

Editorial. A brief commentary on extreme sanctions

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This volume is about extreme sanctions. Some of the sanctions under consideration in this issue are extreme in themselves; others are extreme in their consequences. There is a sense in which all sanctions in modern justice systems are life sanctions, since sentences are virtually never expunged and thus are a stain on one's record that endures for the remainder of one's life. Likewise, all sanctions leave their mark on the offender in a psychological sense. For better or worse, and mostly worse, exposure to the justice system and its sanctions changes the character of those punished. Sanctions also change the lives of the loved ones of those punished, and indeed, we learn from the work of Todd Clear and Natasha Frost (2013), take a toll on the community from which offenders and their loved ones originate. To punish is to inflict pain. Pain has consequences. We are admonished to face and ameliorate those consequences – by way of alternative, less intrusive interventions (Carlone, this volume) or by a focus on restoration (Moretti, this volume) – but in the absence of fundamental reforms, a presumption of harm attends all criminal sanctions.

Many of the entries in this volume deal directly with life sentences, death sentences, and solitary confinement, sentences that inflict great suffering, indeed suffering that violates the human dignity of offenders and arguably constitutes a case of torture. These harsh sanctions are most commonly deployed in America, which has the highest incarceration rate in the Western world, if not the entire world. Conditions in American prisons, particularly high security prisons reserved for those serving extreme sanctions, are uniquely harsh and have been described by Alison Liebling (2011) as “dehumanizing” and “hellish”, and ultimately

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“un-survivable” in the face of widespread and even routine violations of human dignity. In the memorable parlance of the pseudonymous American prison writer B.M. Dolarman (2014), «prison is the place where a man’s dignity goes to die». Women, too, suffer this unseemly death of dignity in the face of an invasive daily penal regime (George, 2015). In essence, respect for dignity in prison means allowing prisoners to live like human beings, rather than caged animals or stored objects (Johnson, 2014). This is a low bar, but one that many prisons around the world, but perhaps especially in America, fail to meet.

In the opening essay, “What We Do”, Nagelson and Huckelbury (this volume) make a strong case that solitary confinement is antithetical to human rights and, as a practical matter, is an instance of torture. This regimen of torture is used widely in American prisons, affecting some 80.000 or more prisoners on any given day. The simple fact that isolation is a widespread punishment in the United States adds weight to the moving assertions made by Nagelsen and Huckelbury. The punishment of solitary confinement, as used in American prisons, amounts to torture on a grand scale, affecting more prisoners than found in the entire prison systems of some nations. That such sanctions flow from a system that often is lawless, as made plain by Fagelson (this volume) in his thoughtful essay, adds to the enormity of this practice, as well as other torturous practices, such as waterboarding, that take shape in the hidden and often anonymous spaces provided by the isolation of prisons and by isolated settings within prisons called “special housing units”, an ironic and disturbing euphemism.

«Harsh and degrading punishments», state Chiappetta and Johnson (this volume), «are standard practice in the American justice system». This can be seen in the routine violations of self that are the found in the regular use of strip searches in the American justice system, including for arrests of persons charged with minor crimes. A telling case in point is the notorious “perp walk,” in which “perpetrators” – persons accused or convicted of crime – are paraded in handcuffs before the media and the viewing public. This practice is little more than a modern version of primitive communal shaming. Shaming, which brings mortification in its wake, is an extreme sanction in the sense that it is a kind of death penalty of the self-mortification comes from the Latin *mortificare* (to put to death). The person mortified suffers a mortal wound to the personality at the juncture of insult. The personality, if you will, has been put to death. This experience of mortal insult may not be permanent, though presumably it is when the shaming is a continuing enterprise, but surely such assaults on the self leave a mark on its victims long after the shaming has ceased. More generally, the sheer contempt for the personhood of those accused or convicted

of crime makes each and every encounter in the American justice system a potential exercise in extreme sanctions. Violent deaths at the hands of police during the arrest process are stark reminders of the underlying violence of the justice system, but the routine violations of the person inherent in the administration of justice are the background and impetus of this violence.

Several contributions shed light on the theoretical rationales for harsh justice and offer a valuable comparative theoretical perspective on justice, punishment, correction, and human rights. A sentence of life imprisonment, we learn from Vianello (this volume), «challenges the very essence of the modern penalist doctrine based on the premise that all forms of punishment must respect an individual's dignity». Such sanctions, she contends, are a kind of death penalty; as such, they are morally repugnant and without merit as legal sanctions in Europe, where the death penalty has been outlawed. Life sentences without the possibility of parole come in for harsh criticism by Vianello. Permanent imprisonment, in the view of many Italian life-sentence prisoners, is arguably worse than a death sentence. A group of 300 Italian lifers signed a petition sent to the President of the Republic demanding «that our life sentence be converted to a death sentence». In the words of one prisoner, «at least a death sentence gives you the chance to stop suffering». Such claims about endless suffering adduced by Vianello make questions about the prevalence and extent of violence in society and in the justice process, examined by Baldani (this volume), all the more compelling. These testimonials about suffering also reinforce the centrality of the notion of human dignity in punishment, which we learn is routinely violated in the “hard prison regimes” to which some Italian offenders are subjected. These regimes, vividly described by Siino (this volume), limit freedom within the prison and impose sharp restrictions on contacts with loved ones in the free world. These hard regimes bring to mind the solitary and other “special housing units” so common in the United States and which, like their counterparts in Italy, are rooted in what Fabbri (this volume) aptly describes as «a history of neglect». That history continues on both sides of the Atlantic, finding painful expression in regimes that produce extreme suffering as a matter of course.

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