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Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2011/05/31/supreme-court-strikes-a-blow-for-the-human-rights-of-prisoners/>

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by [Jean Casella and James Ridgeway](#) | May 31, 2011

Supreme Court Justice Antonin Scalia, in his dissenting opinion to last week's [Brown v. Plata](#) decision, called the ruling perhaps the most radical injunction issued by a court in our nation's history. Since Scalia is the ultimate legal literalist, we presumably ought to take his written opinions literally. So what is this decision that the Court's most conservative justice finds more radical even than *Roe v. Wade* or *Brown v. Board of Education*? It is no less than the notion that prisoners are human beings, entitled to the most basic human rights even while incarcerated.

In rendering the majority opinion in the *Plata* case, Justice Anthony Kennedy wrote: Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment. And cruel and unusual punishment is what California prisoners are receiving, according to the Supreme Court's 5-4 ruling, in a prison system so overcrowded that it cannot provide anything close to adequate mental health care or medical care to its [147,000 inmates](#). To comply with the Court's ruling California must remedy the situation by reducing its prison population to a mere 137.5 percent of capacity, rather than the current [175.5 percent](#).

It's a decision that runs counter to the federal courts take on prisoners' rights over at least three decades, especially since the passage of the 1996 [Prison Litigation Reform Act](#), which severely limited the ability of prisoners to file civil lawsuits and of courts to intervene on their behalf. In citing the essence of human dignity inherent even in the nation's 2.3 million prison inmates, the decision also runs counter to the mentality of mass incarceration, by which prisoners have been so effectively dehumanized that otherwise decent people condone treating them in ways that often approach and sometimes constitute torture. Kennedy actually references torture in insisting that a prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.

To show that California's prisons have in fact reached this level of inhumanity, Justice Kennedy cites just a handful of examples from the voluminous documentation submitted on behalf of the plaintiffs by the [Prison Law Office](#) and others. (Solitary Watch readers will be particularly interested to note that Kennedy singles out the solitary confinement of prisoners with mental illness for a special dose of approbation.)

Prisoners in California with serious mental illness do not receive minimal, adequate care. Because of a shortage of treatment beds, suicidal inmates may be held for prolonged periods in telephone-booth sized cages without toilets. A psychiatric expert reported observing an inmate who had been held in such a cage for nearly 24 hours, standing in a pool of his own urine, unresponsive and nearly catatonic. Prison officials explained they had no place to put him. Other inmates awaiting care may be held for months in administrative generic klonopin yellow segregation, where they endure harsh and isolated conditions and receive only limited mental health services. Wait times for mental health care range as high as 12 months. In 2006, the suicide rate in California's prisons was nearly 80% higher than the national average for prison populations; and a court-appointed Special Master found that 72.1% of suicides involved some measure of inadequate assessment, treatment, or intervention, and were therefore most probably foreseeable and/or preventable.

Prisoners suffering from physical illness also receive severely deficient care. California's prisons were designed to meet the medical needs of a population at 100% of design capacity and so have only half the clinical space needed to treat the current population. A correctional officer testified that, in one prison, up to 50 sick inmates may be held together in a 12-by 20-foot cage for up to five hours awaiting treatment. The number of staff is inadequate, and prisoners face significant delays in access to care. A prisoner with severe abdominal pain died after a 5-week delay in referral to a specialist; a prisoner with constant and extreme chest pain died after an 8-hour delay in evaluation by a doctor; and a prisoner died of testicular cancer after a failure of MDs to work up for cancer in a young man with 17 months of testicular pain. Many prisoners, suffering from severe but not life-threatening conditions, experience prolonged illness and unnecessary pain.

Kennedy also takes the unusual step of appending photographs to his opinion. (These can be viewed in Mother Jones.com's powerful montage, [here](#).) Together with the written descriptions, they depict California prisons as something akin to Hieronymus Bosch's paintings of an overcrowded Hell. Berkeley Law professor [Jonathan Simon](#) believes that the photographs forced the Court to confront the sheer magnitude of California's penal depravity, and goes so far as to compare the images to another notorious set of photos: Like the pictures from Abu Ghraib, he writes, these photos locate California's penal practices in a place of inhumanity, degradation, and torture.

that cannot be tolerated (even by judges disciplined by decades of punitive populism and crime fear).

Simon is among the [many commentators](#) who believe that the *Plata* decision has far-reaching implications, and even represents a turning point. The system of mass incarceration depends deeply and irretrievably on a simple condition, the denial of the humanity of prisoners. Yesterday the Supreme Court overturned that denial. If this is true, it may someday affect the host of other [human right violations](#) that take place every day in prisons across the country from the tolerance for prison rape to the widespread use of solitary confinement. But it will take more than a single Supreme Court decision to wean the incarceration nation off of its 30-year addiction to prisons.



James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and the former Yugoslavia. Earlier, he wrote for The New Republic and Ramparts, and his work appeared in dozens of other publications. He was the co-director of two films and author of 20 books, including a forthcoming posthumous edition of his groundbreaking 1991 work on the far right, *Blood in the Face*. Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book *Hell Is a Very Small Place: Voices from Solitary Confinement*. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets @solitarywatch.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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@Leon Haller, & You Are Going to Prison

I was attempting to extricate myself from this forum when your comments drew my attention.

Well It is refreshing that someone else has spoken out against this interracial crime, the mass executions you call for is not going to happen.

This article on The Atlantic today seems to be speaking to your present state of mind.

The Vigilante of Clallam County

Patrick Drum was tired of seeing sex offenders hurt children. So he decided to kill them.

LEXI PANDELL DEC 4 2013, 7:00 AM ET

Excerpts:

Some who have experienced abuse in childhood, particularly men, are prone to turning these emotions outward, sometimes violently. Physically targeting child molesters is probably very, very rare and unusual, Knight said. But the dynamic is not uncommon.

I stonewalled people all the time growing up, Drum said. I'm a private person most of my girlfriends would never even know about my dad.

He was never forced to have a psychiatric evaluation or to go to therapy. No one helped him confront his past. This lack of support is incredibly common. I can count on my one hand the number of times I've worked with clients where the families have been supportive of them, Knight said. The typical way is to deny, deny, deny.

Of course, most people who are sexually abused as children don't go on to kill pedophiles, and many are not violent. But Drum with his history of sexual abuse, lack of counseling, and protective nature was a ticking time bomb.

About a week after his sentencing, Drum stabbed a fellow inmate with a sharpened, plastic utensil. The 19-year-old sex offender, who survived the attack, was serving time for failing to register. Drum wouldn't know until later that his victim had committed his sex offense when he was just 13 years old. Drum was soon moved to SOLTARY. When he was released into the general population months later, he

fashioned a shiv from a toothbrush and a razor blade and tried to kill another sex offender in the gymnasium. Prison officers caught him before he was able to seriously harm the man, who Drum said had raped a male friend from Port Angeles.

And, with that, he was back in SOLITARY INDEFINITELY.

Maybe you could sympathize with Drum.

Keep pointing out the abuse taking place.

Here is a link to some quotes of mine which will help make your case against prison rape.

<http://solitarywatch.com/2013/11/22/federal-bureau-prisons-details-limited-audit-solitary-confinement-practices/#comment-14377>

This articles concerns are utterly misguided. The one genuine concern which needs to be addressed at the Presidential level (Obummer? fat chance hell do a SINGLE DECENT THING as Prez nearly 2014, still waiting) is the horror of prison rape which is both a violation of the 8th Am prohibition against cruel and unusual punishment; a serious AIDS-transmission belt, and thus public health problem; and a RACIAL ASSAULT ON WHITE MEN BY VICIOUS PREDATORY BLACKS. This supreme indignity inflicted upon often morally innocent white men, and by truly Satanic blacks, must be resisted and terminated.

The answers are fourfold. We need to stop incarcerating people for nonviolent, victimless crimes. We must give those convicted of serious, but nonviolent, crimes, punishment options beyond prison (eg, corporal punishment whipping, electroshocks, or heavy restitution plus community service requirements). We should be executing a lot more criminals (hundreds of thousands per year), and on a very routine basis (no more than one post-conviction appeal). And we must racially re-segregate our nations prisons.

Once a prison becomes this overcrowded the chances of violence of every kind skyrocket. A room like this quickly becomes host to what is known as the covered wagon. Prisoners arrange the three-high bunk beds in a rough square and drape them with blankets to block off the view of the guards. It is in the middle of this that a gang rape can continue for an astonishing amount of time.

In 1973 a student protester didnt pay the \$10 bail after being arrested at a Quaker pray-in at the White House where he was protesting the bombing of Cambodia. In the Washington, D.C. lockup he was almost immediately attacked by fellow prisoners, sodomized and forced to suck dick while being nearly beaten to death for three solid days He was raped all day and all night. No guard came to his rescue.

Guys beaten and dragged into the covered wagon are set upon by dozens of men. They have all their teeth knocked out, they are forced to perform fellatio for hours and hours while being savagely fucked up the ass until their assholes literally gush blood. Even if the guards were able to detect whats going on (and they most certainly can), they would not do anything.

You write The system of mass incarceration depends deeply and irretrievably on a simple condition, the denial of the humanity of prisoners. and you are absolutely correct but this practice goes back a lot further than three decades. As I have just recently found out.

From The Rise and Fall of Californias Radical Prison Movement by Eric Cummins

Page 24: Since 1871 California prisoners had been deemed civilly dead slaves of the state. Following the Supreme Court case Ruffin v. Commonwealth, the California Penal Code had been amended to read:

673 Civil Rights of Convict Suspended

A sentence of imprisonment in a state prison for any term less than life suspends all civil rights of the person so sentenced

674 Civil Death

A person sentenced to imprisonment in the state prison for life is thereafter deemed civilly dead.

(The push back to this view began in the 1960s)

Page 130-131: In 1968the California legislature amended the states penal code on the issue of the civil death of prisoners. As amended, the statute greatly expanded the reading, writing liberties and correspondence privileges of prisoners as well as granting other rights.

Alan Sieroty authored the legislation to amend section 2600 of the penal code..Sieroty was angered that the prisons continued to feel they had the right to control all intellectual activity: People lose their liberty. We understood that but they should be able to think and read and write and do things that are not a threat to anybody but are part of our basic rights.

After a long battle with the Department of Corrections, which opposed the bill, Penal Code 2600 underwent the revisions necessary to reassure the prison system that granting reading and writing privileges to inmates would not compromise institutional security.and the Convict Bill of Rights became law. In addition to granting relative freedom of access to reading materials, Penal Code 2600 gave the right to.correspond confidentially with members of the bar and holders of public office.

(The big surprise.)

One immediate and dramatic result of the new law was that confidential letters from inmates alleging abuses poured into the offices of California attorneys and lawmakers.

Page 132: The number of court cases involving post-conviction prisoners rights swelled the court docket, adding to the already great volume of habeas corpus petitions being brought by convict writ-writers and jailhouse lawyers.

These decisions were soon followed by Jordan v. Grady (1972), which upheld the right of confidential correspondence between prisoners and public officials or attorneys, and Jordan on Habeas Corpus (1974), which allowed this correspondence to include enclosures such as

court documents.

Page 133: Censorship continued at San Quentin prison, but it became more sporadic and was illegal.

Page 237: In December 1973 the House Committee on Internal Security, was particularly interested to hear about the unrestricted flow of extremist propaganda into the prisons that the late FBI director J. Edgar Hoover had claimed stimulated the hardened criminal inmates into an alliance with revolutionary extremists.

Again the San Quentin administration chose to ignore the genuine grievances of the inmates as a source of prison rebellion. The committee was in part correct in its observations. Imported radical literature and the support of radical outsiders had certainly contributed to San Quentins revolution, though beneath this surface was along history of unresolved, legitimate prisoner grievances that had little to do with the ideological wars of the California Right and Left that were being reproduced in San Quentins battle of books. Despite this fact, in the California prison system a solution was already in the works. The plan was to turn the prisoners away from reading anything whatsoever.

In 1972-73 televisions were installed in administrative segregation at Deuel Vocational Institution. Now the prison could feign permissiveness by issuing televisions and at the same time produce the same heightened control. Introducing televisions appeared on the surface to be a concession to inmate agitators and seemed to represent a further widening of inmates contact with the community outside the walls. But the contact was to be carefully controlled. The prison soon set about collecting a set of precensored videotapes to be piped to the cells during times of unrest.

(That is pretty devious in my opinion.)

As for the PLRA Ive added some additional info to my previous article The Prisoners Catch 22 in the comments below the article.

<http://solitarywatch.com/2010/07/10/the-prisoners-catch-22/>

@Amanda they also used these cages in the CYA at Preston School of Industry where I did time.

Preston placed certain wards in them at the school house. How does that compare to your own high school experience? Thankfully they had not been in use when I was there.

These scenes in the photos raise the hair on the back of my neck. All ex-cons know of the danger found in such places. However you should read the publics comments on Mother Jones they have no idea.

I had my parole revoked for disturbing the peace and was sent to Preston in 1968. I (So I agree that they send too many to these costly institutions for minor infractions of their where they encounter violent inmates worthy of them. I am not sure why but I was sent to Sequoia Lodge where the institutions most violent wards were kept. It was tucked way back away from all the others and we didnt interact with the rest of the population. However I am most grateful to have been placed there in my own cell. These dorms are dangerous places even when not overpopulated as these are. Although most of the inmates housed in my lodge, I just love that description , murdered or raped someone at least I could sleep at night. Even my best (only) friend there had himself shot a drug dealer in the head and in front of his mother no less. Another had shot two policemen in the head in an alley in South Central Los Angeles in what he claimed was a revolutionary act. I could go on and on but you get the idea.

The fear these inmates deal every day as they lay on their bunks listening to the sounds of someone being beaten, raped or stabbed, must be the same fear a tethered animal in a slaughter house feels as his executioner approaches. No wonder they age faster than free people.

It found that as a result of overcrowding the prisoners medical and mental health care has fallen short of minimum constitutional requirements . Even after the prison population is reduced California s prisons could still be over 37 above capacity The dissent painted a picture of a public safety disaster if the inmates were released. As the court noted needless suffering and death have been the well documented result of current conditions Outrageously many prisoners are there for nothing more than growing or delivering a plant that has never caused a fatal overdose marijuana.

Those holding cages are terrifying.

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