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Donald Trump’s Use of Hate Speech and Gaffes and the Resulting Moral Panics, or Lack Thereof

By: Taylor Bacheldor

Individuals use different language ideologies to understand the speech they hear. The use of differing language ideologies leads the public to understand speech in dramatically different ways. In the Book *The Everyday Language of White Racism*, Jane Hill examines visible and covert forms of racist discourse. She also examines how the use of racist discourse by those in power can ensue moral panics. A moral panic is classified as, “a sudden and excessive feeling of alarm or fear, usually affecting a body of persons, and leading to extravagant or in- judicious efforts to secure safety” (Garland, 2008, p. 10). Typically, moral panics involve a reported event sparking anxiety and creating hostility among different groups of people. This causes the public to have a disproportionate negative reaction which ultimately results in a panic. According to Hill, a moral panic would include public criticism and media attention followed by panic by the public. Some public and media outlets have criticized President Trump for using overt and covert forms of racist discourse. Based on Hill’s analysis, Donald Trump’s speeches have not yet caused a moral panic, as many of his listeners draw on various language ideologies to understand and justify his speeches.

Hill’s primary focus of *The Everyday Language of White Racism* is to determine how white Americans can use racist discourse while denying that they are racist. Hill investigates how white Americans are able to hold and share negative stereotypes to justify the oppression of people of color, while claiming that they are not racist (Hill, 2011). Donald Trump has been accused of using racist discourse as well as promoting negative stereotypes of underprivileged groups, while simultaneously maintaining that he is not racist. Throughout the book, Hill is particularly focused on the beliefs held by individuals in advantaged positions within society. Donald Trump, as President of the United States of America, certainly holds a prestigious position. He has frequently and publicly stated gaffes, otherwise known as blunders, slurs, and promoted stereotypes of disadvantaged groups of people.
Although some have cried out against his speech, his words have not yet incited a full-blown moral panic.

Much of Donald Trump’s language has sparked discussions and controversy within the media as well as the public. His speech is frequently categorized as hateful by the media. It appears as though no disadvantaged group is safe from being targeted by the President. However, he typically targets immigrants and people of color. In one speech, he questioned where President Obama was born, because he is a man of color, suggesting he was likely born outside of the United States. At a Conservative Political Action Conference in 2015, Trump stated, “I don’t know where he was born” (O’Connor and Marans, 2017). Additionally, he has also been accused of discriminating against his black employees. In 1997, the President reportedly stated, “And it’s probably not his fault because laziness is a trait in blacks. It really is, I believe that. It’s not anything they can control” (O’Connor and Marans, 2017). In May of 1997, during an interview with Playboy, Trump confirmed these accusations. Certainly, this is hate speech, yet even this direct discrimination failed to incite a moral panic among the public. Although the media brought attention to this incident, there was not an uproar of the public so the attention quickly dissipated. The President also frequently targets immigrants, as he has questioned, "Why do we want all these people from 'shithole countries' coming here?" (Watkins and Phillip, 2018). In this quote, Trump was demeaning countries including El Salvador and Haiti. Further, he was generalizing countries outside of the United States into one negative group. During this conversation, he also questioned the worth of El Salvadorians and Haitians. While Trump has denied much of his speech, and apologized for misspoken words, many have declared him as a racist for using this language, as well as other language that generalizes groups.

While it is certainly questionable, Donald Trump claims that he is not racist. According to the folk theory of racism, explored by Hill, racism and racist speech only persists among the uneducated (Hill, 2011, p. 49). Trump, however, holds the most prestigious occupation within the United States. Therefore, it is clear that the public has not deemed him to be uneducated. Further, “most English speakers know that to utter sentences with negative concord exposes speakers to stigma, to being labeled as crude or uneducated” (Hill, 2011, p. 36). While some of those who have cried out publicly about Trump’s speech claim he is uneducated, he continues to hold the most powerful position in our country. Also, he continues to have many supporters for the upcoming presidential race. Certainly, these supporters would not vote for him to be our president if they deemed him uneducated. Hill argues, “Middle-class speakers think that African American or white working-class speakers who use negative concord are not just doing something ‘non-standard,’ they are speaking illogically, revealing the poverty and disorder of their thought” (Hill, 2011, p. 36). This statement provides further support that the common discourse reveals that racist speech would not be tolerated in this country. Although Donald Trump is not working-class, this is a telling statement that does not seem to apply to the upper-class. Seemingly, poverty and disorder of thought go hand-in-hand. As Donald Trump is in a position of power, occupationally and socioeconomically, his disorder of thought is often overlooked which allows him continued support by the public as well as a platform to run for re-election. Therefore, it can be surmised that despite his racist speech, many continue to view him as an educated, logical man.
After a mild moral panic regarding the Islamic State of Iraq and Syria (ISIS), not including Donald Trump, a spokesperson from the Trump campaign stated, “Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on” (Kruse and Gee, 2016). While this statement may have seemed rational or well-mannered on the surface, it implies that all Muslims may support or be involved with ISIS. This implication is demeaning, xenophobic, racist, and furthers a negative stereotype about the Muslim religion. Similarly, during a 2016 press release, Trump is quoted with stating, “If and when the Vatican is attacked by ISIS, which as everyone knows is ISIS’s ultimate trophy, I can promise you that the Pope would have only wished and prayed that Donald Trump would have been President because this would not have happened....” (Kruse and Gee, 2016). After this statement, Trump continued to berate the Pope, Muslims, and democratic leaders. This entire speech was riddled with hateful words against various groups of people, yet he was still elected to be the President. Also, this speech received criticism and attention from the media, yet failed to create a moral panic of the people.

The negative speech patterns used by Donald Trump existed prior to him being elected as the President. Before Trump was elected as President, he openly mocked a man with a severe physical disability. The man, Serge Kovaleski, suffered from a congenital condition called arthrogryposis that affects joint movement. At the time of this incident, Kovaleski worked for the New York Times. Trump reacted to a report Kovaleski had made by mocking him, saying, “Now the poor guy, you ought to see this guy. ‘Ah, I don’t know what I said! I don’t remember’” (Kruse and Gee, 2016). As Trump was speaking, he was purposefully stuttering. By stating “Ah, I don’t know what I said! I don’t remember” (Kruse and Gee, 2016), Trump was effectively calling Kovaleski’s mental capacity into question. While he was speaking, Trump also mimicked the distinctive disability by flailing his arms around. During this speech, it is clear that Trump was engaged in social alexithymia, because he refused, or was otherwise unable to account for the feelings of others. It is undeniable that he was unwilling to recognize the feelings of Kovaleski at this time. This was overt hate speech and mockery, yet even this instance failed to incite a moral panic. After Trump received some criticism from the media, he apologized for his statement and physical mockery. This is a common approach by Trump, which allows his supporters to defend against his hateful speech and continue supporting him. After his apology, his supporters came to aid in his defense. One supporter, Ann Coulter, wrote columns and participated in interviews defending Trump as a result of this incident. She insisted Trump was not mocking Kovaleski because he was disabled, but rather this physical mockery was typical of any individual Trump was to imitate, “This is how Donald Trump does an imitation of a flustered, cowardly person or a frightened person” (Borchers, 2016). Trump’s apology allowed his supporters to dismiss his language and actions as mistakes which in turn curbed a moral panic.

Another instance of speech from our President that could have created a moral panic, but failed to do so involves his speech against Mexican immigrants. Trump questioned Mexican immigrants’ morals and integrity stating, “When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists” (Kruse and Gee, 2016). This statement was classified as a gaffe. Although this
statement appears to be quite derogatory towards Mexican immigrants, Trump simultaneously
claims that he loves Hispanic immigrants. In 2016 he tweeted the following from his personal
twitter, “Happy #CincoDeMayo! The best taco bowls are made in Trump Tower Grill. I love
Hispanics” (Kruse and Gee, 2016). It is likely that many individuals believe that Trump’s hateful
speech can be classified as blunders or gaffes because he typically contradicts his hateful claims by
professing his admiration and appreciation for the groups he targets. These contradictions made by
Trump allow people to assess his character and believe that he is not a hateful, racist, prejudiced
individual, as his supporters draw upon the personalistic ideology. The ideology of personalism
holds that the most important part of meaning from language usage comes from the beliefs and
intentions of the speaker (Hill, 2011, p. 38). Therefore, Trump’s supporters view instances such as
this as well-intended, misspoken speech, rather than ill-intended hate speech. This is because his
apologies and professed admiration for groups he targets contradict the language he uses in
speeches, allowing them to question his beliefs and intentions.

Recently, Trump has victimized Jewish people with his ill-mannered way of speaking. He
stated that the Jewish audience had “no choice” except to vote to re-elect him. Trump’s reasoning
for the Jewish audience’s apparent lack of choice was that he claimed if they voted for a Democratic
candidate, they would lose money to the proposed tax plans (Flynn, 2019). Trump is quoted stating,
“But you have to vote for me — you have no choice. You’re not gonna vote for Pocahontas, I can
tell you that. You’re not gonna vote for the wealth tax. Yeah, let’s take 100 percent of your wealth
away” (Flynn, 2019). This statement draws on negative stereotypes of Jewish people, insinuating
that they are overly concerned with money. He followed his prior statement with this, “Some of
you don’t like me. Some of you I don’t like at all, actually. And you’re going to be my biggest
supporters because you’re going to be out of business in about 15 minutes if they get it” (Flynn,
2019). In this speech, Trump stated that Jewish voters would be more likely to vote for a candidate
they do not like, rather than a candidate they do like, but would increase their taxes. Together, these
quotes create an illusion that all Jewish people are overly concerned with their wealth and economic
stability, to the extent that these concerns would surpass their core tenets and beliefs. Even after
stating these offensive and seemingly anti-Semitic comments, powerful Jewish community members
continue to support him. For example, “Rabbi Shmuley Boteach, who said he attended the speech,
praised it as ‘one of the most pro-Israel speeches ever delivered by an American president’” (Flynn,
2019). These seemingly anti-Semitic comments were made very recently. Therefore, it is possible
that these statements may successfully create a moral panic. However, it is extremely unlikely that
a moral panic will ensue as a result of this speech. As the past has shown, supporters of Donald
Trump tend to draw on personalistic ideology to downplay and rationalize hateful speech made by
the President.

All of the aforementioned indiscretions made by President Donald Trump have had the
capabilities of inciting moral panics. Although Donald Trump has been criticized and those
denunciations have received media attention, the public has not truly panicked as a response to any
of his comments. Considering that Donald Trump has publicly used racist and offensive discourse
and stereotypes against Mexicans, Muslims, Christians, the physically disabled, and the Jewish, just
to name a few, yet remains to have supporters implies something about the ideologies of these
supporters. Unless these supporters are themselves, racists, believe these statements, or also have social alexithymia, it is probable that they strongly value and believe in the personalistic ideology of language. Therefore, these supporters must believe that Donald Trump does not truly believe the hateful things he has publicly stated, or does not intend to say them. However, as previously shown, there have been many instances where he has utilized hateful speech and gaffes. Trump supporters, assuming they are not racists, must draw upon the apologies and praise he gives to targeted groups to evaluate his character. Trump being a white man in a patriarchal racist society also helps him maintain his status.

On the other hand, some individuals avidly oppose Trump. Many of these individuals are offended by his speech and have spoken out against him. Those who are offended by Donald Trump’s speech seem to view his speech through a performative ideology lens. This ideology, according to Hill, holds that words, including hate speech, can be assaultive and can inflict harm to the individuals the words are about (Hill, 2011, p. 40). Although these assaults are not physical, those who assess language through performative ideology recognize that the pains can be similar. Therefore, many of those who oppose Trump believe that his speech effectively assaults groups he has targeted, including but not limited to Jews, Muslims, Mexicans and the physically disabled. Also, those who oppose his hateful speech critique him and claim that he completely ignores the feelings of others. According to Hill, his inability or unwillingness to recognize the feelings of other groups while speaking would be classified as social alexithymia. Those who oppose Donald Trump may also draw on personalistic ideology, believing that his hateful speech is targeted, rather than merely errors. These individuals may believe that because of the sheer frequency of this language, Trump believes the hateful things he says. Therefore, those who do not support Trump may draw on multiple linguistic ideologies to form conclusions about his character, intentions, and beliefs.

Individuals unconsciously draw upon different language ideologies to understand speech. Because individuals may use different language ideologies to make sense of what they hear, individuals can hear the same speech and draw conclusions about it and the speaker in various ways. This explains why the public has heard about the same claims Trump has made, but have made different conclusions about his intentions, beliefs, moral character, and leadership ability. It seems as though political affiliation may impact the language ideologies an individual chooses to draw upon when reacting to Trump’s speech. His supporters and opposers seem to remain relatively consistent despite the specific gaffe in question. Therefore, it is unlikely that any speech made by Donald Trump will incite a moral panic, as his supporters have found a way to downplay and dismiss his claims and hateful speech by drawing upon the linguistic ideology of personalism.
References


Introduction and Point of View

The size of the transgender population in the United States is difficult to quantify. Recent statistics suggest that around 390 per 100,000 adults identify as transgender (Meerwijk & Sevelius, 2017). A “transgender” individual is defined as someone who has a different gender identity than the sex they were assigned at birth (Meerwijk & Sevelius, 2017). Individuals who identify as transgender face pervasive social and economic discrimination and are often excluded from the legitimate economy in the United States. As the result of exclusion from traditional social networks and professions, transgender individuals are disproportionately likely to be arrested, convicted, and sentenced to prison (Tarzwell, 2006). Widespread transphobia and bias against transgender individuals results in exclusion from traditional familial structures and mainstream society, which creates barriers to employment and secure housing. These barriers channel ostracized transgender individuals into poverty, sex work, and drug use, placing them at a higher risk for incarceration (Clark, White Hughto, & Pachankis, 2017).

George R. Brown and Everett McDuffie estimated that in 2007 there were at least 750 transgender prisoners in America, the majority of whom were transgender women who were placed in men’s facilities (Pemberton, 2013). Other estimates suggest that the population of transgender prisoners could be in the thousands or even up to 10,000. Numbers are difficult to estimate due to sex-segregation in United States prisons. However, it is estimated that about 16% of transgender individuals have been incarcerated in their lifetime, compared to 2.8-6.6% of the general United States population (Clark et al., 2017). Transgender females are even more likely to be incarcerated, as 21% of transgender females have been incarcerated at least once (Clark et al., 2017).
Gender Identity Disorder (GID) is a “formal diagnosis used to describe those who experience persistent gender dysphoria and discontent with the traditional gender roles assigned to their biological sex” (Correctional Facilities, 2007). This diagnosis is often associated with individuals who identify as transgender. There are currently hundreds of different policies in place regarding the medical treatment of transgender inmates during incarceration in each state. There is no universal policy in place that instructs prisons on how to “handle” a transgender inmate; the result of which is varying state policies regarding the placement of inmates, difficult access to hormone therapy and a lack of uniform training by correction officer and prison medical staff (Pemberton, 2013). According to Tarzwell (2006), “In the absence of policies specifically addressing the needs of transgender prisoners, prisoners are likely to face the denial of gender-affirming medical care, resulting in physical and psychological pain, a feeling of loss of identity, as well as harassment and assault” (p. 170). I believe that providing hormone therapy to transgender inmates, as well as reforming the assignment process and increasing training in correctional facilities will be beneficial to the prison system in the United States.

The Assignment Process

United States prisons most commonly assign inmates to male or female prisons based on their genitalia (Clark et al., 2017). Prisoners who have already undergone gender confirmation procedures are likely to be placed into a facility that aligns with their new physical appearance. However, most have not undergone this expensive process. As a result, the majority of transgender individuals are assigned to a facility based on assigned sex at birth (Correctional Facilities, 2007). In the United States, there is no comprehensive gender recognition statute, so policies relating to transgender inmates differ between state and federal jurisdictions.

Each state varies in the way that they treat transgender inmates within their facilities. Tarzwell (2006) examined the different ways that states handle this controversial issue. For example, Arkansas prisons make placement decisions based on genitalia. If a transgender female has undergone hormone therapy on their own before incarceration and has breasts, but still has a penis, that individual will be placed in an all-male facility. Idaho typically uses genitalia based placement, but allows for deviation when security or safety concerns are present. Idaho also mandates that individuals diagnosed with Gender Identity Disorder should be housed together, if possible (Tarzwell, 2006). Minnesota, on the other hand, has no policy regarding placement options for transgender prisoners, and leaves the decision up to each prison. Similarly, Michigan also has no written policy regarding placement, but instead mandates that transgender prisoners must be given a single cell with a private toilet and shower when possible (Tarzwell, 2006). Connecticut recently changed its policy and now allows transgender inmates to be housed according to their gender identity if medically diagnosed with gender dysphoria according to the American Psychological Association’s guidelines.

While states’ policies may differ, the general finding of a study conducted by Mann (2006) showed that security and safety risks are far more prominent in male facilities for both transgender men and women than in female facilities in all states. Physical and sexual assault are among the greatest concerns regarding the placement of transgender individuals in male facilities. Based on
her findings, Mann suggests assigning both transgender men and women to female facilities, unless serious security risks are present. Assigning transgender males into male facilities is inherently dangerous because of the violence and toxic masculinity that exists within male facilities (Mann, 2006). The United States prison system is considered to be “hyper-gendered,” where traditional gender roles are strictly enforced and inmates are in danger if they do not conform (Correctional Facilities, 2007). When prisoners are assigned to a sex-segregated facility that does not align with their gender identity, they are at an increased risk of victimization while incarcerated. Different threats to transgender prisoners include harassment, sexual assault, physical assault, and other forms of humiliation (Clark, 2017). Prison can be a terrible experience for anyone, but incarceration is especially traumatic for transgender prisoners who are “incompatible with a system that relies on rigidly demarcated gender boundaries to function” (Tarzwell, 2006, p. 170).

Proponents of genitalia-based assignment suggest that transgender inmates should be assigned based on genitalia but separated from the general population in prisons for protection. Recent studies have shown that transgender inmates are thirteen times more likely to experience sexual assault behind bars (Kuchinsky, 2015). Having separate facilities for transgender individuals will protect them from violence from the prisoners in the general population, which may include rapists, murderers, and other violent criminals. This solution continues to be commonly used in prison systems today, one example of which is Idaho (Correctional Facilities, 2007). However, while separation from the general population may decrease victimization by other inmates, policies that separate small numbers of inmates can increase the rates of sexual, physical, and verbal abuse by prison staff by limiting the number of potential witnesses who may report such events (Correctional Facilities, 2007). Not only does the separation of transgender inmates increase their risk of victimization by predatory staff, but it also deprives them of the ability to form positive relationships with other inmates that may be able to provide some form of physical protection (Correctional Facilities, 2007).

Despite the fact that assigning a transgender male into a female facility would not align with the inmate’s gender identity, Mann argues that it is ideal for all transgender inmates to avoid placement in a male facility, unless an individual has undergone sex reassignment surgery. Even in this situation, a “female-to-male transgender prisoner is still subject to an increased risk of harm in the male facility, while the male-to-female transgender prisoner is not subject to an increased risk of harm in the female facility” (Mann, 2006).

In regards to the placement of transgender prisoners, I believe that those who have undergone hormone therapy prior to incarceration should be allowed to enter into a facility based on his or her self-identified gender identity if they wish. Some individuals may not feel comfortable enough entering a facility that matches their gender identity based on where they are in their transition. For example, if a transgender male still has breasts, he may feel uncomfortable entering a male facility due to increased risks of sexual abuse. I think that this decision should be based on the preference of the inmate so long as they have a history of taking hormones, regardless of their legality, or if they are diagnosed with either gender dysphoria or GID.
In addition to assignment policies in the United States, providing gender-affirming medical treatment to transgender inmates is another controversial issue. There are different ways that transgender inmates can receive medical treatment while incarcerated. Almost all prisons offer mental health treatment and counseling to all inmates, including those who identify as transgender. Most prisoners receive some sort of mental health treatment or counseling while they are incarcerated, (Clark et al., 2017) however; transgender inmates may need additional access to mental health and medical treatment to meet their general healthcare needs.

Some transgender inmates may receive care in addition to mental health treatment that medically affirms their gender. Examples of this may include the use of hormone therapy or sexual reassignment surgery (SRS) (Clark et al., 2017). However, these treatments are significantly less available to transgender prisoners. As of 2015, there were only seven states that had policies allowing sexual reassignment surgery for inmates. The first inmate to receive surgery while incarcerated was in January of 2017 in a California prison. Until then, no inmate had successfully obtained SRS while incarcerated (Clark et al., 2017). It is almost as difficult to obtain hormone therapy in prison as it is to access SRS. Only 14% of transgender inmates reported gaining access to cross-sex hormones while incarcerated (Clark et al., 2017).

Like assignment policies, states vary on whether or not they provide gender-affirming medical care to transgender inmates. Arkansas, for example, provides counseling but not hormones or surgery to transgender inmates. Few states deviate from the model that Arkansas has set, but Alabama provides hormone therapy for maintenance purposes only. A prisoner who enters a facility with the prior surgical alteration of the genitals or hormone replacements will be given access to hormone therapy while incarcerated (Tarzwell, 2006). However, the prisoner must prove that hormone therapy was prescribed as a medical regimen under the supervision of a medical doctor at the time of incarceration. Similarly to Alabama, Colorado also offers hormone therapy to incarcerated individuals only as a form of maintenance to an existing treatment regimen initiated by a medical doctor prior to incarceration (Tarzwell, 2006).

The issue with only allowing those who have begun a medical regimen under the supervision of a medical professional to continue hormone therapy while incarcerated is that these policies exclude most of the transgender population in prisons from receiving this treatment. Most transgender individuals are low-income and while many may have used hormones prior to incarceration, the majority of hormones used by transgender individuals are illicit street hormones (Clark et al., 2017). Requiring medical records means that most transgender inmates will have to stop taking hormones during their sentence. This can lead to a reversal of the effects of the previously taken hormones and greatly impact the mental and physical health of these inmates (Clark et al., 2017).

Most of the advocates against providing access to hormone therapy and sex-reassignment surgery to inmates list the high costs of these treatments as the main reason that they should not be implemented. According to Mann (2006), many believe that providing gender-affirming hormone
hormone therapy should not be the taxpayer’s burden. In New York, the additional cost of providing hormone therapy in prisons is $9,000 per prisoner, per year (Mann, 2006). Hormone therapy is not cheap, and many argue that prisoners lose the right to hormone therapy because they broke the law. People who are not in prison cannot afford hormone therapy or sex-reassignment surgery, so providing these things to inmates is believed to be unfair to transgender individuals who are not incarcerated (Mann, 2006). Another reason against providing hormone therapy and medical treatment to transgender inmates is that it provides special treatment to certain inmates, who should not be treated any differently than the general population (Kuchinski, 2015). Furthermore, prison medical staff from the Clark et al. (2017) study expressed beliefs that inmates would exacerbate their symptoms in order to receive special attention by medical staff.

However, “while budget is a consideration in expanding access to hormone therapy, the costs of auto-castration (mutilation of the genitals to stop the flow of testosterone to the body), severe mental health issues, and suicide outweigh the relative affordability of hormone therapy” (Clark et al., 2017, p. 87). Mann (2006) argues that “if a prisoner was diagnosed with cancer prior to incarceration, the prison administration, seemingly, would not deny the prisoner the appropriate method of treatment, chemotherapy, and then claim that funding for that treatment was unavailable.” Similar to this, if a prisoner is diagnosed with Gender Identity Disorder, prisons, therefore, cannot and should not deny appropriate treatment and claim that the reason is that it is too expensive (Mann, 2006).

Because Gender Identity Disorder is a formalized medical diagnosis, withholding hormone therapy to transgender inmates diagnosed with GID is a violation of human rights. The Eighth Amendment protects prisoners from cruel and unusual punishment (Clark et al., 2017). Furthermore, the UN Nelson Mandela Rules also include guaranteed “protection of vulnerable groups in prison, access to correctional medical and health services, and respect for prisoners’ inherent dignity” (Clark et al., 2017, p. 87). Therefore, denying medically necessary hormone therapy to patients is an infringement on human rights. Withholding hormone therapy or sex-reassignment surgery as a treatment for Gender Identity Disorder or gender dysphoria would be a violation of the Eighth Amendment because the prison medical staff would be acting with “deliberate indifference” to the “serious medical needs of transgender inmates” (Correctional Facilities, 2007).

I believe that providing access to hormone therapy to transgender individuals is a necessity, and policies should uniformly reflect this across the country. Despite the costs, hormone therapy can be beneficial to prevent transgender inmates from developing other psychological disorders as a result of being denied adequate medical treatment. Most policies now mandate that individuals must provide official medical records stating that they were on a medical regimen of hormone therapy under the supervision of a doctor. I believe that this step is unnecessary. According to Tarzwell (2006), hormone levels can be evaluated by a saliva swab. This swab can be a part of the intake process to determine if the inmate had been taking gender-confirming hormones, regardless of where the hormones came from. Once the swab is taken, the results can be used to tailor a regimen of medically necessary gender-affirming care to the inmate. These decisions can be made by a committee within each prison. The committee should include transgender individuals, including former transgender inmates who understand the process of undergoing gender transformation.
Training

In addition to providing gender affirming medical care to inmates, employees of prisons are often not properly trained to care for the needs of transgender individuals. Clark et al. (2017) states a lack of training and custody staff bias as two factors “that impede correctional healthcare providers’ ability to provide gender-affirming care to transgender patients” (p. 80). Results of the study call for transgender-specific competency trainings for both custody staff and correctional medical staff. Clark et al. (2017) interviewed twenty correctional healthcare providers regarding their experiences in caring with transgender inmates and working with custody staff. One social worker noted that there were no training opportunities available for her through the prison system, and she had to seek training from an outside source. Another claimed that, oftentimes, the prisoner would be referred to as “she” by half of the medical staff, and as “he” by the other half of the medical staff (Clark et al., 2017). Even worse, one medical professional claimed that custody staff in the prison she worked in would often refer to transgender prisoners as “it” or “he/she,” and would look down upon medical professionals for being an “inmate lover” if they sympathized with an inmate’s needs (Clark et al., 2017).

Clark et al. (2017) similarly found that “prisons require interventions at multiple levels to improve incarcerated transgender individuals’ access to quality gender-affirming care” (p. 87). At the structural level, introducing a pronoun guideline for medical and custody staff will likely lead to less psychological discomfort for a transgender prisoner. Staff members need to be enabled and mandated to use preferred pronouns regardless of the facility they are located in. In addition, Clark et al. (2017) also found that “some providers intentionally withheld hormones from transgender patients based on perceived poor behavior” (p. 87). The results of this study suggest that the introduction of hormone therapy into prisons without specific policy guidelines and training regimens allowed hormones and other forms of medical treatment to be used as a controlling mechanism for transgender patients.

In an intervention study conducted by White Hughto, Clark, Altice, Reisner, Kershaw, & Pachankis (2017), results showed that increased competency training increased the willingness of correctional healthcare providers to provide gender-affirming care, higher measured levels of cultural and clinical competence, and greater self-efficacy in caring for transgender patients. Healthcare providers in this intervention study were exposed to a new perspective regarding norms for providing transgender care. Results of this study also demonstrated that in order for new training regimens to be implemented in prisons, annual web-based trainings should be available to train new staff and to refresh existing staff in transgender health competencies (White Hughto et al., 2017).

Conclusion

I believe that providing access to hormone therapy to transgender individuals is a necessity, and policies should uniformly reflect this across the country. Despite the costs, hormone therapy
can be beneficial to prevent transgender inmates from developing other psychological disorders as a result of being denied adequate medical treatment. In addition to this, training programs should be established to educate both medical professionals and custody staff about the specific care needs of transgender inmates. Research suggests that training prison staff leads to better care provided to transgender patients, as well as a higher level of comfort of transgender individuals asking for care.

In my opinion, denying transgender individuals medically necessary hormone therapy as a treatment for Gender Identity Disorder is a violation of that individual’s human rights. Denying basic rights to prisoners is a violation of the Eight Amendment, and may actually result in greater costs and incarceration rates of the transgender population in the future. If transgender inmates were given hormone therapy while incarcerated and made progress in their transition, they may be less likely to recidivate because they would be further along in their transition. Progress made toward their full-transition may set them up better in society, and they may be less likely to be excluded from employment and housing in the United States.

Providing appropriate placement and treatment to transgender prisoners while incarcerated is a basic human right that these individuals are entitled to. Staff in prisons today are in desperate need of more training and education on proper ways to both interact with and treat an individual who has been diagnosed with Gender Identity Disorder. Pronoun guidelines need to be established in order to reduce the levels of psychological discomfort experienced by the prisoners, which may lead to a greater frequency of outbursts and difficult behavior within the prison.

While states vary in the policies regarding transgender prisoners, the decision should mostly be up to the individual, unless serious risks are involved. Because the transition process for transgender individuals is a lengthy and complicated process, it is hard to come up with a single uniform policy that encompasses the best way to treat all transgender inmates. Individuals may be at different stages in their transition process, which would make creating one encompassing policy extremely difficult. However, instituting simple saliva swabs at intake would be the most logical step moving forward in providing treatment regimens during incarceration periods. A simple swab can determine if an individual has been using hormones, regardless of medical prescription. Withholding hormones from those who have already begun a hormone regimen can reverse the effects of these hormones and increase psychological discomfort of transgender inmates.

While the process of changing elements of our criminal justice system is complicated, we can start to assist members of the transgender community in our everyday lives; doing so may help to keep these individuals out of correctional facilities in the first place. The rate of incarceration for transgender individuals is so high due to widespread transphobia and exclusion from traditional employment and social networking. Treating the needs and existence of others with respect can have favorable impacts on the incarceration rates of the vulnerable and threatened members of society. This, in and of itself can bring us closer to achieving appropriate treatment of transgender individuals both within the prison system and in everyday life.
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Perceptions of Immigration and Customs Enforcement
By: Renée Radavich

Immigration has become an increasingly controversial issue in the United States, particularly with the election of President Donald Trump. Recently, the immigration crisis down at the southern border has been at the forefront of the conversation. The portrayal of the Immigration and Customs Enforcement (ICE) housing facilities has caused considerable debate in the political realm, resulting in a negative perception of ICE. This semester, I had the opportunity to intern with Homeland Security Investigations (HSI). HSI is an offshoot of ICE. The group I interned with was the Document and Benefit Fraud Taskforce (DBFTF). DBFTF focuses mainly on visa fraud, marriage fraud, and identity theft. My experience with ICE provided a unique perspective on the working of ICE that was different from the media’s portrayal. It was through this internship that I was able to see that there is a significant misperception in how United States’ citizens perceive federal immigration agencies, particularly ICE and HSI.

A recent Pew Research Center survey found that 47% of Americans view ICE unfavorably. This is a higher percentage than those who view ICE favorably, which sits at 44% (Pew Research Center, 2018). More specifically, within the United States, 77% of Republicans view ICE favorably while 82% of Democrats view ICE unfavorably (ibid.). It would be interesting to poll whether those who responded know the daily responsibilities of both ICE and HSI. The media only reports on a small percentage of ICE activities, and I believe most people don’t take the time to really look into what the media is reporting on. This causes me to like that most people are unaware of the vast majority of responsibilities that ICE has.

It is not widely known that ICE is actually split into two different divisions. There is the Enforcement and Removal Operation (ERO), which is the enforcement branch of ICE. They deal primarily with identification and arrest,
domestic transportation, detention, bond management, and supervised release, including alternatives to detention. They also remove undocumented immigrants from the United States. The other division is Homeland Security Investigations (HSI) that deals only with the investigations. They investigate financial crimes such as bulk cash smuggling, trade crimes like commercial fraud and property theft, and drug crimes like transnational gang activity and trafficking (“Working for ICE,” 2020).

President Trump’s rhetoric and reporting on the immigration crisis on the Southern border has created an unfavorable opinion on ICE and HSI. As mentioned above, current opinions on immigration are generally based on political affiliation, with Republicans being more against immigration and Democrats having a more favorable view on immigration. During Trump’s campaign he, “promised to deport two million immigrants upon taking of office and to support Kate’s Law, which increases the penalties for deported immigrants who try to return to the U.S.” (Romero, 2018, p. 39). It is through promises and language like this that Trump has created a polarizing atmosphere when it comes to opinions about immigrants and immigration law.

The election of Trump has seen Twitter become a platform for people to voice their political opinions. President Trump himself often tweets about immigrants and ICE. For example, on June 17th, 2019, Trump tweeted, “Next week ICE will begin the process of removing the millions of illegal aliens who have illicitly found their way into the United States. They will be removed as fast as they come in” (Trump, 2019). Tweets like this created an uproar from many people and an atmosphere of hatred against ICE and HSI. However, the discontent for ICE agents began long before Trump tweeted this. Last year, on July 3rd, 2018, a man named Brandon Ziobrowski tweeted, “I am broke but will scrounge and literally give $500 to anyone who kills an ice agent. @me seriously who else can pledge get in on this let’s make this work” (Marcelo, 2019). Ziobrowski tweeted this shortly after ICE agents’ names and addresses had been posted on social media with the intention of intimidating and harassing them. With a recent rise in threats against law enforcement amid a bitter divide on immigration and other issues, tweets like these are taken seriously by the federal government. Unfortunately, the grand jury decided to acquit Ziobrowski (ibid.). He is a perfect example of an individual with a misleading view of ICE. He was unaware of the scope of crimes that ICE and HSI investigates and the various duties the agency performs. He was primarily focused on the issues at the border and generalized them to ICE and HSI, as many average citizens do. Situations such as these set a precedent for further hate speech and threats against federal law enforcement. The million-dollar question in all of this that has yet to be answered: where should the government draw the line of free speech that could potentially put their agents in danger?

Looking at the deportation side of ICE, an article “Deportation Terror” released in 2008 explains how the deportation of immigrants is a form of social control by the state. The author talks about how fear of deportation is an ongoing rhetorical practice of the government. By creating a sense of fear that immigrants will upset the social and economic order, they can justify their removal processes. The author states, “The raids and resulting deportations carried out by the Bureau of Customs and Immigration Enforcement (ICE) serve as a de facto immigration policy in a political climate characterized by fractious and inconclusive discourse on questions of immigration and
national identity at the political level, and accompanied by racialized vigilante terror at the borders” (Buff, 2008, p. 530). This, in turn, creates a “permanent state of racial emergency.” While this article was written before the election of President Trump, some of these claims still reign true. Since before his election, President Trump has spewed anti-immigration language. The author states that it is language like this that creates a fear among the immigrant community. While this fear is very warranted, there is a misunderstanding of the scope of ICE and HSI and what agents do. There is not a specific protocol that all departments must follow regarding what cases to investigate. To take that a step further, ICE and HSI are not explicitly targeting specific communities. Most often, agents investigate cases, and then it is up to the Attorney General whether to prosecute or not.

My experience this semester only covered a fraction of what ICE and HSI do as a whole. They are not perfect; the way they have handled the immigration crisis down at the southern border is problematic. However, these issues on the southern border do not warrant the abolition of ICE, as some people have suggested. As mentioned before, ICE and HSI do way more than most people can even begin to imagine. In Boston alone, there are over ten different task forces, each focused on a different aspect of immigration law (“Homeland Security Investigations,” 2019). Nevertheless, people seem to believe they have such a great understanding of what ICE and HSI stands for.

DBFTF is one division of HSI that is not as well known. As mentioned in the first paragraph, the DBFTF focuses primarily on visa fraud, Medicaid and other benefit fraud, and identity theft. Looking more closely at Medicaid fraud, in 2006, Congress passed the Deficit Reduction Act (DRA) of 2005 (Pub. L. No. 98-171), requiring that “state and local Medicaid agencies obtain proof of citizenship and identity from citizens who had applied for Medicaid” (Ku & Perez, 2010, p. 5). The authors of this piece claim that the change in policy only served to negatively affect eligible citizens. They say, “the simple fact that someone cannot readily produce evidence does not mean he or she is not a citizen...many citizens cannot readily verify their status even if they are native-born” (ibid., p. 24). The argument is that native-born citizens often lack proof of citizenship because it is rarely called for. However, it is not the state’s fault that people do not have their citizenship documents readily available. A simple solution for this argument would be for citizens to know where their documents are and keep them in an easily accessible place. Furthermore, this article does not address the issue of undocumented citizens using a stolen identity to receive benefits.

During my internship with DBFTF, agents dealt with stolen identity cases, particularly Dominicans stealing the identity and social security numbers of Puerto Ricans. The exact financial loss in Massachusetts is unknown, but the number is pretty substantial; in the millions, at least. Therefore, the need for additional legislation is warranted. In my opinion, the fact that there are over a thousand individuals just in Massachusetts who are misusing the healthcare system is very concerning. While the Trump administration’s rhetoric about Hispanics stealing the jobs and benefits of hard working Americans is a big reason why there has been a recent push by the higher-ups to do more, the financial cost of such fraud is immense. It is for these reasons, among others, that there has been a big push to bring some of these individuals to justice.

There is very limited academic research regarding the effects of such operations. However, a 2016 study shows “poverty and marginalization of migrant communities has led to the mutually
beneficial exchange of work authorization documents between donors with legal status and recipients without legal status” (Horton, 2016, p. 312). In the case of this article, the idea of “identity loan” is explored. In contrast to identity theft, identity loan is simply when a worker borrows valid documents from friends or family. Workplaces who hire these workers often look past the obviously false documents because they need the workers. The fact that these companies are being complacent in these practices is concerning. The Immigration Reform and Control Act (IRCA) of 1986 “prohibits the “knowing employment” of unauthorized migrants and requires that employers “personally inspect” the documents of each employee proving their identity” (ibid, p. 316). However, many of these employers look the other way since it is a mutually beneficial exchange. The cases that DBFTF deals with typically only focus on those who are using the fake identity and social security numbers or on companies that are the ones producing fraudulent visa claims. I have not seen a case like the ones detailed in this article. It would be very interesting if ICE and HSI looked into the relationship between immigrants using fake documents and their employers.

Working for Homeland Security Investigations in the Document and Benefit Fraud Taskforce this semester has been an eye-opening experience. While ICE and HSI could use some improvements, this federal agency does a great deal of good for this country. The fact that people openly threaten ICE agents and get away with it is also quite concerning to me. A widespread misperception of ICE and HSI is that they target people simply because they are here illegally. However, this is not the case. While I cannot fully speak for all other departments, in the daily briefing emails sent, all the descriptions of arrests made in other departments included details about the crimes people were arrested for. These individuals are not merely arrested because they are here illegally. They broke the law and often also already have a criminal history. Looking specifically at DBFTF, the only people targeted for identity theft cases are those who have a criminal history. The perception that ICE only targets people that are seeking asylum (just for an example) is simply false. It was through this internship that I was able to see that false information about ICE and HSI is currently being spread to an unknowing population.
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A Review of Litigation Involving the Practice of Solitary Confinement

By: Erika Dennery

Introduction

Every correctional system across the country has cells, units, or entire facilities designed to isolate certain inmates (U.S. Department of Justice, 2016). Confinement is sometimes solitary, and it is usually intended to help manage the correctional facility and keep the environment safe for both inmates and the correctional staff themselves. There are many different terms used to describe segregation. Within corrections, the main distinction between the types of segregation practices are disciplinary segregation and administrative segregation (Shames, Wilcox, & Subramanian, 2015). Disciplinary segregation refers to short-term confinement as a result of an inmate’s specific violation of the prison’s policies; this confinement is imposed as a sanction following a disciplinary hearing. The majority of people in disciplinary segregation are in solitary confinement. Administrative segregation refers to long-term confinement to a supermax unit or facility utilized to separate inmates deemed as a significant threat to institutional security. Inmates are typically transferred to administrative segregation based on patterns of disruptive behavior, being identified as a security threat, or receiving the designation of a high-risk inmate, and many inmates in administrative segregation are in solitary confinement (U.S. Department of Justice, 2016). Inmates are also placed in administrative segregation based on their status as a gang member. In these cases, inmates are not necessarily put directly into solitary confinement cells; they may have a cellmate and interact with other inmates, but they are typically not placed in the same cell with someone who they clearly do not get along with. Most research focuses not on the different types of solitary confinement, but on solitary confinement as a whole, and the lasting effects that it can have on those who reside there.
For over 30 years, supermax facilities have had isolation inherent in their design. These facilities employ advanced security and control, allow for minimal contact between inmates and staff, and serve the primary purpose of isolating offenders who require the highest and most restrictive security classification (Fellner, 2000). Across correctional systems, super-maximum units are also referred to as administrative maximum units, administrative segregation units, special housing units, secure housing units, segregation units, isolation units, and many more (Naday, Freilich, & Mellow, 2008). Although there is a wide variety of terms used to encapsulate supermax, they all lead back to one crucial feature: solitude. Isolation through solitary confinement is prevalent across all types of segregation. However, not all of those in restrictive housing are in solitary confinement. In some restrictive housing facilities, inmates are allowed to mingle with one another and even share cells. In solitary confinement, however, inmates spend approximately 23 hours per day in their cell and may only be allowed outdoors for one hour every day (American Civil Liberties Union, 2013). Other features of solitary confinement include low levels of natural light, artificial lighting, little or no access to classes, books, or television, restrictions on visitation rights, little to no human contact, as well as limited access to shower privileges (American Civil Liberties Union, 2013).

As a whole, the premise of solitary confinement leads to many concerns regarding its ethical implications. Although more research on the subject is needed, there are many concerning aspects of solitary in practice. First, there are known negative mental health effects of long-term stays in solitary units. The conditions of an inmate’s confinement in solitude can also lead to further psychological distress and deterioration. Along with this, individual characteristics of inmates and their coping skills are linked to whether or not they will be placed in solitary confinement. Unsurprisingly, the mentally ill possess less coping skills, and thus end up in solitary confinement cells more often than those who do not possess these characteristics. Furthermore, the lack of a deterrent effect of solitary confinement has led to more questions regarding the ethicality of its everyday use. Therefore, based on these central aspects of isolation by solitary confinement, it is clear that this practice may be violating inmates’ Eighth Amendment rights, which is to be free from cruel and unusual punishment. The current research intends to conduct an in-depth content analysis of court cases at the federal level on segregation practices as they pertain to the Eighth and Fourteenth Amendments.

**Entry Process**

Segregation is a typical response to inmate misconduct or violence that correctional administrations tend to use to regulate inmate behavior and further promote order and safety within their institutions (Browne, Cambier, & Agha, 2011). Most importantly, solitary confinement has three primary purposes, two of which are associated with misbehavior. The first is responding to serious disciplinary misconduct (i.e., disciplinary segregation). The next is ensuring the well-being of the prison (i.e., administrative segregation). The third is protecting inmates from harm (i.e., protective custody), which is mostly unrelated to the topic at hand.

O’Keefe (2008) conducted research that examined the Colorado system of due process for administrative segregation placements and its inclusion of multiple points of review. In this prison system, inmates are given written notice of their impending hearing for segregation placement and
its inclusion of multiple points of review. In this prison system, inmates are given written notice of their impending hearing for segregation placement and have the right to be present with witnesses (O’Keefe, 2008). The burden of proof rests with correctional staff, and each case is reviewed by the warden, who has the authority to reverse a decision. Each case is also examined by a high-security management division, following the warden’s review. In this study, 89% of hearings resulted in an initial decision to place the inmate in administrative segregation (O’Keefe, 2008).

Although institutional misbehavior is the primary basis for an inmate’s placement in segregation, placements can occur for reasons that are not related to misconduct (O’Keefe, 2008). Placements may occur for nuisance behaviors, such as accumulating minor disciplinary infractions. O’Keefe examined that 15% of placements in solitary were unrelated to the three primary purposes of solitary confinement. Reasons for these placements included multiple minor disciplinary infractions, possession of drugs or drug paraphernalia, and refusing a housing assignment (O’Keefe, 2008). When inmates are placed into solitary confinement for reasons that are not in line with solitary’s primary purposes, this threatens the punishment’s ability to function as intended.

**Conditions of Confinement**

Inmates in solitary confinement are physically separated from the rest of the prison population. Therefore, they do not participate in regular routines, opportunities, and collective activities available to the general population (Haney, 2003). Research has found that the conditions of confinement in solitary housing units are also typically characterized by inmate hostility and violence, further exacerbating the unfavorable conditions that prisoners have to endure (Mears & Watson, 2006). Although by the late 19th-century, solitary confinement was typically restricted to brief periods of punishment, today solitary confinement differs drastically. In solitary confinement today, prisoners are housed in “virtual isolation,” and they are rarely permitted to leave their cells (Haney, 2003). Prisoners eat alone in their cells, have no social contact or activity, and are entirely cut off from the outside world. Reiter (2012) conducted research articulating the fundamental principles underlying the design of supermax prisons in California. The main principles of the model of supermax prisons were supposed to be: (1) limited periods of isolation, (2) limited availability of solitary cells, and (3) implementation of step-down programs to ease the transition between supermaxes and parole (Reiter, 2012). Research collected from two different supermax prisons in California - Corcoran and Pelican Bay - showed that the average time served in solitary confinement was not short by any means. Based on this research and the first principle of the design of supermax prisons, it is clear that limited periods of supermax isolation are a thing of the past in California.

Furthermore, there is not a limited availability of isolation cells in today’s prisons. When they were first created, they were intended to be a “scarce resource,” but today, more and more prisons are creating space for new solitary housing units (Reiter, 2012). Along with this, most prisons do not possess an effective step-down program to help prisoners’ transition from isolation back into the general population. Hundreds of prisoners annually are released directly from solitary confinement to parole, and these inmates often do not spend time in the general population before being released on parole (Reiter, 2012). When this happens, it limits the availability of these prisoners to cope upon release, and they often cycle right back into the system (Reiter, 2012).
Mental Health Effects of Solitary Confinement

Previous research has demonstrated that solitary confinement can have specific adverse effects on those placed within its confines. More specifically, empirical research on such isolation has consistently documented many of the detrimental consequences of living in solitary confinement (Haney, 2006). From specific case studies to systematic research on different supermax facilities, the evidence documenting the adverse psychological effects of solitary is not new. The majority of research thus far focused on identifying the interaction between prison settings and mental health issues. In a survey that examined 131 inmates selected at random from Washington’s supermax facilities, it was concluded that 45% of solitary residents have a severe mental illness, marked psychological symptoms, psychological breakdowns, or brain damage (Lovell, 2008). Mental health issues, taken together with the conditions of confinement in solitary, can lead to inmate violence; many inmates with mental illnesses commit violent offenses while incarcerated (Mears & Watson, 2006).

The adverse effects of solitary confinement also appear to be related primarily to the duration and conditions of confinement (Haney, 2003). Clinical depression and long-term impulse control disorder are correlated with social isolation, and prisoners in long-term solitary confinement are at increased risk for developing symptoms of mental illness (Haney, 2006). Prisoners with pre-existing mental illnesses also are at a higher risk for developing psychiatric symptoms such as “psychosis, suicidal behavior, and self-mutilation,” and prisoners in long-term solitary confinement frequently display these behaviors (Haney, 2006). Those who have difficulty adjusting to prison are also at an increased risk for being placed in solitary confinement, seeing as they are unable to manage their behavior appropriately while in the general population (Haney, 2003).

Lack of a Deterrent Effect

Research has found that an inmate’s perception of sanction severity can vary among different inmates (Mears & Watson, 2006). For example, inmates may fear the thought of being placed in solitary confinement and then behave better than they would if the threat of solitary did not exist. This fear would indicate that inmates view solitary confinement as punitive and that this form of confinement creates order through deterrence (Mears & Watson, 2006). If this is true, then conditions such as swift and sure placement into solitary would need to be in place in order for it to work; inmates would have to believe that solitary will quickly and likely result from the commission of disruptive or violent behaviors (Mears & Watson, 2006).

Mears and Watson (2006) conducted a research study in which inmates across the country were interviewed. Some respondents indicated that many inmates do not want to be placed in solitary because their freedom will be restricted. However, some inmates may not consider solitary confinement to be punishment, and this could undermine a deterrent effect (Mears & Watson, 2006). Along with this, if inmates perceive solitary confinement as a punishment, they must consider the possibility of receiving the punishment likely, in order for the deterrent effect to work. About 10 to 15 percent of supermax inmates are in protective custody, because they are scared of being in the general population. However, since they do not want to be labeled as protective...
custody inmates, they misbehave to get placed in solitary. It is difficult to get these inmates out of solitary confinement because they will do anything to get back there and avoid the general population (Mears & Watson, 2006). The number of prisoners who fit this profile is unknown. However, if prisoners willingly want to return to solitary confinement, then any specific deterrent effect would be undermined, therefore rendering the punishment ineffective.

Furthermore, research has demonstrated that recidivism is very common among those who have spent time in solitary confinement. Two types of recidivism have been researched, recidivism back to solitary confinement, and recidivism back to the streets. The former can be described as those inmates that spend time in solitary confinement and return to the general population. These inmates eventually end up back in solitary confinement due to disciplinary reasons. Recidivism back to the streets includes inmates that spend time in solitary confinement and are ultimately released back into society. These inmates then commit another crime that lands them back in prison.

Recidivism back to solitary confinement is examined in a study conducted by Barak-Glantz (1983), which revealed that being in the “hole,” or solitary confinement, has little deterrent effect on subsequent experiences with punitive solitary confinement. In other words, spending time in solitary confinement and then being released back into the general population does not affect whether or not someone will refrain from committing the acts that landed them there. Based on this research, it can be argued that long-term solitary confinement is a form of cruel and unusual punishment, based on the fact that it has negative long-term effects on the prisoner as well as the fact that it does not decrease recidivism rates; it increases them.

While one of the main arguments in favor of solitary confinement is that it poses as an essential deterrent effect for the most violent inmates, this is not always the case (Zgoba, Pizarro-Terrill, & Salerno, 2019). For example, researchers conducted a study examining violent offenders and the effect that placement in solitary has on offender recidivism post-prison release. Researchers found that inmates placed in solitary confinement had elevated levels of recidivism and more new commitments for all crime types compared to those not placed in solitary (Zgoba et al., 2019). The subjects who spent time in solitary also displayed a shorter time to re-arrest than the non-solitary individuals did. This demonstrates that there is a high likelihood that time spent in solitary confinement increases the possibility that an inmate who is released will commit a new crime once back onto the streets.

Individual Characteristics, Coping Skills & Their Relationship to Violence

Previous research has found that individual characteristics, such as an inmate’s level of coping skills, have been related to increased violence in prisons, thus leading many who lack such skills to be placed in solitary confinement (Steiner, Butler, & Ellison, 2014). Research has demonstrated that the background characteristics of inmates are especially relevant to the explanation of misconduct and violence within the prison system (Steiner et al., 2014). The main factors associated with an increased risk of misconduct and violence are having a history of antisocial behavior, being surrounded by antisocial peers or gang involvement, and mental health problems (Steiner et al., 2014). Along with this, other factors can contribute to misconduct and
violence, such as a history of victimization before incarceration, a higher security risk classification, and a sentence of five years or less. In summary, inmates with low self-control are at higher risk for misconduct, and the incarcerating offense is also a risk factor for violence perpetration (Steiner et al., 2014).

Individual characteristics and coping skills among prisoners are also affected depending on the features of the prison itself. For example, prison crowding has been shown to impact inmates both physically and psychologically through overstimulation (Adams, 1992). Gaes (1994) elaborates on this concept, maintaining that crowded conditions create uncertainty in inmates that elevate arousal levels, thus making reactive behaviors more likely to occur. More importantly, people with mental illness are even less likely to be able to cope with these situations and therefore are more likely to end up in solitary due to outbursts related to a combination of mental illness and institutional factors (Adams, 1992). Adams found that the prison culture supports coping strategies that rely on self-reliance and personal autonomy, both skills that those with mental illnesses are less likely to possess than those in the general population (Adams, 1992).

More recent research has indicated that inmates with mental health problems, both minor and severe, have higher rates of assaultive violence than inmates without mental health problems (Silver, Felson, & Vaneseltine, 2008). Researchers also found that these inmates had significantly higher rates of committing assaultive violent crimes than property, drug, and other crimes (Silver et al., 2008). Therefore, based on the level of violence demonstrated by these individuals outside of the prison environment, logically, this lack of coping skills and violence would only be amplified once within the constraints of solitary.

**Litigation on Solitary Confinement**

Since the 1890s, the Supreme Court, as well as the lower courts, have had the opportunity to rule on cases involving solitary confinement. The court has ruled in favor of both petitioners and defendants. However, the decision ultimately tends to lie in how severe the conditions of solitary confinement are, and the procedures that lead to an inmate’s placement in solitary confinement. These decisions have consistently pertained to either the Eighth Amendment and the provision relating to cruel and unusual punishment, or the Fourteenth Amendment and a person’s right to due process within the court system.

The Eighth Amendment of the Constitution states that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted” (The 8th Amendment of the U.S. Constitution). This Amendment is intended to safeguard Americans against excessive punishment. The Supreme Court has addressed Eighth Amendment concerns in many different cases, recognizing that particularly barbaric conditions threaten the constitutionality of solitary confinement (Brooks v. Florida, 1967). The court has ruled that brief periods of isolation may induce a degree of psychological trauma but that this level of trauma does not rise to cruel and unusual punishment (Madrid v. Gomez, 1995). However, the court has recognized that “if the particular conditions of segregation being challenged are such that they inflict a serious mental illness, greatly exacerbate mental illness, or deprive inmates of a basic necessity of human existence ... indeed, they have crossed into the realm of psychological torture” (Madrid v. Gomez, 1995). Often, the unusualness
standard of the Eighth Amendment is much more difficult to prove. While a correctional practice may be blatantly cruel, if the punishment is not also unusual, then it cannot be considered a violation of the protections that the Eighth Amendment offers. When examining it in this way, it is almost impossible to imagine how solitary confinement could be considered unusual, seeing as it is a core aspect of correctional systems in the United States. This aspect raises concerns regarding the court system and how it makes decisions on cases involving solitary confinement and the Eighth Amendment.

The Due Process Clause of the Fourteenth Amendment states that “no person shall be deprived of life, liberty, or property without due process of law” (The 14th Amendment of the U.S. Constitution). “Due process” refers to fair procedures. The Supreme Court has ruled that an indefinite assignment to supermax conditions is constitutional, as long as certain minimal due process protections are in place during the administrative hearing at which correctional officials determine the grounds for the placement (Wilkinson v. Austin, 2005). Specifically, the court argues that inmates must receive notice of the factual basis justifying their confinement in solitary, and they must have an opportunity to rebut the factual basis. The opportunity for rebuttal is minimal, and it does not always allow the prisoner the right to call witnesses or to have an attorney. Even a non-attorney advocate is frequently prohibited from being present at any administrative hearing (Wilkinson v. Austin, 2005). After an inmate has been assigned to an indefinite solitary confinement term, the federal courts have required a minimal review of the prisoner’s status. This review does not need to identify what the prisoner could do to earn release from solitary confinement (Wilkinson v. Austin, 2005). According to the Supreme Court, as long as an inmate is given the opportunities listed above, then they are receiving due process in their correctional system. Because of this, it can be difficult for an inmate to argue that their due process rights were violated since their rights are so minimal in the first place.

Conclusion

Overall, the drawbacks to solitary confinement seem to outweigh the potential benefits in most cases. While it should not be eliminated as a form of punishment for those who pose a security threat or who commit the worst crimes, it is difficult to argue that it is a fair punishment for inmates who barely do any wrong during their stay in prison. Solitary confinement poses little to no deterrent effect as well, therefore, inmates who are put there for reasons other than security threats are not learning from this punishment. If an inmate is not learning from his or her stay in solitary confinement, then the punishment as a whole cannot be deemed highly effective.

Along with this, the lack of regulations in order to determine how long one has to stay in solitary confinement for minor infractions can lead to the punishment being overused for those who may not deserve it. Unless solitary confinement is being imposed for security reasons, the negatives of this punishment seem to outweigh the positive. As a whole, solitary confinement needs to be rethought in the United States if we are to utilize it in a fair way in order to ensure the least amount of psychological damage possible.
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The Persistence of the Prison System: Envisioning a New Mode of Correction

By: Michel-Ange Siaba

Introduction

For the majority of history, various societies have employed imprisonment as a primary criminal punishment. However, in more recent history the United States has engaged in a dangerous justice reform mission—that led to the U.S having the highest level of incarceration, with 2.3 million people behind bars (Sawyer and Wagner, 2019). The United States began to have difficulties envisioning a future without prison confinement, as incarceration became deeply rooted in its history. Despite the prison’s failure to rehabilitate, reduce recidivism, and deter crime, it continues to be a prominent form of punishment. The reason for this is that society historically built various economies and infrastructures around a punitive paradigm of punishment and the incarceration of targeted groups. By utilizing a historical analysis of the United States’ criminal justice system, this paper seeks to contribute to the discussions revolving around the following questions: Why do prisons persist? How do we go about beginning to envision a future without prisons? And, finally, how do we take active steps towards a more productive method of correction? Via a compilation of examinations of the mechanics of punishment, criminal justice proceedings, and the history of criminal labeling, the goal is to highlight the processes by which exclusion becomes an intrinsic criminal punishment.

To critically think about moving past confinement as punishment, numerous historical and underlying issues must be addressed. The two main issues that will be addressed are both the culture of exclusion and the use of the nebulous criminal body. These concepts were forged over time and by the use of punitive measures by the state, and instilled into the people through incentives or coercion. The culture of exclusion refers to a social mentality that accepts and advocates for the removal of certain groups as a remedy to social issues or simply as a means of existence. These norms

About the Author

Michel-Ange is a member of the Class of 2021, and a recent transfer from Humboldt State, CA. He is from Cote D’Ivoire but now lives in California. He majors in Criminology with a minor in Sociology and German. In recent years, Michel-Ange became interested in the practical use of theory in the criminal justice system, and whether theory-based legal reforms are a viable component of social change. His post-grad aspirations include entering a J.D./Ph.D Program, where he hopes to focus on criminal law and criminology studies.
may be informal in how individuals choose to interact with those groups; or they may be formal by being implemented into law. The most extreme example is criminal incapacitation in the form of prisons, but this mentality permeates through many aspects of society. In the United States, this is observed in job opportunity barriers such as citizenship requirements; in higher education with the reliance on standardized testing scores despite its inaccessibility to a large percentage of the population; and in the implementation of xenophobic and antireligion travel sanctions.

Exclusion—through a historical process—became the accepted method of punishment for the criminal body. Thus in order to move away from prisons, we must examine the ways in which we exclude members of our society and also challenge our own efforts to rehabilitate by stepping away from post-prison rehabilitation to preemptive re-inclusion.

Tony Platt, a UC Berkeley scholar, has contemplated issues of racial and social inequality for decades, but his most recent work speaks directly to the United States prison system. Platt's interpretation of the carceral state is a useful framework from which one can understand the United States’ historical tendency to confine groups labeled as “others.” In the book, Beyond These Walls, Platt postulates that the carceral state can be observed in a part of American history that predates the rise of penitentiaries. Carceral in this sense is used “metaphorically to evoke the range of ways in which the human body can be contained beyond walls” (Platt 2019:14). During the era of slavery, the south’s entire economy was reliant on the continued oppression and containment of slaves. Thus when the Civil War ended, the South was desperately in need of a new form of labor to support the Southern States’ economy. This led to a variety of laws and regulations that criminalized blacks and allowed for their bodies to be used for labor. Strong traces of the same regulations are utilized but articulated differently in “An Act for the Government and Protection,” which allowed for the criminalization, policing, and subjugation of Native American bodies. In both of those cases and other cases, such as homelessness regulations, members of society profited from the containment of these groups labeled as “others” and qualified as such. The South’s economy and its individuals greatly benefited from the installment of the black codes while white families benefited from systemic slavery that allowed for the employment of convicted blacks with no compensation. Families also benefited from the leasing of Native American bodies, which in tandem with black codes, helped boost their productivity and bolstered the economy. The pattern is as follows: the identification of a group to be differentiated and antagonized, the establishment of legal systems that serve to contain, control and oppress these groups, and then society’s benefit from the situation. This eventually leads to the normalization of these conditions that have occurred throughout history. This creates a condition of living that is so ingrained, internalized, and normalized into the core of the society to the point that life otherwise cannot be envisioned...that is until something fundamentally changes.

Various historical and sociological patterns led society to an epoch defined by incapacitation, a paradigm of punishment from which diversion is difficult. Foucault’s analysis of the purpose of torture and punishment in feudal France provides a basis for understanding the persistence of prisons. When discussing the diffusion of the power through society, Foucault writes:

“The new juridical theory of penalty corresponds in fact to a new ‘political economy’ of the power to punish...In short, the power to judge should no longer depend on the innumerable,
discontinuous, sometimes contradictory privileges of sovereignty, but on the continuously distributed effects of public power” (Foucault 2009:81).

A major shift cited by Foucault (2009) is in the judicial proceedings and the diffusion of the power to judge, as well as what the criminal is being judged against. Foucault (2009) argues that public execution had a very specific political role, in which the monarch demanded and exercised punishment. In the era of torture, the law sought to obtain the absolute truth from the criminal and scarcely considered variables outside the actions of the perpetrator. Thus, the individual stood trial for the actions they committed, but this changed with the introduction of gentle punishment—a consequence of punishment reforms that aim to be more humane. This is important because “as punishment becomes gentle a new economy of power is created” (Michihiro Sugata 2019), one whose functionality exceeds beyond actions and spotlights the characteristics of the actor. As the power to punish is diffused through society—and is no longer exclusive to the judge—the purpose of punishment changes, and the nature of the judicial trial becomes less concerned with the facts but rather with the criminal’s being. Criminality and its punishments, in modern society, are less defined by actions but rather by the actors. Thus two different actors performing the same actions may receive vastly different trial outcomes based on their compatibility with the criminal stereotype. In essence, modern trial no longer seeks objective truths because a myriad of extra-legal factors predestine each actor’s outcomes. This shift in the purpose of the trial is a key contributor to the persistence of prisons as well as a key starting point in imagining a prison free society.

The shift in the purpose of judicial trial, as well as the diffusion of power to other contributors in sentencing, such as doctors, psychologists, and other experts, serve to create a separate being upon which the state focuses and imposes its power. With this shift, the law no longer asks “what did you do?” but rather “who are you?” (Michihiro Sugata, 2019), which leads to the creation of a new legal body. When considering the objective fact of the case, the law applies itself to the individual as it concerns their own specific incident and circumstances. The process of being or becoming a criminal solely lies in each individual’s actions and how those actions violate the societal code. According to Foucault, this was the goal of torture and confession, thus making them a detrimental aspect of a judicial trial in those times. Though confession is still a component of judicial trial in today’s courts, it serves a different purpose. One does not become a criminal via their admittance of the crime committed, rather their confessions are aggravating or mitigating factors to what is already assumed by the system. Essentially, one is already a criminal well before going to trial, and their criminality is not a result of the facts of the events but rather it is already decided. Then the court proceeding becomes about determining to what degree the person aligns with the society’s understanding of the criminal, which decides the specifications of their punishment.

Incarceration as a method of punishment has been very successful in our society, and the reasons for this are clear when the history of human interaction is analyzed. The first component needed in order to create a state that relies on confinement is the identification of a group of people followed by their labeling as a threat or inferior. The labeling of blacks as inferior facilitated the development of slavery; the labeling of Japanese Americans as war enemies naturalized their confinement in internment camps during WWII. Finally, President Trump’s portrayal of Hispanics is fueling his carceral anti-immigration laws and the confinement of Hispanic families. Mass imprisonment is no
exception to this pattern. For example, President Nixon’s “war on drugs” accomplished the ostracization of two groups: the ones who suffered from substance abuse and the poor were the umbrella population targeted by this war; while minorities, especially the Black and Latino communities, were the distinct targets of state violence. In analyzing the history of criminalization of certain groups, and how these new forms of criminalization align with economical revolutions—and needs of the United States—leads to the conclusion of what I refer to as the nebulous criminal body. In other words, the existence of a blank slate upon which any group of people at any time can be criminalized at the convenience of the state’s power, which is then accepted by society through coercion and normalization. This nebulous criminal encompasses any type of criminal created or to be created, upon which the label as a threat will forever persist; this leads to the conditions in which criminals will forever be seen as the “other” to society. Thus, the definition of the criminal is not stagnant and perhaps will never be; and while it is currently inhabited by certain racial and socioeconomic groups, this may not be the case in several decades. The attributes that define a criminal are part of an abstract concept of a being that abides by the necessities of power, but the power to alter the image does not solely rest in the state—though it greatly influences it—or the judges, but every member that partakes in the complex process of punishment. The criminal is not just a “person doing bad things” but rather a vague—thus flexible construct—that changes as power in society demands it. However, the nebulous criminal body—regardless of the shape it forms—maintains the one constant characteristic of being the foreign threat to the social body.

Another requirement for the normalization of punishment is that it must be appealing to society. The aspect of incarceration that makes it appealing to society is that of exclusion. As we attempt to make our methods of punishment more humane, ironically, we steer towards forms of punishment that are draconian and barbaric. The intent is to create forms of punishment that appear less gruesome, but these modes of punishment are telling of various mechanisms at play in our society. Several issues remain: no person will willingly share their space and resources with someone they deemed to be a threat or of no use; as the punishment now comes in the defense of society, it must be reassured that the threat will not be able to act again; and that, lastly, the victims of the crime are given some sort of reassurance that perpetrator is receiving an appropriate punishment. Exclusion offers an answer to these problems, and because the punishment happens behind closed doors, it can mask itself as more humane.

The exclusionary aspect of punishment can be abundantly observed in the social justice mechanisms in western society, but what about those societies that do not rely solely on prisons? Consider the ethnic Igbo tribe of Nigeria and their methods of handling crime in their culture, as detailed by Aja Egbeke’s (1997) research on the meaning of law in Igbo culture. The Igbo people’s denial of the existence of personal morality, as well as the blameworthiness one holds for their conscious or unconscious actions, only highlight a few differences between their culture and western culture. Even without the use of prisons, one of the Igbo tribe’s most severe punishments come in the form of either temporary or permanent banishment from the tribe. In other words, for a culture that does not employ a physical method of incarceration, exclusion from the social fabrique is still seen as a necessary and potent form of punishment. In conclusion, criminality is not welcomed by society. Consequently, its
immune response to unwanted conditions is to free itself of it, by tossing it aside and purging it from the social body.

Lastly, with the practice of exclusion, the relinquishment of responsibility comes more easily, as it no longer is the concern of society or of any individual in the society to take responsibility for punishment. This gives tremendous freedom to various institutions to manipulate this form of punishment.

The individual being asked “what have you done?” and the person being asked “who are you?” are different legal bodies. As legal bodies, the former is being evaluated on the basis of their individuality and their actions weighted against the laws of the society. In this scenario, Jon drinks and drives; he is then questioned and admits to drinking and driving. Jon’s actions are then weighted on the societal moral balance and determined a violation, thus he becomes a criminal. The latter, however, is being evaluated on the quality of their being and their individuality against the nebulous criminal body. In this scenario, Jon drinks and drives, he is then evaluated to determine which qualities of criminality he possesses. Drinking is already associated with mischievous or criminal behavior, but in deciding the outcome and consequences of his behavior based on society’s notions of criminality, Jon more than often than not receives a more punitive outcome if he is a minority than if he is not. Jon is categorized as a certain type of criminal; thus Jon is differentiated, antagonized and consequently excluded. What is happening here is that it is not one’s action that is being weighed with the social contract but rather a person’s being weighed against the criminal body that exists in the ether. This body has no designated form, which makes it bend to the will of whoever is in power. Therefore, in comparing an individual with this nebulous criminal body, the individual will always fit the necessary criteria of a criminal. This is not to insinuate a superiority between the two methods of criminal procedures outlined above, but simply to highlight two different mechanisms of punishment and to challenge the myth that is accepted by our society in their belief in the former method of punishment. Lastly, because otherness has been conditioned to be an intrinsic quality of the nebulous criminal body, its immediate exclusion from society becomes the most fitting punishment.

The prison system is codependent on the nebulous criminal body, for as long as it exists and bends to the will of the state, there will always be a population available to fill up the spaces in the prisons. Society knows not how to properly handle “others” and as such their exclusion and eventual disappearance from the social fabrique, is a shameful but practical method of appeasing society’s worries. Simply put, the power that makes prison possible is not concerned with rehabilitation nor is it concerned with determining truth. Rather, it assumes criminality, becomes concerned with individuals as types of criminals, then swiftly excludes them from the social body in a semblance of problem-solving. Likewise, as long as prisons exist, they will be seen as a proper punishment for crime, because the exclusion of the nebulous criminal body has become a natural component of social problem-solving.

Are questions about a person’s being important in determining their level of blame for their actions? What about the woman who kills her husband in response to years of abuse or the juvenile who commits robbery because they lack the resources to live reasonably? These are factors that are indeed important in determining accountability and responsibility because they tell you more about
why the person might be less culpable for their actions. However, having varying levels of accountability and responsibility for a crime often does not change the fundamental mechanism of punishment. The issue remains that our criminal justice system still uses these factors simply to categorize criminals. The validity of one’s culpability is not brought into consideration in these cases, but their degree of criminality is. Or rather it asks, “how much of a criminal are they for their actions?”

Also, questions about the individual are often used as aggravating factors and rarely mitigating factors when applied to the populations that find themselves on the wrong end of the criminal justice system. The populations defined in the nebulous criminal body, often minorities, defiers of state, and the poor are not given the luxury of having an abundance of mitigating factors used to their advantage. Consider this statistic: a minor who comes into contact with the system is 38 times more likely to be incarcerated as an adult, which means the vast majority of incarcerated adults have some sort of prior history with the system (Chase and Schankula 2018). Meanwhile, according to Bergman (2016), a UCLA Law School Professor, the most commonly used aggravating factor in sentencing is the person’s prior offenses or repeated offenses. Although the intention behind mitigating and aggravating factors may appear to be impartial, we must question the objective results of such practices in our legal system.

As society attempts to envision an alternative to confinement as a punishment, it is important to revisit one of Tony Platt’s main points about our current system of punishment. Platt suggests that when thinking about the carceral state, it is important to consider all the prison-like institutions that have shaped the United States’ functionality and normalized such practices. The exclusion of the criminal does not only happen in prisons but in the processes that occur prior to and after the prison experience. Prior to the prison experience exclusion comes in the form of societal prejudice against the populations defined in the nebulous criminal body. Thus blacks, the poor, those with mental illness, and opposers of the state among other minority groups, become systematically separated from the whole. A more literal example of this is the practice of both redlining and reverse redlining neighborhoods that occurred in the 1960s. More recent examples can be found in the methods of policing of affluent neighborhoods versus those of poorer neighborhoods and also the architectural organization of city ghettos. Moreover, after their release, prisoners have many of their rights revoked as well as the inability to find a well-paying job, thus trapping them between poverty and a criminalized status, essentially “civil death” (Platt 2019:16). Ex-convicts are not given the chance to reintegrate within the social fabrique and as their exclusion continues so does their punishment; the life on the outside then becomes an extension of the prison. Due to these conditions, it simply is not enough to get rid of prisons, but rather we must address these points of exclusion in society.

When we begin to steer away from methodologies and ideologies of exclusion, perhaps, then we can truly envision a state of rehabilitation, in which the primary purpose will be the reintegration of criminals into the social fabrique. The ideology of preemptive re-inclusion could lead us to a reality in which prisons are not necessary because the prison’s primary goal is to ostracize and oppress. Perhaps someday we will reach an idealistic form of a borderless state, both metaphorically and physically. Perhaps the creation of a physically borderless state is too idealistic, however, the notion of a state of inclusion is not. In order to reach the era of the state of inclusion, there are several things our society must implement as well as eliminate. Tony Platt touches upon this topic briefly in Beyond These Walls by stating that efforts to “reintegrate the formerly incarcerated into their community should be
part of a more broadly based welfare rights campaign,” these are campaigns whose fundamental belief is in “people’s desire to work and be productive and creative” (2019:253). This is an important point to bring up considering the failures brought by agencies operating under the carceral system, such as parole boards and their officers, in their attempt to reintegrate. Though, I propose that reintegration that happens only post-incarceration is a form of reintegration that still manages to ignore the underlying processes and history, racial, gender or otherwise, that contribute to the formation of a criminal. People whose beings and bodies are pre-defined within the nebulous criminal body are preemptively removed from the social fabrique far before entering the prison system. This can be observed in the general public’s treatment of the poor, whether it expresses outward distrust and disgust, or it silently polices the homeless so that they may be out of sight and segregated, overt or subtle. These bodies are criminalized and excluded before reaching the justice system. Thus, in addressing methods by which society may deviate from a culture of exclusion, it must not simply focus its energy on the bodies that have been physically removed from society via prisons. In short, the demolition of carceral barriers must occur light-years before the prison walls are reached.

It is not feasible that the state’s perverted use of the nebulous criminal body to further and exact its power will suddenly cease, nor will centuries of antagonistic and punitive criminal justice reforms framing dissolve. However, it is within the power of the public to push for laws that will act as stepping stones to effect justice reforms. Consider a change to how we choose to utilize the law and they may affect our society for the better, hopefully, or whichever judgment neutral consequences that may occur. In order to begin to combat the preemptive exclusion of the at-risk community, I propose a redefinition of the purpose of our laws. Imagine laws whose purposes are not to deter “negative” actions, but rather to encourage certain behaviors. Suppose instead of criminalizing various acts that are particular to the homeless population, such as urinating, sleeping or loitering in public, we instead made it a right for a homeless person to seek help from the government. Suppose each county was required by law to have a community-run shelter that provided temporary housing, food, and other necessities to the homeless population, while simultaneously working towards helping those people get hired by businesses in the community. This would be encouraging a homeless person to visit their local shelters and receive help whenever they choose to, instead of criminalizing the acts they perform by virtue of their status as homeless. A mission of this scale does not only require government intervention but also requires the members of the communities to play a direct role in dealing with their homelessness issue. Volunteers, those who donate canned foods, the businesses that are willing to hire homeless people and the ones going to those businesses, are all members of the community. This will create a change in culture and atmosphere around people who are homeless, instead of alienating them as the “others” it humanizes the population as people who are simply attempting to figure life out as the rest of us. While homelessness is used as an example, this methodology is not limited to the homeless population and their struggles, but is applicable to various other issues.

The matter of fact is that there is a litany of severe underlying processes that society must observe and change in order to set eyes on the dawn of change. While it is impossible to fully dissect these issues and propose their possible solutions in such a short essay, it is important to ponder the conditions that lead to mass incarceration. Incarceration is not a closed-off system operating autonomously, but rather a byproduct of a chain reaction in which oppressive use of power and
ostracization are the catalysts. By laying down an infrastructure that means to serve and reintegrate the bodies that are victims of power, we can begin to use similar methods and apply them to how we think about punishment, then we may begin to move away from prisons.
References


On Thursday, February 27th, the Joseph W. Martin Institute for Law and Society presented: Restorative Justice: A Closer Look at Specialized Courts in Massachusetts. This event welcomed a panel of experienced specialty court members to Stonehill’s campus. The panel included moderator, Chief Justice Paul Dawley and speakers, Judge Mary Hogan Sullivan, Judge Mike Vitali, Brockton Police Lieutenant Richard Linehan, Mr. Richard Winant (President of Massachusetts Sober Homes certification program), and Probation Officer Michelle Rawdon Hollies. This event attracted Stonehill college students, faculty, and community members who all were curious to learn more about the specialized court system in Massachusetts.

Restorative Justice: A Closer Look at Specialized Courts in Massachusetts

By: Anna Samaniego

The panel opened with Chief Justice Paul Dawley discussing the timely topic of specialty courts and the reformation of the criminal justice system. Although this is not a new area for debate, he simply wanted to emphasize the importance of justice reform and how Massachusetts contributes to enhancing the lives of the people they work with. Chief Justice Dawley then described how Massachusetts has been a pioneer in the shift from incarceration to rehabilitation thanks to the problem-solving specialty courts throughout the state. There is a wide array of specialty courts throughout the state and the goals of these courts are to reduce recidivism, provide linkage to treatment and programs, and to save lives. Chief Justice Dawley described how terms of punishment are now shifting from those old “get tough on crime” policies, to more complex, individualized approaches that provide positive paths in people’s lives.

Specialty courts are a work in progress with challenges in implementation, staffing and resourcing issues, funding for expansion opportunities, and even the trauma associated with the work each day. He called attention to the emotional investment involved with working in these courts. Chief Justice Dawley has attended funerals, graduations, meetings, proving how invested these professionals are in the lives of people they care for. He closed his portion of the panel with a short story about a Quincy Drug Court graduation for a man in his 40s. This man never thought he was going to graduate since he had overdosed 18 times in his life and he never expected to be alive. He was able to reconnect with his family, obtained a steady job, and improved his life through the assistance of drug court.
Next in the panel was Judge Mary Hogan Sullivan. She was the director of specialty courts in Massachusetts who originated in Veteran’s Court and a prosecutor and defense lawyer before becoming a judge in 2001. She believed that the criminal justice system needed to understand that substance use disorders are an underlying reason as to why people return to court. The federal government began to provide resources to educate court officials about underlying issues. New programs helped court officials learn about brain development, working with law enforcement, interacting with individuals regularly, assessments, clinicians, and working to create individualized treatment options. Specialty courts create almost instant accountability as individuals stand before the court once a week. Then, if there is a relapse or new charge, they are able to address it immediately. Judge Sullivan stated that drug court works best for high risk individuals who are unable to stop on their own and pose a risk to the community. She knows that without drug court these individuals would be in the house of corrections.

The following panelist was Judge Mike Vitali who presides over the drug court in Brockton. He has become a very important part of the district court system and is a resource to judges across the state. Judge Vitali claimed that “presiding over drug court feels like having 40 kids a week who I have to solve problems with.” He believes that he helps carry the responsibility to keep people alive through his work. He walked the audience through a day in the life of a drug court judge. First thing he does is have a conference with his team and they talk about each person, how they can help criminal defendants, and what will be expected. Then, when an individual enters court, there is a conversation to find out how things are going, what is going on, and how to help them. He has a moral drive to serve the community. He genuinely tries to understand the people he helps by learning about their emotional triggers and possible risk factors that influence them. He listens to them carefully to develop a plan to help keep them safe, alive, and to motivate them to stop offending.

Judge Vitali ended his segment with a story about a young girl who was 20 weeks pregnant. She entered his drug court, was given probation, and put into a program for mothers and small children where she could live. She gave birth to healthy twin girls and the father of the children threatened to go to her housing program and take the kids away. She refused to get a restraining order and was discharged by the program. She went back to drug court, the Department of Children and Families took her babies, and she was put into transitional housing. Luckily, she was reunited with her babies 8 days later, they were moved to a safe location, and drug court provided transportation for her to continue the drug court program. Drug court threw her a baby shower where community members donated baby clothes and toys. Judge Vitali even donated some of his own belongings. She ended up graduating drug court and he still is in contact with the family today. He recently saw the girls; they are now three years old and he is a big part of their lives.

Richard Winant was the next presenter and he is a certified training and recovery coach, a speaker in jails and houses of corrections, and the President of Massachusetts Alliance for Sober Housing. He was a former addict who has been sober for many years. He is also a former inmate, where he was locked up for 23 hours a day. Richard was not given the option of specialty courts or alternative treatment options. He now teaches a class and owns a sober house for men which he says is a part of the continuum of care. He provides a safe environment where there is support and structure. Before coming to the sober house, individuals experience arrests, emergency room visits, and Richard calls
that “draining from the system.” Once in the house, they work on their recovery, how to secure a job, and improving their lives. He sees judges get more involved in understanding recovery by asking questions and recognizing the individuals’ efforts to improve. Richard said that a judge saying “I’m proud of you” is something special. They stop being an intimidating authority figure and become another person trying to care for you. Sober houses play a significant role in drug courts as they provide people with life skills, coping mechanisms, and they even retrain probation officers to respond to addicts with a perspective that is understanding and patient.

Before Richard finished his portion, he left the audience with a message. He said that honesty is so difficult for addicts as they do not trust anyone, and their lives revolve around lying and manipulating. He stated that addiction is a disease of isolation and the way he plans to help people fight it is through connectedness. Richard concluded that “you are only as sick as your secrets, you should tell people what is going on because this is not about bad people becoming good, it is about sick people becoming well.”

The next presenter was Probation Officer Michelle Rawdon Hollies. She started the district drug court and has been awarded for her work. When she was asked to start the drug court, she was terrified. She understood that this would be a lot of work and too much to take on with kids at home. Officer Hollies began to sit in drug court, attend graduations, and programs and began to see how drug courts were saving lives. She originally became a probation officer to save lives and decided she was going to form a team. Judge Vitali took over the team and the drug court started growing. Officer Hollies explained that this team is available 24 hours a day 7 days a week to cheer clients on and they are always involved in helping people when they need it. She noticed that people with long criminal histories and long cases are tired of the system and need drug court the most. They usually have trauma, lost family members, are homeless, and are not receiving adequate care. Officer Hollies provides treatment plans specific to each person. Her treatment plans involve transportation, drug court, and therapy groups. Then as they move onto new phases, they receive certificates to track their progress. This reward system gives each person a sense of pride that they are continuing to make strides towards recovery.

The final panelist was Lieutenant Richard Linehan and he served as a mental health officer on a crisis intervention team, as well as a police liaison to the drug court and a veteran in the United States army medical field. He worked with the Brockton police department to assist them in giving up their traditional ways of not taking on an individualized approach with clients. Lt. Linehan says that drug court changes that old way of thinking since they actively listen to clients, build trust, and help people work through their trauma. Trauma leads people to form bad habits and often turn to drugs or addiction to numb their pain. He hoped to build bonds with individuals and instill hope in the lives he helped.

Thanks to Judge Vitali, Chief Justice Dawley and this amazing team of people, restorative justice is saving lives. This panel is fighting to help improve communities one life at a time. Their compassion and care shined through as they discussed the importance of their roles and they hoped to inspire young students and local community members to do their part in reforming the criminal justice system.