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### **Retributive Justice: A Review of the Ethical Considerations Surrounding Capital Punishment and Solitary Confinement as used in United States Correctional Facilities**

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**Retributive Justice:  
A Review of the Ethical Considerations Surrounding Capital Punishment and Solitary  
Confinement as used in United States Correctional Facilities**

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I have adhered to the honor code on this assignment

## **Abstract**

The purpose of this paper is to argue the use of capital punishment and segregated housing throughout United States correctional facilities constitute human rights violations through torture. Regardless of the reason for their application, these penalties are physically and psychologically damaging, inconsistently assigned, costly, and, in their most potent form, fatal. As such, I advocate for the national abolishment of these practices. In their place, I support enacting policies that promote education and reformation over punishment. My aim in making this argument is to encourage a transition away from the popular American judicial ideology grounded in retribution toward a framework marked by rehabilitation.

Keywords: justice, capital punishment, segregated housing, death penalty, solitary confinement

“I am certainly not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.”

-Thomas Jefferson\*\*

Albeit a hypocritical comment coming from a slave owner, this quote nicely illustrates my thesis' premise: the punitive use of capital punishment and solitary confinement, especially for extended periods, is outdated. Masked by language such as "correctional facility," the torture that takes place behind prison walls is anything but rehabilitating. From the moment an individual enters the institution, they are stripped of their dignity and delegated as second-class citizens, even for low-level offenses (*Florence v. County of Burlington*, 2012).

This thesis weighs the ethical considerations of the United States 'prison system' -- a term I use to refer to the entirety of penal institutions, both public and private, state and federal. I will be less concerned with examining the ethics surrounding the prison system as a whole, but rather the contents of the experience and its moral implications. Specifically, I identify two harmful practices currently implemented in jails and prisons today: capital punishment and solitary confinement, and how they promote punishment over rehabilitation to perpetuate mass incarceration. For the sake of time, specific attention is placed on the American Penal system, with additional historical accounts extracted from European and surrounding nations. However, it is critical to note that both practices transcend American politics, with the majority of

executions occurring outside the United States. The emphasis of the paper is on the practices themselves, and I use the U.S. Judicial System as an outlet by which to analyze these procedures. Throughout this paper, I use the terms "death penalty" and "capital punishment" interchangeably. Similarly, I use "solitary confinement" correspondingly with "isolation," "segregation," "restrictive housing," and "special housing/management units." Each of the former terms is involved more in colloquial speech, while penal institutions primarily adopt the latter terminology. There is no federal legal definition, but there is a broad consensus across states that "segregated housing" practice involves removing an inmate from the general prison population and placement into a confined cell for 22 to 24 hours a day (Metcalf et al., 2013). Usually accompanying these isolations are reduced natural light, extreme restrictions on comfort and education items, and recreation and visitation rights (Metcalf et al., 2013). Capital Punishment, as defined by Merriem-Webster, and the interpretation I will adopt in this essay as, "punishment by death."

The paper is divided into three sections: the first gives a genealogical account of capital punishment and solitary confinement, as well as a background into the prominent philosopher involved in shaping their practice, and the judicial ideologies they introduced. The second answers the descriptive claim of how both practices are currently implemented in the U.S. Judicial System. These sections are meant to give a historical context to modern-day policies by presenting conflicting philosophical ideologies of crime and justice and explain how these frameworks shaped policy creation. The third part of the paper considers the normative query of how correctional facilities ought to be run. In this portion I evaluate the two practices and how they follow from a justice system governed by retributive properties. My thesis concludes by discussing reform policies to shift the focus away from castigation toward promoting an

education-based prison system. The purpose of this paper is to argue the use of capital punishment and segregated housing throughout United States correctional facilities constitute human rights violations through torture. Regardless of the reason for their application, these penalties are physically and psychologically damaging, inconsistently assigned, costly, and, in their most potent form, fatal. As such, I advocate for the national abolishment of these practices. In their place, I support enacting policies that promote education and reformation over punishment. My aim in making this argument is to encourage a transition away from the popular American judicial ideology grounded in retribution toward a framework marked by rehabilitation.

People in power have struggled with the governance over law and order since the beginning of civilization. The issues discussed are multifaceted, spanning philosophical frameworks surrounding justice and civilian safety, and usually express economic concerns. The earliest documented law code are tablets from Ebla (modern-day Syria) that date back to 2400 B.C.E. (“Hammurabi’s Code,” 2021). These historical texts largely reference administrative, economic, agricultural and trade concerns, but some acknowledge lexical and grammatical indices, as well as judicial proceedings (Wilson, 1977). The extent to which religion is discussed is somewhat vague, but most archivists argue the tablets make no explicit mention of religious life (Dahood, 2021; Viganò & Pardee, 1984). Rather, ‘knowledge’ of the ritualistic processes is inferred from tablets containing the personal names of mythological deities, literary descriptions of the role of the temple, cultic texts, hymns and intonations, etc. At the time of their creation, the ancient city was an economic superhub, and most of the tablets reference commercial and diplomatic operations (“Ebla,” 2021). As such, a majority of the legal documents are contracts pertaining to the distribution of goods (Pettinato, 1976). However, some of the judicial texts

work to clarify the relationship between injury and penalty, with others containing details of trial procedures (“Ebla,” 2021). The preserved law code is highly circumstantial in that it contains varying penal conditions depending on the exact nature of the crime (Wilson, 1977).

Further, the tablets establish separate punitive outcomes contingent upon the effectiveness of the victim in providing evidence for their claim. For example, if a woman were able to offer proof of her virginity before the assault, as well as unwarrantedness of the attack, the accused would endure the penalty of death. However, if the victim were unable to meet such standards, the accused would pay a fine that varied situationally. In this way, the punishment was more dependent on how well the victim met the burden of proof than proportionality of offense to sanction. Because it is possible to have different punishments for what appears to be the same crime, a reasonable conclusion can be drawn in that this system of governance is not one that relies heavily on proportionality. While their primary purpose may not to have been to establish a judicial framework, or to indicate standards of justice, these tablets are the earliest recorded evidence of legal documentation, and set the foundation for later codes of law, such as that written by Hammurabi of the Babylonian Empire (“Code of Hammurabi,” 2021; Mark, 2011).

One of, if not the earliest, references to a system of justice governed by retribution and proportionality came around 600 years later from the King of Babylon in 1728 B.C.E. (“Hammurabi's Code,” 2020). In its entirety, Hammurabi's code is a multilayered system of assigned settlements and punishments that distinguish between social class and type of offense. The contents include a series of 282 rules in the format of ‘if ...’then’ statements that outline laws relating to varying aspects of daily life, such as property and wage regulations, personal injury, family, trade, property, justice, malpractice, building code and irrigation policies. At first glance, the document presents itself as a law code. However, scholars disagree about its exact

purpose. Some advocate it was an attempt to uphold justice in his society (“Hammurabi’s Law code,” 2021). Other academics argue its purpose was more symbolic than anything (“Hammurabi’s Law code,” 2021). That is, it was a façade to paint the King as an ally of Justice and was not intended to be a functioning law code. As evidence for this claim researchers cite the following passage:

*“Let the oppressed, who has a lawsuit, come before my image as king of righteousness. Let him read the inscription on my monument, and understand my precious words. Let my inscription throw light upon his case, and may he discover his rights, and let his heart be made glad...”*

Regardless of the intent behind its establishment, what makes Hammurabi’s code particularly relevant in discussions of judicial ideology is its implications for the principle of "Lex Talionis" – or, the Law of Retribution. More colloquially known as ‘an eye for an eye,’ the ideals set forth by Lex Talionis underscore the same basic principle as modern-day capital punishment: equal revenge. If you kill someone – equal punishment would entail you, then, perish. Lex Talionis implicates a justice system governed by retribution and proportionality. ‘Retribution’ referring to punishment as consequence of a criminal offense, and ‘proportionality’ as the idea that the punishment must be proportional to the crime (Google Dictionary). It is critical to note that while the three concepts above are all implicated in one another, they present unique motivators of punishing. There is no universal interpretation or application of either of these concepts, but for the purposes of this essay I adopt the above definitions. The phrase was not explicitly written, but Hammurabi’s Law is often hailed as a real-world example of this precept (Andrews, 2021). However, if one were to read through his codebook, they would soon realize that while his punitive approach mirrors some aspects of this model, he takes a looser,



more figurative, interpretation, in that some of the penalties appear too severe to award the title of 'proportional.'

There is evidence of gender and class hierarchies, so that inferior members of society (women, plebeians, and slaves) were disadvantaged, often receiving harsher punishments, sometimes at the cost of a male relative. When dominant members of society were found guilty of having inflicted harm onto those with a lower social standing, often their penalties took a monetary form. This may have acted as a reinforcer to engage in crime with a lower-class constituent as opposed to a member of nobility. However, the settlements and penalties were still relatively large, likely enough to deter at least some from engaging in criminal behavior. Further evidence of inequality in the code is that most of the punishments entail someone being put to death, even for minor crimes. From the very first law it is evident that it will not be a successful system of upholding justice, whether intended or not. Nor is it grounded in principles or retribution or proportionality.

1. If a man brings an accusation against another man, charging him with murder, but cannot prove it, the accuser shall be put to death.

It is easy to imagine a scenario where an innocent woman accuses someone else of murder. The accused, having actually had committed the crime, had sneakily burned all the evidence, so there was nothing to show. Unable to prove the individual guilty, the accuser, themselves, is sentenced to death. It is not evident, at least to me, how the punishment is acting as a form of retribution.

However, maybe Hammurabi is referring to proportion between the punishments. Let us examine two more.

14. If a man has stolen a child, he shall be put to death.

154. If a man has committed incest with his daughter, that man shall be banished from the city.

There is an apparent disparity in the sentencing between the two rules, with the prior being far stricter in proportion to the latter. By these standards, a man can steal someone else's daughter and he is executed, but if that same man were to rape his own daughter, he would be banished to another city, free to do the same thing to someone else.

There is a category of rules, personal injury, which are more reflective of the values of 'lex talionis,' and often referenced in colloquial speak as primary examples. However, even these standards evidence the same hierarchal gender and class distinctions, so that inferior members of society were disadvantaged.

195. If a son strikes his father, they shall cut off his hand.

196. If a man destroys the eye of another man, they shall destroy his eye.

From these two examples it is apparent why so many view the artifact as a model of lex talionis, as there is an obvious leap from the offense to the punishment. Yet, the interpretation is one that is quite literal.

Even though the Babylonian empire fell shortly after Hammurabi died, those ideals written in stone have permeated throughout history. A poetic irony, of sort. While the historical accounts presented above are not direct reflections of 'retributive justice' as it is encountered in today's society, they did establish the principles that would inspire later philosophers in their attempts at creating a penal code by which to uphold justice.

Discussions of alternative punitive approaches not grounded in physical torture began gaining in popularity in the 17<sup>th</sup> and 18<sup>th</sup> centuries. Influenced by the Era of Enlightenment that had just swept Europe and its successor, the Romantic Era, there was a change in ideals away from tyranny toward freedom and individualism, which is passionately expressed in works of art, poetry, and literature from this time ("The Romantic Period," 2020). Competing theories

included that of teleological and deontological ethics, where the former emphasizes the goal or objective of the action (“Teleological Ethics,” 2021). One branch of teleological ethics is that of consequentialism, in which moral judgments are based on the outcome of an act. With Deontological ethics, morality is determined in virtue of the act being morally obligatory (“Deontological Ethics,” 2021). The philosophers of this time were largely consequentialist, with exceptions from John Locke and Immanuel Kant.

Thomas Hobbes set the stage for thinkers of the Enlightenment with his discussion of political philosophy and natural law (Cooper, 2018). He sought to establish a society based around a social contract. In his *Leviathan*, he fervently opposed the state of nature, arguing that if citizens left to their own devices, society would crumble (Norrie, 1984). With no sovereign state to impose order, crime would go unchecked and people would be living in a constant fear of being killed. He believed without an absolute authority the natural state would always be one of conflict.

Influenced by Hobbes, John Locke, also an important figurehead in political philosophy and known as the ‘Father of Liberalism,’ believes in a social contract theory to ensure peace in a ruthless state of nature (“Locke on Government, 2004”). In his *Two Treatises of Government*, his version diverges in that he believes citizens possess natural rights to life, liberty and property that cannot be denied (“Locke’s Political Philosophy,” 2020). He agrees with Hobbes that humans are naturally curious animals, but he believes they are capable of autonomous decision-making in which tyranny is avoided. In doing so, contesting Hobbes’ view regarding the necessity of a sovereign king (“Foundations of American Government,” 2021). Instead, he believes the social contract extends in agreement to the leader, whose job it is to protect these freedoms (“Locke’s

Political Philosophy,” 2020). If the contract is broken, the constituents possess the right to overthrow the government.

Another prominent philosopher of the Enlightenment period is that of Montesquieu. He a political theorist who, contrary to Locke and Hobbes, believed the natural state of the world was one of peace (“Baron de Montesquieu,” 2021). It is not until a society is formed that there becomes a need for a government to regulate law and order and maintain personal liberty of its citizens. However, his most influential work came from *The Spirit of the Laws* where he detailed a government in which each of its three branches (legislative, judicial, executive) were separate but kept each other balanced so as one did not become too powerful (“Baron de Montesquieu, Charles-Louis de Secondat,” 2021). The legislative would be in charge of writing the laws, the executive would enforce the laws, and the judicial would interpret the laws. While this idea was not adopted in France, Thomas Jefferson, James Madison, and other writers of the Declaration of Independence adopted these ideals and those set forth by John Locke in establishing the U.S. government system (“Foundations of American Government,” 2021).

Immanuel Kant opposed many of the consequentialist views at the time and drew influence from the ideas set forth by retributive justice, providing a deontological justification for punishment (Kant, 1785). The concept of retributive justice can be used in many ways but is largely understood to accept the following three assumptions (“Retributive Justice,” 2021). First, people who commit wrongdoings morally deserve to be inflicted with a punishment that is proportionate to the crime. Second, it is morally good, independent of one’s virtues or beliefs, that some punisher gives the offender the punishment they deserve. Lastly, it is morally impermissible to punish someone who is innocent of a crime, or to assign a disproportionately large penalty. Often the concept is broken down into two categories to better clarify the

motivation behind the punishment. Positive retributivism emphasizes a duty of guilty persons to fulfill a deserved penalty (“Positive Retributivism,” 2021). Negative retributivism, by contrast, contends punishment extends beyond the moral obligation of the individual – it must benefit society in some way or another, one example being a reduction in recidivism rates (“Negative Retributivism,” 2021).

Kant appears to be more concerned with autonomy and respect than its produced outcome. In this way, he adopts positive retributivist principles and could be described as a moral universalist – someone who believe there are certain codes of ethics that can be universally applied (Williams, 2008). In his *Groundwork on the Metaphysic of Morals*, Kant sets the foundation for the rest of his argument on crime and punishment (Kant, 1785). He starts by contending ‘freedom’ is something that transcends the observable world; there can never be free will independent of the self, as it would inherently be subject to the natural laws of the universe. Therefore, the only way to ascribe moral responsibility lies within the individual; it is not discoverable by experience. Deciding what is ‘just’ is an a priori phenomenon, meaning it can be known without empirical observation. Kant goes on to explain the concept of ‘duty’ and distinguishes between those which we are always obliged to perform (perfect) and those which there are exceptions for having not done so (imperfect) (“Kant’s Moral Philosophy,” 2016). He further differentiates duties to oneself versus others. In this way, moral action requires both willing (intent) and action (going out and performing the act).

His goal in these articulations was to find a supreme principle of morality - a set of universal ethical assumptions that are binding in all contexts and not contingent upon one’s internal desires, thoughts, and feelings (“Kant’s Moral Philosophy,” 2016). In his *Groundwork on the Metaphysics of Morals*, Kant goes on to outline a set of assumptions that must be met for

an individual to have engaged in a ‘rational action’. These standards serve as procedure in evaluating whether a particular act is in agreement with moral law. He calls the principle the categorical imperative. Where a hypothetical imperative, by contrast, would entail an act that is not binding. He presents three formulations of the concept, each with slight variations. He offers a fourth interpretation as well, but it is unnecessary for the purposes of this discussion. The first schema:

*“Act only according to that maxim whereby you can at the same time will that it should become a universal law.” -Immanuel Kant*

Kant believes an action is only morally permissible if the ‘moral rule’ on which it was justified would be universally accepted and obeyed without anomaly (“Kant’s Moral Philosophy,” 2016). In this way, a moral act must be one of absolute and universal necessity, disconnected from contextual shifts and individual desires, and it must be applicable to all rational beings. By contrast, an immoral act is one with intentional disregard for the categorical imperative: “In general, I believe people should X, but I am consciously making an exception for myself” (“Kant’s Moral Philosophy,” 2016). A second use of the categorical imperative offered by Kant is the disavowal of using a human life as a means to an end (“Kant’s Moral Philosophy,” 2016).. He believes humans possess intrinsic value that cannot be revoked by using their body as a means to an end, even for the betterment of society. He believes under a Utilitarian rule there exists the potential justification to sacrifice one innocent life for the prosperity of one hundred.

Twelve years later Immanuel Kant writes, *The Metaphysics of Morals*, a more political literature than his Groundwork, in which he argues for the right of the sovereign state to hold the offending party responsible for having committed a crime (Kant, 1797; Anderson, 2005). His view was guided by both natural law advocated by John Locke as well as social contract theory

as offered by Hobbes. Kant starts by distinguishing between different kinds of crime, public and private (a modern-day 'civil' and 'criminal' distinction) and then proceeds to articulate a conceptualization of justice that justifies death for the person in virtue of them having murdered someone else (Kant, 1797). "Whoever has committed murder, must die" (Ataner, 2006). In this way, the individual decides who lives and dies -- if they commit the crime, this is the outlined penalty. Kant argues to be proportional to the crime, that particular act must be punishable by execution (Kant, 1797, Anderson, 2005). He believes there can be no likeness between life and death.

An alternative outlook of retribution is that of Negative Retributivism, the constraint that the punishment should have positive value and achieve a goal, such as deterrence or incarceration ("Retributive Justice," 2021). Cesare Beccaria, a pioneer in the movement toward a more rehabilitative and equitable punitive system, adopts a hybrid view of justice founded on both negative retributivist and utilitarian principles ("Cesare Beccaria," 2020). His most famous work, *On Crimes and Punishments* (1764), is one of the first principles concerning criminal punishment governance (Beccaria, 1995; Bessler, 2006). Beccaria offers a more teleological approach to penal reform and emphasizes that punishments should ultimately benefit society, either by necessity to ensure the nation's security or by producing more productive and valuable members' post-release. The latter example hints at his roots in negative retributivism in that the punishment is justified in virtue of the value it brings.

In his literature, Beccaria argues that death fails to meet the criteria under his "useful and necessary" standard. He asserts that if murder is unjustified as an act, how can it be justified as a punishment? He bases his logic on the universal human right to life and presents the question: what makes one person justified in killing one of his kind? It is neither useful nor deterring; it is

torture. He uses the following thought experiment as support for his claim that all capital punishment is unjust: "the penalty of death could not be contained in the original civil contract [i.e., that if we had decided as a society what rules, we should all live by, we would not have agreed to allow the death penalty]; for, in that case, every one of the people would have had to consent to lose his life if he murdered any of his fellow citizens" Beccaria argues that such consent is impossible, as no person would willingly agree to give up their life.

Kant counters this thought experiment by saying Beccaria is misguided in his reasoning: "No one undergoes punishment because he has willed to be punished, but because he has willed a punishable action" ("Kant on the Death Penalty," 2005). Therefore, it does not matter if he agrees to be punished or not. Kant expresses two primary issues with the Utilitarian Theory ("Kant on the Death Penalty," 2005). First, he claims it does not align with his notion of the categorical imperative, because it treats the prisoner as a means to an end: their only purpose is for the betterment of society. Second, he argues it potentially justifies the incarceration of an innocent individual if said arrest was at the benefit of the rest of the population. In this way, the punishment would not be proportional to the crime, because there was none.

To this point, Beccaria's likely response is that Kant takes the definition too literally. People do not go out into society with every decision we make to ensure that the greatest portion of people derived happiness from it ("Kant on the Death Penalty," 2005). It is more of a general standard to follow. Further, those cases are far and few between as the government must still prove that the individual is guilty of a crime. Beccaria would likely indicate his philosophy also argues for the proportionality between crimes and punishments – the two just diverge on what they consider to be 'fair'. Beccaria's concept of fairness is one that favors improvement, whereas



Kant's ideological framework considers moral obligation a more appropriate approach to obtaining lawfulness.

Writers of the enlightenment substantially influenced later philosophers in their critiques of punishment. One such notable scholar being Michel Foucault. In his book *Discipline and Punish*, Michel Foucault notes the guillotine signified a novel, more ethical, method of execution. One that was marked by "rapid and discreet deaths" (Foucault, 1975). Prior to its adoption, members of nobility sentenced to death were beheaded by means of axe or sword, a much more gruesome and arduous approach than previously used, often taking multiple blows to induce fatality ("Beheading," 2021). By contrast, for commoners, hanging was the primary measure used ("Medieval Torture," 2021). In the United States at this time, punitive values transitioned from harsh physical punishments, such as public hangings, to more humane methods, such as incarceration ("Punishment," 2020). Writers at the time were concerned with the injustices of the current system and sought to answer the question: how do we punish fairly? However, the question presupposes there are some punishments that are justifiable, a claim that will be under review in the second half of this paper.

The literature produced by Beccaria inspired many other philosophers, physicians, poets, and literary icons of the time, most notably that of Dr. Benjamin Rush, a strong advocate for black rights and a fervent opposer of both slavery and death as criminal retribution (Charleroy & Marland, 2016). However, he is most well-known for opening the first silent prison in the United States, ultimately providing the foundation for modern-day solitary confinement. Initially implemented as a reform strategy intended to promote introspection and repentance through spiritual reform, prisoners were placed in empty cells with only a bed and a bible (Charleroy & Marland, 2016). They had extremely limited, if any, contact with fellow inmates or guards. The

silence was meant to induce self-reflection and turn its inhabitants to the word of God (Charleroy & Marland, 2016). Dr. Rush intended these prisons to be a more humanitarian form of punishment than the public executions that marked this period. As news of this promising and novel rehabilitative strategy spread, historical figures made their way to the prison to see it for themselves. One particular visit came from literary icon Charles Dickens, who denounced the practice, documenting:

"In its intention I am well convinced that it is kind, humane, and meant for reformation; but I am persuaded that those who designed this system of Prison Discipline, and those benevolent gentleman who carry it into execution, do not know what it is that they are doing....I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body; and because its ghastly signs and tokens are not so palpable to the eye,... and it extorts few cries that human ears can hear; therefore I the more denounce it, as a secret punishment in which slumbering humanity is not roused up to stay" (Dickens, 1842).

Alexis de Tocqueville made a similar remark after visiting the prison, noting, "this absolute solitude, if nothing interrupts it, is beyond the strength of man; it destroys the criminal without intermission and without pity; it does not re-form, it kills" (Tocqueville, 1982). Physicians at the time increasingly began to echo these same concerns of isolation leading to the development of psychosis. After visiting the prison, Dr. Francis Gray expressed, "[T]he system of constant separation . . . even when administered with the utmost humanity produces so many cases of insanity and death as to indicate most clearly, that its general tendency is to enfeeble the body and the mind" (Gray, 1848). The novel awareness of the deleterious effects of long-term segregation and the disproportionate assignment of black prisoners to these conditions prompted a reduction in these policies' use (Cloud et al., 2015). However, this decline was short-lived. The

introduction of Alcatraz Prison in 1934 and other high-security prisons brought the use of segregated housing for criminals who were considered especially dangerous. However, these policies' dissent was still apparent, and from echoed concerns emerged treaties and standards designed to protect human rights.

The United Nations General Assembly met in 1948 to discuss current issues with criminality and punishment and develop a set of standards that all the adopted nations should live by (UN General Assembly, 1948). From this meeting came the International Bill of Human rights and its components: The Universal Declaration's list of Human Rights (1948) and the later addition of the International Covenant on Civil and Political Rights (1976). The Universal Declaration's list of Human Rights (UDHR) was the first document to outline fundamental human rights that should be universally upheld (Universal Declaration of Human Rights [UDHR], 1948). The International Covenant on Civil and Political Rights further protected human rights as it extended upon those outlined in the UDHR and made them legally bound under international law (UN General Assembly, 1966). In 1984, the United States attended and became a party to the Convention Against Torture, prohibiting intentional and severe physical or mental pain and suffering (UN General Assembly, 1984). Specific to prisons, in 1955, the UN Congress on the Prevention of Crime and the Treatment of Offenders met and adopted the Standard Minimum Rules for the Treatment of Prisoners (UN Congress, 1955). The basic principle being understand as impartial judicial treatment regardless of societal status, race, sex, religion, etc.

Another philosophical shift occurred in the 1970s that continued through the 1980s with the introduction to the war on drugs and the subsequent policies that brought the era of mass incarceration still seen to this day (Alexander, 2010). An increase in private companies and

federal supermax facilities were created to keep up with the influx of prison sentences (Alexander, 2010). The former, owned and operated by third-party businesses, and the latter, government-run, maximum security facilities comprised solely of restrictive housing units. The result was a normalization of solitary confinement – it became used for most inmates, not just those who posed the highest security risks (Digard et al., 2018).

Despite the massive increase in number and length of sentences that occurred during this time, in 2005, 42 U.S. Code § 2000dd was enacted to further protect against cruel, degrading, or inhuman treatment of any person under the custody of the federal government – extending U.S. policies to immigration detainees (Detainee Treatment Act of 2005). Other national standards to ensure fair treatment of individuals throughout the criminal justice process include those outlined by the American Bar Association (ABA, 1980-2011) and the protections afforded by the Eighth Amendment. The Eighth Amendment to the United States Constitution states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

The Supreme Court has set multiple precedents as guides for determining the scope of ‘cruel and unusual punishment’. A few of which relate to the conditions of one’s sentence, and others to the proportionality of the sentence to the crime. (“Cruel and Unusual Punishment,” 2020). Over the years the court has gone back and forth regarding its position on proportionality. Furthermore, while these precedents might seem like they protect the rights of the prisoner, an unreasonable burden of proof is often required of them.

One of the first standards came from the *Weems v. U.S.* (1910) decision, which held that it must be disproportionate to the crime for a punishment to be deemed cruel and unusual. The court opinion cited a need for the interpretation to be generalizable to future generations. However, I contend the lack of specificity introduces vagueness and subsequent arbitrariness into

the decision-making process. At least to me, declaring a punishment disproportionate to the crime is the same interpretation as saying it is cruel and unusual, so it is unclear what difference this verbalization made. *Furman v. Georgia* (1972) ruled that capital punishment violates the Eighth Amendment as it disproportionately affects poor people and minorities and exchanges a human life for material gains. This victory was short-lived, however, as in *Coker v. Georgia* (1977), the Supreme Court ruled that the punishment must be directly proportional to the crime; otherwise, it violates the Eighth Amendment; the inverse of the same guideline presented over sixty years ago. As determined from the *Wilson v. Seiter* (1992) decision, in order to establish an eighth amendment violation, the prisoner must prove both that the act caused substantial harm, and officials must be deliberately indifferent to the caused harm. This standard invites a couple questions, such as how is substantial harm and deliberate indifference measured?

Today, it stands that the death penalty does not violate the Eighth Amendment's ban on cruel and unusual punishment ("Death Penalty," 2020). And yet, many of the current policies implemented in correctional facilities seemingly breach this amendment. In the past twenty years, the United Nations General Assembly has adopted multiple resolutions, urging those U.S. states who have not done so already to cease the death penalty (Office of the High Commissioner [OHC], 2020). I pose the following question to both the federal and state governments: what was the point of signing those international treaties and subsequent U.S. legislation – if not to hold this country to those standards?

In 2021, 27 states allowed the use of capital punishment ("States and Capital Punishment," 2021). The primary method of execution in these states is lethal injection, but other forms are offered in varying circumstances ("States and Capital Punishment," 2021). Alabama, Arkansas, Mississippi, New Hampshire, Oklahoma, South Carolina, Tennessee, Utah and

Wyoming, all allow a second method if lethal injection is found to be unconstitutional and/or unavailable. These options include electrocution, deadly gas, hanging, nitrogen hypoxia, and firing squad. It is unclear, at least to me, how these other forms could be considered more or less constitutional than lethal injection. What makes one method of killing more humane than another? In other words, how is this determination made and measured? By pain inflicted? By rapidness of death? By efficacy of completion?

Further, Arizona, Kentucky, Tennessee, and Utah choose secondary means of execution for prisoners sentenced before the introduction of lethal injection ("States and Capital Punishment," 2021). Authorizing varying methods of execution simply in virtue of one's arrest date seems unjust. If a more humane way of carrying out death sentencing has been established (regardless of the veracity -- i.e., lethal injection), that should be the primary method used, regardless of arrest date.

South Carolina was the first state to declare electrocution the primary method of execution, with lethal injections and firing squad acting as secondary source ("States and Capital Punishment," 2021). The rationale being executions had been halted for about a decade as pharmaceutical companies stopped supplying the necessary drugs (South Carolina Department of Corrections, 2021). At the time, Carolina law stated the prisoner had the right to choose between the electric chair or lethal injection. With knowledge of the predicament of the state, all Death Row inmates chose the latter. However, as of May 2021, the state has revised prior legislation to allow for a resumption of executions in the state (South Carolina Department of Corrections, 2021). This alteration requires prisoners to choose between electric chair or firing squad if lethal injection is not available. The adoption of this legislation sets a harmful example for other states

in debate surrounding the abolishment of capital punishment, especially those with existing secondary means of execution.

Modern-day arguments in support of the practice mirror claims of desert (Sethurju, Sole, & Oliver, 2016; Finckenaue, 1988). These arguments are positive retributivist, as punishment for crime remains the focus.

Assertions against this line of thought can parallel those of Beccaria, Camus, Foucault, and other thinkers who were against the brutality of the form of punishment. Humans are not almighty beings of judgment. To determine a punishment – that is acceptable. To make a conviction of death - that is a power that should only be granted to a higher being. Capital punishment is an unfit sanction regardless the crime committed; it is cruel for a human to inflict such torture on another. Further, prisoners who are sentenced to execution do not just serve the punishment of death for their crime, they also concede the remainder of their life in the strictest living conditions, along with the knowledge of their anticipated killing. These prisoners experience rapid deterioration of their mental and emotional health, documented as “Death Row Phenomenon” (Penal Reform International, 2017).

Arguments in favor of the death penalty can also mirror negative retributivist theories of justice. As evidenced in the *Gregg v. Georgia* (1976) Supreme Court decision, which held that the death penalty is not necessarily unconstitutional as it could serve a corrective purpose. However, there is no evidence that the death penalty, or any measure used to increase the severity of a punishment, is an effective deterrent of crime (Nagin, 2013). Evidence has been found highlighting the opposite phenomenon, that exposure to violence can prime violent behavior (Bailey, 2006). Murder rates, including those of police officers, are significantly higher in states that endorse the death penalty (“Capital Punishment and Police Safety,” 2021). By

contrast, states that have abolished the policy have experienced lower murder rates than before, taking into account officer deaths (“Capital Punishment and Police Safety,” 2021).

Under a negative retributivist framework, some benefit must come to society. That is not the case here as third parties are negatively affected, in extreme cases innocent lives are lost, and the practice costs significantly more than alternative measures.

These harsh conditions are harmful not only for the individuals in direct experience, but also for the prison personnel in charge of oversight. An interview conducted between Penal Reform International and Edgar Fincher, correctional officer on the Ellis Unit (Death Row) in Walker County in Texas shed light on the demands of this line of work. Fincher expressed the correlation between officers who work on Death Row, particularly those on the execution team, and the development of symptoms mirroring acute stress disorder and post-traumatic stress disorder (PTSD). He also noted personality changes, increased accounts of depression, and a novel difficulty in maintaining personal relationships among guards. He recalled the story of one individual tasked with transported inmates to the execution chamber. He began experiencing nightmares, cold sweats, and sleeplessness, resulting in a complete personality change. Another guard had a nervous breakdown years after the fact, when he suddenly had a vision of the eyes of all the prisoners he had executed in the past. This experience marked the beginning of his battle with PTSD (*Into the Abyss* (documentary film), 2011). Thirty-four percent of corrections officers meet the diagnostic criteria for PTSD; where, contrastingly, only fourteen percent of military veterans report similar symptomology (Spinaris et al., 2012).

Prison guards are already at a heightened susceptibility of developing depression - three times more likely than the general U.S. population (Greenhaus & Beutell, 1985); Vilagut, Forero, Barbaglia, & Alonso, 2016; Spinaris & Denhof, 2013) Spinaris and colleagues (2012) further



explored this relationship, and discovered exposure to violence, injury, or death moderated the relationship between prison officials and subsequent diagnoses. Stack and Tsoudis (1996) found prison officers had a 39% higher risk of suicide than the age-matched general population working in other professions.

The experience is also detrimental to the family members of those convicted.

"You'll never hear another sound like a mother wailing when she is watching her son be executed. There's no other sound like it. It is just this horrendous wail. It's definitely something you won't ever forget."

Anonymous Warden

An additional/extra variable to consider with using this punitive measure is the high probability that innocent people have been sentenced to death in the past. According to the American Civil Liberties Union, "Since 1973, over 156 people have been released from Death Row in 26 states because of innocence." The potential loss of one innocent life should be enough to reject the practice entirely, or at the very least lead to reformation. Since 1982, there have been over 40 executions that have been botched, the majority of which from lethal injection (Amnesty International, 2014). While doctors, nurses, etc. are often authorized to prepare and examine the materials before execution, they are not required to carry it out, and almost never do ("Capital Punishment and Police Safety," 2021). Further, drug doses are not administered uniform across state lines (Death Penalty Information Center, 2021). The current system is flawed.

There has been discussion surrounding legislation which would employ a licensed medical professional to inject the drugs instead of prison officials (Black & Sade, 2021). However, this solution invokes the question of whether such action would be against ethical codes by which physicians are bound, such as the Hippocratic Oath, in which they swear to

uphold moral standards in their practice (Black & Sade, 2021). Additionally, direct physician involvement would go against the American Medical Association's code of Medical Ethics, which prohibits involvement in executions ("Capital Punishment," 2021).

Another argument against capital punishment is in reference to its expense. According to a financial analysis conducted by Susquehanna University (2015), a death penalty inmate costs about \$1.12 million more than a general population inmate. Further, overpopulation can be solved by other means. Lawrence Wein and Mericcan Usta are two researchers who built a mathematical model of the Los Angeles County Jail System and simulated inmates' movement through their stay there (Simmons, 2016). They found the most cost-effective approach to reducing the prison population was through pre-trial release (bail) and split sentencing (the sentence is served half in prison and the rest in probation).

While I have painted a dim picture of the use of capital punishment in the United States, in recent years there have been significant strides toward national abolishment. There were seventeen executions in 2020 and six so far in 2021 ("Execution List," 2021). While COVID may play a role, it is important to note the reduction. However, the best solution would be to abolish the practice in its entirety and replace its use with life imprisonment. I urge President Biden to pardon the remainder of the individuals on federal death row and commute lesser sentences.

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The next portion of this essay will be devoted to contemporary segregated housing, and the way it is currently being implemented in the U.S. is both ineffective and in violation of human rights treaties the United States is a party to. To best understand a problem, you must ask

the people who have been affected. In this case: those who have experienced the desolate nature of solitary confinement. One notable advocate against its practice, Albert Woodfox, spent forty years in a cell block designated to special housing. Describing his time in prison:

“We were locked down 23 hours a day. There was no outside exercise yard for CCR prisoners. There were prisoners in CCR who hadn’t been outside in years. We couldn’t make or receive phone calls. We weren’t allowed books, magazines, newspapers, or radios. There were no fans on the tier; there was no access to ice, no hot water in the sinks in our cells...Needless to say, we were not allowed educational, social, vocational, or religious programs; we weren’t allowed to do hobby crafts (leatherwork, painting, woodwork). Rats came up the shower drain at the end of the hall and would run down the tier...Mice came out at night. When the red ants invaded, they were everywhere all at once, in clothes, sheets, mail, toiletries, food...Gassing prisoners was the number one response by security to deal with any prisoner at Angola who demanded to be treated with dignity. In the 70s we were gassed so often every prisoner in CCR almost became immune to the teargas.” –Albert Woodfox, *Solitary* (2019).

### **Say his name.**

The conditions depicted above are not unique to Woodfox's experience but rather endured by most inmates living in this type of isolated housing. The Arthur Liman Center at Yale Law School collected data on the use of solitary confinement in prisons throughout the United States ("Time-In-Cell," 2019). This information included the number of confined prisoners, the type of segregation they were assigned to, the cell conditions, and the length of time they were there. The researchers found an estimated 55,000 to 62,500 prisoners were being kept in restricted housing for more than or equal to 22 hours a day for 15 days or longer and accounts for 3.8% of the total prison population who took part in the survey.

Inmates are placed in isolation for several reasons, including administrative and disciplinary segregation, protective custody, and temporary confinement (Shames et al., 2015).

Administrative segregation is a strategy employed to ensure the facility's general functioning (Harrington, 2015). People deemed a safety threat to the guards and fellow inmates are removed and placed in isolation for an indefinite time. The guards often target gang members and similarly affiliated crowds. One type of administrative housing is protective custody, in which individuals are removed from the general population for their safety as an at-risk group (i.e., sexual minorities, people with mental illnesses, etc.). Most of these housing adjustments are not requested but instead left up to prison discretion. Inmates kept on Death Row are also classified under 'administrative segregation.' Additional use of solitary confinement is a behavior deterrent (Harrington, 2015). Correctional facilities use disciplinary segregation as punishment for violating a facility rule. A trial is held, and if the individual is found guilty, a specific amount of time is allocated in solitary. A third motivator of segregated housing includes temporary confinement, implemented when an incarcerated person has an ongoing investigation, no extra beds for transfer prisoners, etc.

Justification of this practice can be seen in positive retributive principles of desert: The individual has committed a crime, and they must be put away (Gordon, 2014). In whatever way officials see fit. However, it is evident in the 21<sup>st</sup> century American prisons that one's debt is not paid in full to society, even after having served time. On every job, welfare application, etc. there exists the question: have you been convicted of a criminal offense? This distinction, I am sure, has contributed to someone having not received the position. Further, in eleven states, felons permanently lose their voting rights (National Conference of State Legislators, 2021).

More popular arguments for segregation resemble negative retributive arguments of deterrence ("Corrections Officers Defend Solitary Confinement as A Key Deterrent, 2015; Gordon, 2014). Deterrence Theory argues the threat of punishment discourages people from

committing crime. Proponents of this penological structure propose longer and harsher prison sentences, as these would induce the most fear, and therefore prevent the most crime (Tomlinson, 2016). Because it views punishment as an obligation the individual must fulfill, under a negative retributivist criminal justice system, many of the policies enacted are not meant to protect the rights of the individual, but rather to prevent future crime (“Retributivist Justice,” 2021). For example, opportunities for parole are limited with truth-in-sentencing laws, which incentivize having the persons convicted serve a majority of their prison sentence. Longer sentences are also a result of a heavier reliance placed on mandatory minimum sentences (where the convicted individual must serve a predefined term, life without parole, and plea bargains (Tomlinson, 2016).

Other claims of negative retribution contend it is a helpful tool that helps keep the facility running smoothly by managing disruptive inmates (Charleroy & Marland, 2016), that it effectively reforms prisoner behavior within the facility and post-release (Mears, 2013), and that it presents a solution to prison overpopulation (Cloud et al., 2015) – all of which are claims grounded in negative retribution. In response to first two arguments, most inmates assigned disciplinary segregation receive violations for low-level, non-violent crimes, such as profanity (Digard et al., 2018). Often these are not individuals who pose a high-risk to the facility, and, therefore, putting them in solitary is likely doing more harm than good. One study found about four out of every five prisoners confined in solitary have experienced the consequence before (Fox, 1959). A potential moderating variable to consider in this relationship could be the perceived ‘warranted-ness’ of the penalty. Further, short and long-term use of this punishment does not reduce future infractions (Morris, 2015; Richards, 2015) and recidivism rates (Labrecque & Smith, 2019). Instead, they produce the opposite results, putting those inmates at a

disadvantage when they return to the general prison population (Morris, 2015). To the third point, there are other means of dealing with the rising prison population than killing people and creating supermax prisons, such as removing mandatory minimum sentencing laws, plea bargains, and life without parole.

However, countless studies indicate this is not an effective strategy, and leads to policy creation that are more harmful to those charged (Tomlinson, 2016). In 2012, the Bureau of Justice released a report that found similar rates of severe psychological distress between people who spent thirty or more days in isolation as those who spent one day (Beck, 2015). A study by Appelbaum and colleagues (2011) found higher incident rates of non-suicidal self-injury and suicide acts and increased reports of injuries against guards among prisoners in special management units compared to the general prison population.

These are not just statistics; these are stories. In 2010, a sixteen-year-old boy named Kalief Browder was falsely accused of theft and spent three years in prison (two of which he served in solitary confinement), awaiting a trial that never came (Gonnerman, 2015). During that time, he endured severe mental and physical abuse. Eventually, the police dropped the charges against him, and he was released from prison. During this time, his story gained substantial attention in the media, and he got in touch with an editor from the New Yorker. He spent time in and out of psychiatric wards, exhibiting symptoms of psychosis. One interviewer who visited him during one stay at the hospital noted, “he had recently thrown out his brand-new television, he explained, “because it was watching me.” Two years after his release from prison, he hung himself.

**Say his name.**

Hudson v McMillian (1992) extended the Coker ruling by concluding the unnecessary pain prohibited by the 8th Amendment could include psychological and physical pain. According to a study conducted by the Bureau of Justice in 2017, correctional inmates were three to four times more likely than the average U.S. citizen to meet the criteria for severe psychological distress. From the same study, nearly half of those individuals who had been locked up for over five years had met the threshold for a mental disorder. Another study examined the distinction between physical and mental torture and found them to produce similar suffering levels (Başoğlu et al., 2007). The federal government must recognize the long-term health deficits caused by this form of practice and its proportionality to physical pain. The use of restrictive housing does not serve a rehabilitative function, but only makes the process more difficult. Two hypotheses are accredited for this observation. The first is that prolonged periods without social interaction or novel stimuli have degenerative properties (Cole, 1972). Second, when the individual expresses a need for help, they are not only denied, but locked away.

Another notable case of neglect in the prison system has been of Jamycheal Mitchell, a twenty-four-year-old with schizophrenia who was arrested for convenience store theft. He had not been taking his medication, and after being held for a month he was deemed unfit to stand trial. He was ordered to go to a hospital, where he would have received medical treatment for his condition, but due to an insufficiency in the number of beds available he had to wait in jail for months. During this time, he did not eat or take his medication. Four months later he was found dead due to cardiac arrhythmia caused by extreme weight loss.

**Say his name.**

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The issues outlined throughout this essay are magnified when considering private prisons, jails, and detention centers, which have been identified as having worse conditions that ultimately pose a safety risk for prisoners and officers alike. According to a report by the Department of Justice Inspector General, in most areas these private facilities were found to have a higher rate of safety and security problems than those under federal government jurisdiction (“Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons,” 2016). In 2019, private companies accounted for 8% of the total prison and jail population. While this number may seem insignificant, it amounts to about 116,000 individuals (“Private Prisons in the United States,” 2019). There is an inherent incentivization to work against prisoner rehabilitation, as the more individuals in their facility and the longer they stay, the more money made for the institution. For these reasons, I argue for their national abolishment.

In January President Biden signed an executive order which would end any contracts between the DOJ and for-profit prisons (C.F.R., 2021). While this is a significant advancement toward this goal, the DOJ only accounts for a portion of government sectors working alongside private corporations (Eisen, 2021). In order to work toward complete elimination of for-profit correctional facilities, further action must take place. The order does not affect detention centers contracted by the Department of Homeland Security or for-profit jails by the US Marshalls service (Eisen, 2021). Additionally, state governments must work to terminate their contracts with private prisons.

**Prison is not a business.**



While it would be presumptuous to assert just one justice system onto our own, it is arguable that support for the U.S. judicial system draws from these principles of retribution, even if the system itself does not verbalize these qualities. This fact is evident in its reliance on proportionality between crime and punishment, as well as its credence of deterrence. However, these frameworks place too much focus on the crime instead of rehabilitating the offender, which then does little to prevent future criminal activity. The irony is that the negative retributivists end goal is to deter future crime, and yet they are largely unsuccessful.

Retributive justice has large intuitive appeal - it identifies the individual as a rational agent capable of free will. As such, when a rule of the social order is violated, that person must assume personal responsibility. The problem is the concept of 'proportionality' of crime to punishment is one of vagueness and subsequent arbitrariness and introduces a series of questions that must be answered in order to consistently uphold the standard. How do we measure the gravity of a crime? What is the conversion factor between crimes? How do we rank crimes? What is considered a 'fair' punishment? Does the penalty incurred have to be the same exact as that dealt, or can it be two different things that are weighted equally? For example, in a society that places an extremely high value on material goods, the punishment for stealing could be 'equal' to that of death.

To meet proportionality requirements between crime and punishment, must a person have to be designated a sanction, or can they achieve the same degree of fulfillment by suffering independent of any assigned retribution? Put differently, is it the act of completing the punishment that "clears" one's slate, or something else? Take, for example, two people who committed and were charged with the exact same crime. While both are guilty of their respected offenses, only one is indicted. In this scenario, let us suppose the individual who is found

innocent lives every day with the agony of what they did, and has since devoted their life to helping others, running a non-profit organization that would go under if they were to be sent away. In order to repent for their crime, must this individual serve time in prison? It is not obvious, at least to me, that this is the case. The individual is seemingly living a more productive life than they would have behind bars, and an additional punishment may hinder their progress. In this way, obtaining 'justice' is concerned less with the fulfillment of a punishment, and more with the bettering of oneself as a human being.

Under a positive retributivist framework, this result would not be an acceptable punishment. The negative retributivist, by contrast, may be more inclined to accept the outcome. Their philosophy is that the punishment must have a beneficial outcome on society. While in this case the guilty individual is not serving a "punishment," their actions are benefiting others. However, this scenario seems to disrupt a vision of fairness so cherished by American politics, where physical distress appears to be a requirement under claims of desert and deterrence.

Violence plays an inherent part in the current prison system, and changes must be made. The criminal's role and the role of the guard are established early on, and the detrimental effects this power dynamic has on job performance has been found in study after study: people choose power over human rights every time. One notable example is the Stanford Prison Experiment, which sought to examine the psychological effects of prison life and, more generally, human behavior under perceived power (Zimbardo, 2020). Researchers completely transformed Stanford's psychology department to mimic a real prison's conditions – there were no clocks or windows to judge time. Twenty-four healthy college-aged males participated in the study: half were randomly assigned to be the 'prison guards' the other half were designated as the 'prisoners.' The 'prisoners' were searched, stripped naked, shackled, and given only a smock to wear. While

the study was initially supposed to last two weeks, it was cut short after six days due to the participants' intense psychological and physical trauma who assumed the prisoner role. Despite being nearly fifty years since the results of that study were published, little to no reform has been implemented.

I argue the retributivists' efforts are futile because they approach the issue from the wrong lens. Consequently, there must be an alternative way to view the concept of 'justice' that is more productive for society. One that is not grounded in punishment or deterrence but is more reformative for the convicted person.

### **Reform - *Rehabilitation: an unlikely judicial framework***

Engagement in an inhumane act should not revoke one's status as a human being. Sadly, the current judicial system does not reflect this belief and consistently denies people of their civil liberties in a completely arbitrary manner. In some states, it is the judge (albeit within the restrictions imposed by the state) who determines the penalty (i.e., who gets sentenced to capital punishment versus life in prison without parole; Hans et al., 2015; Emory, 2016) and often this judgment is made in an inconsistent manner ("Legal Background Arbitrariness," 2020). I contend that the use of capital punishment is inherently unethical, and federal and state governments should abolish its practice across private and public domains. Instead, a sentence of life with the chance for parole should be assigned in the cases of homicide, as the punishment sufficiently fits the crime without violating an individual's potential human right to life. Not only are these incarcerated individuals paying the price with their lives, but they are serving an additional sentence of life on Death Row. Regardless of the crime committed, all humans should have the opportunity for redemption. If incarcerated individuals are able to prove redemption,

why should they have to waste their life away? I understand that a decent amount of people in prison are dangerous individuals, but nobody is a lost cause.

Similarly, I argue for the termination of solitary confinement. At the very least, measures need to be taken to significantly reduce the number of people and the length of time spent in solitary. The prison system has come to rely too heavily on this practice, with little consideration of its psychologically traumatizing properties. Prisoners will either get re-released into the world, in which case it is vital they are rehabilitated so as to not pose a safety risk to the community. Alternatively, if the person received a life sentence, they already permanently lost their freedom, so there is little point to physically and psychologically torture them further.

Instead, prisons should implement an education-based reform system centered around GED attainment and training for job opportunities post-release, with additional opportunities for stimulating activities (i.e., outdoor time, access to books, puzzles, natural light, etc.) and social support (i.e., mental health services, visitation, and phone rights). One explanation for the observed psychological trauma is the low level of engagement in stimulating activities available to prisoners in restrictive housing. Inmates are not allowed the same amenities afforded to those in the general prison population. They, therefore, rely on more abstract means of distracting themselves, which likely contributes to any observed mental deterioration. As such, I argue for equal access to these same luxuries and living conditions. A second recommendation I have is to increase schooling opportunities for incarcerated individuals. According to a meta-analysis organized by the Bureau of Justice Assistance, inmates who participate in correctional education programs, on average, are 43 percent less likely to return to prison than those who do not. Further, the researchers conducted a cost analysis comparing that of correction education programs and reincarceration. They found an estimated cost savings of \$0.87 million - \$0.97

million. This approach is beneficial for the prisoners as most have not received a high school/GED degree. It also provides cost-savings for the government (or, in the cases of private prisons, whoever runs the facility).

Furthermore, prison personnel should implement policies to increase social and mental health services for prisoners. According to a 2017 report from the U.S. Department of Justice, around thirty-five percent of people in prison, and forty-four percent on jail inmates have a history of mental health problems. A study conducted by Woo and colleagues (2020) concluded that social support significantly reduced the odds that an individual would receive an infraction. Correctional therapists should receive additional training in areas that are especially problematic for the prison population, such as issues with substance misuse and aggression.

Why is judicial reform such a long and arduous process? Is it because people are unaware of the unfair treatment of prisoners? Is it because they do not care? Or even more horribly, because they promote it? If lack of progress is due to not know-how, plausibly, something as simple as increasing media exposure could deepen the general public's knowledge of current events in that domain. If said knowledge deficiency is a result of apathetic neglect or blatant support of the practices involved, a much larger issue presents itself, one that requires changing a set of foundational beliefs, potentially across a nation. It is critical to note that there is an abundance of political reasons for why change has been stagnant that I will not cover in this essay as I do not possess adequate knowledge on this issue. However, I will discuss other avenues of achieving the goals outlined above.

A general means of reform discussed in Cesare's *On Crimes and Punishments* is a rational-legal system, in which legislation should be as specific as possible to limit the number of arbitrary judgments (Beccaria, 1995). His logic is that the current system's vague nature does

little to deter people from committing future crimes. He argues if laws were to be explicitly laid out, then penalties would be assigned more consistently and therefore work better to reduce problem behavior in and out of prison. Montesquieu indicates a similar position to Beccaria, proposing that legislatures should specifically outline the civil and criminal law, rather than leave it up to the discretion of the judge in meting out sentences.

I agree with the philosophers to a certain extent. I think this idea could potentially do a better job of enforcing equal sentencing across state and local jurisdictions, as researchers have found that certainty of punishment works as a far greater deterrent than increases in the length or severity of sentences (Nagin, 2013). In terms of legislation that impacts day to day living of prisoners, I believe more specific legislation outlining what exactly constitutes cruel and unusual punishment could also be beneficial. The problem is, and how could the ancient philosophers have predicted this, the government and its employees do not always follow the current rules outlined in federal and state legislation that deal with treatment of prisoners. This claim is evidenced at the very least by the improper allotment and enforcement of solitary confinement in U.S. prisons. Even more, correctional officers go out of their way to assert dominance and inflict harsh, often unwarranted, treatment. As proof, one can refer to the video released of Kalief Browder being attacked by a guard despite having just been standing there. Nowhere in U.S. legislation is there a clause that allows for the beating of an inmate senseless, and yet, this instance was not an anomaly in the system. Said otherwise, explicitly laying out a law does not inherently make it “just.” It needs to be a fair law that is delegated in an equitable non-arbitrary manner.

Beccaria introduces consistency as an important aspect of effective behavior deterrence (Beccaria, 1963). Studies show that the more consistently a punishment is given, the more

responsive the individual will be (Lukowiak, 2010). A study conducted by the National Institute of Justice in 2017 provides support for Beccaria's claim that swift and consistent policing is one of the more effective preventative measures. However, as proven throughout this essay, neither capital punishment nor solitary confinement is assigned steadily, which likely contributes to their current ineffectiveness at reducing internal violations and external recidivism.

If the government is corrupt, you go to the people. A change needs to happen in the mainstream perception of prisoners from that of 'evil criminal who needs to be punished', to 'a sick individual who needs help' would work to greatly reduce the harmful association. Modifying one's belief system is not a task that can be easily accomplished overnight. However, altering the ways in which prisons are run would hopefully produce a shift in values with the general public. Policymakers, influenced by a new set of standards, ideally would enact subsequent reform to reflect these novel ideological shifts. Two factors I believe contribute to the popular view of 'the inmate' are the severity of the environment and the language people use when talking to and about incarcerated individuals. However, these are two avenues in which more research needs to be conducted. An additional thought for the future: one means by which advancements could potentially be accomplished without policy reform is by changing the language we use when interacting with prosecuted individuals to be more positive. For example, using 'consequence' (or a word that denotes a similar meaning) instead of 'punishment.' A question to be considered is whether using language such as "punishment" primes violent behavior and hinders prosocial and emotional progress.

It is possible to assert oneself as the dominant party without being aggressive (Flaxington, 2018). Taking a kinder, although not any less strong, approach, will often end in mutual respect and a greater sense of understanding between the parties, as well as an increased

likelihood of compliancy (Flaxington, 2018). Making this adjustment would drastically change the environment to be more positive, peaceful, and conducive to rehabilitation. The punishment need be only severe enough to deter the individual from engaging in the act (Tomlinson, 2016). Generalizing the findings from this study I argue prison should be a *just* miserable enough experience so as to not incentivize crime. Still, the conditions should be held to a high enough standard so as to not irreparably harm the inmates' mental or physical health.

Some may argue I take a pessimistic outlook on an overall autonomous democratic system of government that generally upholds freedom. However, I do acknowledge that no means of governance will be perfect, and I am grateful to afford the liberties offered by the current regime. I also recognize my position as a majority member of society, and the privilege I bear with it. Not everyone possesses the same luxury as I, and it is imperative to speak up for those who do not. While certain freedoms and rights are outlined, they are applied in a disproportionate manner. Our society can never delegate justice in an equitable way when it is the opinions of one group of people (white men) who have historically determined the standards of fairness. When it is the dominant members of society who created and largely continue to uphold the laws of justice on which this country was formed. It is impossible for the government to be wholly representative of its citizens, especially considering the inherent power differences embedded in a structure founded on racial inequality.

When I was in high school, I wanted to be a lawyer. I aimed to make the world a better place, and I thought sending 'bad' people to prison would be the best means to achieve this goal. I respected the law at point-blank: these were the rules, and if you violated them, you deserved to go to jail. I was under the impression that prisoners would work to better themselves during the time they were away. What I failed to consider was that they were never given a chance.



## PERSONAL NARRATIVES<sup>12</sup>

1) “One of the guards invited me to come talk to him. I made the mistake of thinking he was a friend and was talking about the meaning of life and why things happened. He decided he thought I was suicidal, which I wasn’t. The next day I was shipped off to a maximum-security prison in the upper peninsula of Michigan, stripped down naked and given a kevlar smock to wear.

They keep the temperature down at 60 degrees which means that you have to stay huddled in a corner to conserve body heat. Because this was observation I wasn’t allowed to have anything. Nothing to read, watch, etc. Naked and cold for an entire week. If you’d like to see what this is like, turn your thermostat down, then take all your clothes off, and sleep on the floor of your bathroom with the light on for 6 days straight.

No showering either. Wasn’t offered a chance to clean myself. That’s how I spent New Years 2007. Observation is not some kind of psychological treatment. It’s punishment and mental torture. Sleeping and singing to yourself is all you can do. Too cold to do anything else. Brutal.”

2) “Being in for not a long time and in a low risk tank? Didn’t matter. Ended up with some PTSD. I couldn’t fall asleep without a knife in my hand for the first four months I was released. I had nightmares and didn’t sleep a night through (sober) for the same period of time.”

3) “They pronounce you a savage. Laws no longer apply, rape is a joke, not a horrible violation of someone’s humanity, and either you do as the wardens say and don’t get any punishments (just general bad treatment), and get beaten up by the other prisoners, or you listen to the prisoners and stay there longer, getting beat up by the guards. Prison is not a part of human rights. It is psychopathic.”

4) “An officer was attacked and killed by an inmate. Every night, for weeks, 3rd shift would come on and a half dozen officers would pick cells at random and just beat the s\*\*t out of whoever who was unlucky enough to be in there. Imagine sitting in the dark, hearing a grown man just 100 feet away screaming in pain and agony. Did I mention the CO’s were laughing in between blows?”

5) “Having to be alone with just your thoughts for a majority of the day. Much like everyone else in jail, my thoughts are negative and self-destructive, and being alone with them for extended periods of time does more harm than good.

“If you show signs of harming yourself, they take more of your rights away (blankets, sleeping pads, toilet paper). That only leads to more destructive thoughts.”

6) “You’re a body, that’s it

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<sup>1</sup> <https://didyouknowfacts.com/12-ex-inmates-share-worst-things-happen-prison/>

<sup>2</sup> <https://thoughtcatalog.com/lorenzo-jensen-iii/2017/03/30-ex-convicts-recall-their-most-terrifying-prison-experience/>

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