb Toews, eds. 2004).

² Atul Gawande, *Hellhole: Is Long-term Solitary Confinement Torture?* (The New Yorker, 3/30/09) at <http://www.newyorker.com/magazine/2009/03/30/hellhole>

prisoner of war in Vietnam, reports that his two years in solitary confinement in a 15 by 15 foot cell was worse than beatings, denial of medical treatment for two broken arms, a broken leg, and chronic dysentery, and physical torture. He writes, solitary confinement “is an awful thing. It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.”³ Journalist Terry Anderson who was kidnaped in Beirut in 1985 and held as a hostage for seven years writes similarly about his long periods in solitary confinement in his memoir *Den of Lions*. Americans should think hard about inflicting on criminal offenders conditions we would call torture when applied to our own prisoners of war.

Returning to the theme of doing justice without doing harm, in the American justice system, prison is deemed a just punishment for a defendant who has been duly tried, found guilty and sentenced. When we speak of doing justice to criminal defendants, we are ordinarily talking about what happens at trial and sentencing. What happens afterwards – in prison – is not generally thought about in terms of justice. But it should be. Do we implicitly assume, as the quote above suggests, that prison conditions – including solitary confinement, rape, and violence – are part of the sentence? That “the violence of prison is a way to” do justice by “undo[ing] the injustice of the crime?” If so, we need to foreground that assumption and ask what it would mean for the concept of “justice.” If not, then prison reform should be at the top of the list of what it means to do justice without doing harm. Studies demonstrate that days – let alone weeks or years – in solitary confinement result in dramatic, irreversible changes in brain chemistry, social skills and personality that eventually make those who experience it unfit to reenter ordinary life. Thankfully, across the United States and throughout the world there is an emerging movement calling for the end of solitary confinement.

How we treat our own criminal detainees has implications that are much broader than our own penal system. As one writer framed it, public support for or tolerance of solitary confinement in American prisons,

is the dark side of American exceptionalism. With little concern or demurral, we have consigned tens of thousands of our own citizens to conditions that horrified our highest court a century ago. Our willingness to discard these standards for American citizens made it easy to discard the Geneva Conventions prohibiting similar treatment of foreign prisoners of war, to the detriment of American moral stature in the world. In much the same way that a previous generation of Americans countenances segregation, ours has countenanced legalized torture.⁴

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<http://www.usnews.com/news/articles/2008/01/28/john-mccain-prisoner-of-war-a-first-person-account>

⁴ *Hellhole*, *supra* note 2 at 19.