

# CAN UTILITARIANISM OR RETRIBUTIVISM JUSTIFY SOLITARY CONFINEMENT?

Katherine Sawczyn

*Abstract: Solitary confinement increases negative consequences by severely damaging criminals physically and psychologically. In the philosophy of punishment, utilitarianism argues that a punishment is justified if it maximizes good consequences, while retributivism argues that a punishment is justified if it corrects the wrongful act. Neither utilitarianism nor retributivism can provide strong arguments for the practice of solitary confinement because this form of punishment does not maximize good consequences and is disproportionate to the crime.*

## INTRODUCTION

Solitary confinement is a punishment used throughout the United States that can be enacted in response to a criminal's unsatisfactory behavior. Although the conditions of solitary confinement vary among states and correction centers, general practices include isolation for 23-24 hours a day, sensory deprivation, restricted personal property, extensive surveillance and control, and little or no access to rehabilitative or educational programs (Metzner & Fellner 104). These conditions can last anywhere from days to decades and occur in segregated areas of regular prisons or in special facilities called supermax prisons (104). Solitary confinement is a controversial punishment, and much speculation surrounds its justification.

Utilitarianism and retributivism are the two prevailing views in the philosophy of punishment (Brandt 489). These theories provide different reasons for why governments punish citizens, different goals of punishments, and different preferred types of punishments. Utilitarianism is categorized as forward-thinking: it is concerned with the consequences of punishment. Utilitarians examine the possible outcomes of punishment to determine whether a punishment should be applied, and they always seek to maximize good consequences. In contrast, retributivism is categorized as backward-thinking: it is concerned with the punishment of past acts. Retributivists do not weigh the possible outcomes when choosing a punishment; rather, they examine the wrongdoing to determine a proportionate punishment. Neither utilitarianism nor retributivism can provide strong arguments for the practice of solitary confinement in the United States because this practice does not maximize good consequences and is often disproportionate to the crime.

### **UTILITARIANISM: THE GREATEST GOOD**

Utilitarianism is a philosophy that emphasizes the greatest good. It claims that the purpose and guidelines of punishment should maximize good consequences and that an action is justified if it serves to benefit the highest number of people. It strives to reach the best outcome: a crimeless society. Proponents of utilitarianism value the good of society over the good of the prisoner. However, solitary confinement does not maximize good outcomes, as it does not reform prisoners and increases threats to safety.

#### ***Utilitarianism: Increasing Good Outcomes***

According to utilitarians, if solitary confinement can maximize good outcomes, the prisoner's discomfort is justified. John Stuart Mill, a classic utilitarian, says, "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant" (3). Utilitarians, like Mill, seek to

maximize good consequences for the majority. In 1829, Quakers introduced solitary confinement to the United States, believing that “prisoners isolated in stone cells with only a Bible would use the time to repent, pray, and find introspection” (Sullivan). Quakers knew isolation was not a pleasurable experience, but they thought if a prisoner felt remorse and was dissuaded from further crime, the punishment was ethical. Solitary confinement would benefit the majority by reforming criminals and thus decreasing further crime. Quakers, like other utilitarians, believed that good consequences for the majority are the most important aspect of punishment. The discomfort of the prisoner is for the sake of the good of the majority.

### ***Solitary Confinement: Decreasing Good Outcomes***

Although utilitarianism attempts to justify solitary confinement, the history of this form of punishment along with recent data run counter to this theory’s main objective: to maximize good consequences. While the goal of utilitarians is to benefit the majority by decreasing crime, “an increasing number of studies show a connection between isolating prisoners and higher rates of recidivism” (Eilperin). One study found that prisoners who were in solitary confinement not only had a 20-25% higher rate of recidivism, but the type of crime they committed after release was more likely to be violent (Eilperin). Quakers introduced solitary confinement to reform criminals and deter them from committing future crimes. However, even the Quakers abandoned the practice, as they found it ineffective, and the side effects experienced by prisoners made them worse (Sullivan). The modern research shown here echos those outcomes, revealing that solitary confinement does not maximize utility because it is not beneficent for the majority of society, including the inmate.

### ***Utilitarianism: Increasing Safety***

Utilitarianism argues that solitary confinement maximizes the greatest good by keeping the most people safe. Occasionally, initial imprisonment is not sufficient to deter individuals from misbehaving

while in prison, and prisoners are put into solitary confinement as punishment for acts they committed in prison. Correction officers insist isolation is a necessary tool to protect individuals within the prison system, such as prisoners, guards, and other staff (Zwillich). Utilitarianism argues that solitary confinement is worth the discomfort of the prisoner, since the outcome is the greatest good for the rest of the internal prison population, including guards and other prisoners.

### ***Solitary Confinement: Decreasing Safety***

However, solitary confinement can increase threats to safety, not only for prisoners themselves but also for the general population. Solitary confinement may cause unusual outbursts of anger (NYT); for example, one study found that 90% of inmates in solitary confinement experienced irrational anger, as opposed to 3% of the general population (Gawande). Not only do prisoners who have irrational anger and violent outbursts pose a threat to prison guards; if released from prison, may also direct that anger and violence toward the majority of society. In addition to threatening the safety of others, prisoners in solitary confinement pose a threat to themselves; they are more prone to self-harm. One study found a third of participants in solitary confinement were acutely suicidal (Breslow). In light of this research that suggests solitary confinement creates negative consequences for the majority of society, utilitarianism cannot support the use of isolation as a second punishment within prison.

### **RETRIBUTIVISM: CORRECTING THE PAST**

Within the realm of punishment, retributivism is a theory focused on correcting a past mistake, often disregarding the future effects of punishment. In order to correct the wrongful act, the punishment must be in proportion to the act committed. Retributivists also believe that punishing a person respects their autonomous decision to commit a crime. However, solitary confinement does not correct past mistakes and is not respectful because it is not a proportionate punishment and dehumanizes the prisoner.

***Retributivism: Proportionality***

In regards to retributivism, proportionality is the notion that criminals undergo a punishment that corresponds in degree to the harm caused to others; it can be summed up in the age-old saying of “an eye for an eye” (Corlett 286). A retributivist argument is that if the crime warrants isolation, then that is what the punishment should be. If a criminal has hurt someone, a proportionate punishment may be to remove them from human contact, therefore justifying the use of solitary confinement. A prisoner may be placed in solitary confinement for the crime he or she committed within the prison or outside its confines.

***Solitary Confinement: Disproportionality***

The negative psychological and physical effects of solitary confinement undermine the retributivist argument because the effects are disproportionate to the crime. The acts are not proportionate because there are no standard guidelines for placing prisoners in solitary confinement. Acts that have been punished with isolation include a variety of offenses such as fighting with prisoners or guards, possessing contraband, ignoring orders, refusing to cut one’s hair, accessing Facebook, and using profanity (Rodriguez). Guards are increasingly using solitary confinement to manage difficult prisoners, many of whom have a serious mental illness and whose actions are uncontrollable (Metzner & Fellner 104). Solitary confinement is not reserved for “the worst of the worst” or extremely dangerous prisoners whose violence may warrant short-term isolation. Some prisoners are placed in solitary confinement for years simply because the prison needs to fill those cells, and this is clearly not done in response to the crime they committed (Zwillich). LGBTQ individuals, children in adult prisons, and the mentally ill may live in solitary confinement indefinitely, as guards label them “vulnerable populations” who can be protected in solitary confinement (Rodriguez). As this evidence shows, solitary confinement is often disproportionate as a

punishment to the crime committed. Therefore, retributivism cannot support solitary confinement.

### ***Retributivism: Respect***

When retributivists punish, they claim they are respecting the criminal's humanity and acknowledging that the criminal has the ability to understand the punishment. For example, Immanuel Kant, a central figure in moral philosophy, says whoever "wills a crime, also wills that he be punished—he has done the crime *to himself*" (Flanders 317). If we follow this line of reasoning, then we can conclude that withholding punishment means failing to respect a person's decision to commit a crime.

### ***Solitary Confinement: Disrespect***

Solitary confinement does not respect the criminal because the method of punishment is deeply dehumanizing. Spending long stretches of time alone is not normal, and to withhold human contact is to withhold a very important thing. Touch is "truly fundamental to human communication, bonding, and health," and to deny someone that ability to interact with others is, in a way, to deny him or her the basic aspects of one's humanity (Williams). An inmate at Oregon State Penitentiary describes his time in solitary confinement in the following way: "What is the most difficult part about isolation? I think not being able to see somebody face to face like I'm looking at you; to communicate, to touch, to hug, to feel loved, to feel human" (Lenzner). Retributivists argue that punishing a criminal respects his or her choice and humanity, yet the practice of solitary confinement is clearly inhumane in itself; retributivists therefore cannot use isolation as a means of respecting the criminal's autonomy.

Scientific studies and anecdotal evidence of prisoners' health during and after solitary confinement reveal the profound physical and mental impacts of isolation. For example, solitary confinement aggravates and even creates mental illness, including depression and paranoia (NYT).

In addition to known mental illnesses, prisoners can also experience a unique set of symptoms: “solitary can cause a specific psychiatric syndrome, characterized by hallucinations; panic attacks; overt paranoia; diminished impulse control; hypersensitivity to external stimuli; and difficulties with thinking, concentration and memory” (Breslow). Aggravating or creating mental illness is unethical and disregards the prisoner’s health, as they are at an increased risk of self-harm and suicide.

Other studies show further psychological harm to the prisoner. Not only can solitary confinement disrupt psychological functioning, but it can also create a long-term cognitive impairment or abnormality similar to traumatic brain injury (Gawande). Solitary confinement changes a person’s brain structure and functioning to the point where some experience chronic apathy and cannot behave normally (Breslow). A military study of POWs in Vietnam found that, for many of the prisoners, social isolation was “as torturous and agonizing as any physical abuse they suffered” (Gawande). Solitary confinement thus creates a psychological handicap with which a person must live for the rest of his or her life, beyond the confines of prison. Retributivism dictates that criminals should receive punishment that is proportionate to the crimes they committed and that the punishment respect the humanity of the criminal. As this argument has shown, because solitary confinement is a severe and inhumane punishment with long-lasting effects, retributivists cannot justify this form of punishment.

## **CONCLUSION**

Neither the utilitarian nor the retributivist argument can justify solitary confinement. The punishment does not fulfill the goal of utilitarianism: to maximize good consequences for the majority of society. It does not deter crime by creating a more disciplined prisoner but rather creates a prisoner more prone to violence and anger. The negative outcomes for all involved groups far outweigh the positive ones, which is the opposite of utilitarianism’s goal. Nor does solitary confinement fulfill

the goal of retributivism: to correct a wrongful act proportionally while respecting the person's autonomous choice to commit a crime. Rather, the punishment dehumanizes the prisoner and is disproportionate to the crime. As I have shown, solitary confinement severely punishes a person psychologically and physically, which causes lasting effects that are not justifiable through the two main philosophical theories of punishment.

The implications of this argument are far-reaching for the thousands of prisoners that suffer in solitary confinement in the United States each year. Should the United States eliminate solitary confinement, correctional officers would need to use a different method to achieve the utilitarian and retributivist goals of punishment (maximum positive outcomes, safety, respect, and proportionality). Further research needs to be done on the best alternatives to solitary confinement for the sake of fulfilling those goals. A suggestion that is easy to implement is revoking T.V. or other privileges, but I would argue that the best alternative to solitary confinement is the treatment of underlying behavioral problems through individual and group counseling, art therapy, and other forms of constructive activities. While these treatments require more effort and demand the United States to rethink how it views prisons, the country must find an alternative to solitary confinement if punishment is to fulfill the goals of utilitarianism or retributivism.

Katherine Sawczyn  
Texas A&M University | 2017  
*ksawczyn@tamu.edu*

Acknowledgements: I would sincerely like to thank Professor Linda Radzik for her insightful and captivating lectures in her Philosophy of Law class. Also, I am grateful for her valuable guidance in drafting this paper and glad she encouraged me to submit it to *Aletheia*.



**WORK CITED:**

- Brandt, Richard. "Retributive Justice and Criminal Law." *Ethical Theory: The Problems of Normative and Critical Ethics*. Prentice Hall, Inc, 1959, pp. 489-501.
- Breslow, Jason M. "What Does Solitary Confinement Do To Your Mind?" *PBS, FRONTLINE*, 22 April 2014, <https://www.pbs.org/wgbh/frontline/article/what-does-solitary-confinement-do-to-your-mind/>.
- Corlett, J. Angelo. "Making More Sense of Retributivism: Desert as Responsibility and Proportionality." *Cambridge University Press on behalf of Royal Institute of Philosophy*, vol. 78, no. 304, April 2003, pp. 279-287.
- Eilperin, Juliet. "Obama bans solitary confinement for juveniles in federal prisons." *The Washington Post*, 26 Jan. 2016, [http://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693933a4d31bcc8\\_story.html?noredirect=on&utm\\_term=.797313f828df](http://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693933a4d31bcc8_story.html?noredirect=on&utm_term=.797313f828df).
- Flanders, Chad. "Can Retributivism be Saved?" *BYU Law Review*, vol. 2014, no. 2, 2014, pp. 309-362.
- Gawande, Atul. "Hellhole." *The New Yorker*, 30 Mar. 2009, <https://www.newyorker.com/magazine/2009/03/30/hellhole>.
- Lenzner, Emily. "Solitary Confinement: How Effective Is It?" *National Public Radio*, 25 July 2006, <https://www.npr.org/about/press/060725.solitary.html>.
- Metzner, J. & Fellner, J. "Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics." *The Journal of the American Academy of Psychiatry and the Law*, vol. 38, no. 1, 2010, pp. 104-108.

Mill, John Stuart. "On Liberty." *London: Longman, Roberts, & Green Co.*, 4th ed., Library of Economics and Liberty, 1869.

Rodriguez, Sal. "FAQ." *Solitary Watch*, 2015. <http://solitarywatch.com/facts/faq/>.

Sullivan, Laura. "Timeline: Solitary Confinement in U.S. Prisons." *National Public Radio*, 26 July 2006, <https://www.npr.org/templates/story/story.php?storyId=5579901>.

The Editorial Board. "Pulling Back on the Barbaric Use of Solitary Confinement." *The New York Times*, 5 Aug. 2017, <https://www.nytimes.com/2017/08/05/opinion/sunday/solitary-confinement-prison-juveniles.html>.

Williams, Ray. "8 Reasons Why We Need Human Touch More Than Ever." *Psychology Today*, Sussex Publishers, 28 Mar. 2015.

Zwillich, Todd. "Making the Case: Arguments For and Against Solitary Confinement." *The Takeaway*, 12 Jun. 2013, WYNC, <https://www.wnyc.org/story/306356-making-case-arguments-and-against-solitary-confinement/>.