The subjective experience of punishment

Using penal consciousness to tell a story in the courtroom

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April 27, 2017
What is penal consciousness… and why does it matter?

- **Penal consciousness**: Prisoners’ subjective experience of punishment
  - Concerned with what prisoners consider to be punishment while incarcerated
  - Rather than what is designed or intended to be punishment

"Hey, it’s ‘Crime and Punishment.’ You had to know the second half was going to suck."
Overview of presentation

• Brief explanation of penal consciousness theoretical framework
• How penal consciousness can help tell a story in the courtroom
• Application of framework to Sheppard case
• Implications for post-release prospects and compatibility with traditional risk assessment
Development of penal consciousness framework

- Semi-structured interviews 80 Ohio state prisoners
  - 61% were lifers
  - 49% were serving time for murder/manslaughter
- Inductive analysis
  - 88 hours of audio recording
  - 2,500 pages of transcription
- Goal: To understand how prisoners make sense of their punishment
Content of punishment

• Concrete punishment: Unmet daily needs
  • Medical neglect or mistreatment
  • Breakdown of amenities
  • Expense of daily necessities
  • Inadequate or unhealthy food

• Symbolic punishment: Major losses
  • Loss of freedom
    • Loss of autonomy
    • Loss of self
    • Loss of personhood
  • Loss of family
Severity of punishment

• **Severity:** Intensity or magnitude of punishment as experienced by the prisoner

- Less severe
  - Concrete punishment
    - Medical neglect or mistreatment
    - Breakdown of amenities
    - Expense of daily necessities
    - Inadequate or unhealthy food
  
- More severe
  - Symbolic punishment
    - Loss of freedom
    - Loss of autonomy
    - Loss of family
Beyond severity: Salience and the role of expectation

- **Salience**: Prominence of punishment in the prisoner’s life
  - Determined by the alignment of expectation and experience of punishment
- Expectations of punishment based on:
  - What punishment will be
  - What punishment should or ought to be
Salience, expectation, and the punishment gap

- Less severe

Expectation

Salience

Punishment gap

Experience

More severe

+
Salience, severity and narratives of penal consciousness

- Salience
  - Punishment as a separate life
  - Punishment as part of life

- Severity
  - Punishment as death
  - Punishment as suspension of life
Punishment as part of life

• Lowest in overall harshness
• Time spent in prison is seen as one of many phases of the lifecourse
  • Much like childhood, adolescence, college, or marriage
• This doesn’t imply that prison is seen as normative or necessary
• Or that time spent in prison is short
Punishment as death

- Highest in overall harshness
- Time spent in prison isn’t life at all—it is experienced as death
- Varied temporality of death
  - Single, quick (though not painless) death upon entering prison
  - Single, ongoing death that lasts for the duration of their incarceration
  - “A thousand small deaths” experienced on a daily basis
- Very common among lifers
Implications for reentry

• These narratives give us a sense of how prisoners will adjust to life outside prison
• The story that penal consciousness tells can help judges understand how prisoners’ experienced their punishment
• And more importantly, what this individual experience means for reentry prospects
Sheppard case: Materials and analysis

• 2 in-person interviews
  • Approx. 3 hours each
• 1 written letter
• Extensive background and case documentation provided by CLS Mitigation
  • Life history
  • Incarceration history and timeline
  • Prison records (disciplinary, programming, work, treatment, mental health)
• Line-by-line analysis to determine penal consciousness
Sheppard case: Severity of punishment

Less severe - More severe +

Maximum security prison
Surrounded by violence
Loss of family
Time in segregation
Sheppard case: Salience of punishment

- Expectation
- Salience
- Experience

Punishment gap

- Less severe
- Salience
- More severe

Juvenile at time of offense
Not charged with murder or manslaughter
Mandatory LWOP
Frequent prison moves (including seg)
Sheppard’s Penal Consciousness

Salience

Severity

Bryan Sheppard
Sheppard’s Penal Consciousness

- +

Salience

- +

Severity

- +

Punishment as a separate life
Punishment as death

Punishment as part of life
Punishment as suspension of life
Implications for release

• Consider in context of re-entry risk and protective factors

• Documented barriers to prisoner reentry:
  • Stigma of a felony conviction
  • Financial hardship
  • Availability of drugs and alcohol
  • Criminogenic surroundings
# Protective factors

- Positive prison record

<table>
<thead>
<tr>
<th>TIME IN PRISON</th>
<th>PRISON RECORD</th>
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<tbody>
<tr>
<td>21 years</td>
<td>9 disciplinary incidents</td>
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<tr>
<td>= 7,665 days</td>
<td>× 5 minutes per incident</td>
</tr>
<tr>
<td>= 183,930 hours</td>
<td>= 45 minutes of misbehavior</td>
</tr>
<tr>
<td>= 11,037,600 minutes</td>
<td></td>
</tr>
</tbody>
</table>

Approx. 2 minutes of misbehavior per year
Protective factors

- Positive prison record
- Education
- Drug treatment / maintained sobriety
- Mental health treatment
- Emotional and cognitive skills developed
- Support system
- Age
- Future orientation
Punishment is not the whole story—but it is an important piece
Contact

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