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Solitary Confinement Contemplated Through the Application of Finnis' Natural Law Theory

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Solitary Confinement Contemplated Through the Application of Finnis’ Natural Law Theory

Morality, Administrative Segregation, & the Eighth Amendment

Melissa Cahir

A Legal and Moral Analysis of Solitary Confinement

Melissa Cahir
November 26, 2014
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PART I: A LEGAL ANALYSIS OF SOLITARY CONFINEMENT

"A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane, others, still, committed suicide, while those who withstood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community."

—U.S. Supreme Court, *In re Medley*, 134 U.S. 160, 168 (1890)

The use of solitary confinement in correctional settings has been an ongoing controversial topic between prison administrators, correctional officers, mental health professionals, and legal decision makers. Initially, solitary confinement was advocated as a type of "reclamation," and a way for the institution to effect "a deeper change in the offender's psyche" rather than subject them to the antiquated "rehabilitative affects" that a prisoner would typically undergo through a steady regimen of hard labor.

The increasing popularity of solitary confinement in the late 18th and 19th centuries was certainly not due to its success. A Dutch observer of the early use of solitary confinement stated that it "appeared not to be successful at all. Again and again reports of insanity, suicide, and the complete alienation of prisoners from social life seriously discredited the new form of punishment." As yet another Dutch witness explained, "mind control became the major objective, and solitary confinement fit into

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1 *In re Medley*, 134 U.S. 160, 168 (1890).
this model. The plan was to keep prisoners completely isolated from each other and the outside world so they would be compelled to reflect, break down, be isolated from any outside negative influences, and undergo a positive behavioral transformation.  

The United States began implementing solitary confinement in its penal institutions more than 200 years ago, and its harmful effects were almost immediately apparent and acknowledged by the Supreme Court. However, with the exception of limited legislation in a handful of states restricting the use of solitary confinement, there are no laws in the United States prohibiting the practice. The main tools inmates use to challenge the conditions found in so many of our prisons solitary confinement housing units in contravention of their Constitutional rights can be found in the Eighth and Fourteenth Amendments. “The question is whether [a] penalty subjects the individual to a fate forbidden by the principle of civilized treatment guaranteed by the Eighth Amendment?” A punishment must be examined “in light of the basic prohibition against inhuman treatment,” and the Eighth Amendment was intended to preserve the “basic concept . . . [of] the dignity of man” by assuring that the power to impose punishment is “exercised within the limits of civilized standards.” Beginning with Holt v. Sarver, federal courts found prisons systems were in violation of the cruel and unusual

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5 Id.
6 Id.
8 Id. at 99-100.
punishments clause, and remedial orders directed to improving prison conditions and ameliorating prison life were imposed in approximately two dozen States.\textsuperscript{10} A California district court in \textit{Madrid v. Gomez}, held that the confinement at the SHU at Pelican Bay of the mentally ill and those susceptible from suffering from mental illness were sufficiently injurious to the psychological well-being of inmates to constitute a cruel and unusual punishment under the Eighth Amendment.\textsuperscript{11} The court stated that the solitary confinement of such inmates “put them at significant risk of serious mental illness, constituted a deprivation of a minimal life necessity, and demonstrated deliberate indifference to, and was thus a violation of, the inmates' Eighth Amendment rights.”\textsuperscript{12}

However, even after the failed reformation of the system whereby individual states played fast and loose with the supposed “proper protocol” for throwing prisoners into the “hole”, courts have still neglected to take a hard line approach and seriously reform the system nationwide. On any given day in any Solitary Housing Confinement (hereinafter “SHU”), you will find rampant mental illness, prisoners that have been beaten by guards, inmates that are often left unfed for days, and many times, inmates are subjected to these inhumane conditions for the slightest infraction. Solitary confinement has had a dark and lengthy history since its inception, with the United States in particular spearheading the movement. With the advent and popularization of the idea of a “modern penitentiary” during the first half of the nineteenth century in the US, the practice has


\textsuperscript{12} \textit{Id.} at 1155.
quickly became the widespread standard among our nations’ correctional institutions. According to the Fourteenth Amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”\(^\text{13}\) A person's liberty is equally protected, even when the liberty itself is a statutory creation of the State.\(^\text{14}\) The touchstone of Due Process is protection of the individual against arbitrary action of government.\(^\text{15}\) The Supreme Court held in *Ruiz v. Estelle* that the plaintiff inmates had been not received appropriate medical care and were subjected to "threats, intimidation, coercion, punishment, and discrimination, all in the face of protective orders to the contrary by the district court, and in violation of the Eighth."\(^\text{16}\) The Eighth Amendment establishes a state's obligation to provide medical care for those whom it is punishing by incarceration,\(^\text{17}\) and this duty is a direct consequence of the state's power to deprive a person of his freedom for a violation of its penal laws.\(^\text{18}\) An inmate is denied the freedom to care for himself, as he otherwise might. "(He) must rely on prison authorities to treat his medical needs and if the authorities fail to do so, those needs will not be met."\(^\text{19}\)

\(^{13}\) USCS Const. Amend. 14, USCS Const. Amend. 14, § 1  
\(^{14}\) *Id.*  
\(^{15}\) *Dent v. West Virginia*, 129 U.S. 114, 123 (1889).  
\(^{16}\) *Ruiz v. Estelle*, 679 F.2d 1115  
\(^{18}\) *Id.*  
\(^{19}\) *Id.*
Solitary confinement and its potentially harmful effects to prisoners caused a decline of the practice in most American prison systems, however, during the 1980’s solitary confinement regained popularity when our government created the so-called "Super Max" prisons following an incident at Marion Penitentiary in Illinois, where two guards were murdered on the same day.\textsuperscript{20} This, in conjunction with an increase in prison violence and overcrowded prison populations, caused a sharp increase in the use of solitary confinement.\textsuperscript{21} This spike in the use of SHU’s spread rapidly across the global community. So much so that Amnesty International and various human rights organizations decided to monitor and report on the prevalence of this type of punishment in global communities such as Turkey (Human Rights Watch 2001; Amnesty International 2003), Iran (Human Rights Watch 2004\textit{a}), and Tunisia (Human Rights Watch 2004\textit{b}).\textsuperscript{22}

In the United States, solitary confinement is supposed to be used for three reasons: "to punish violations of prison rules (disciplinary segregation); to isolate prisoners who are a threat to the safety and security of the prison (administrative segregation); and to protect vulnerable prisoners, such as those potentially targeted for violence in the general prison population (protective custody)."\textsuperscript{23}

\begin{flushleft}
\textsuperscript{21} The term "marionization of American prisons" has been used
\textsuperscript{23} AMERICAN CIVIL LIBERTIES UNION & HUMAN RIGHTS WATCH, GROWING UP LOCKED DOWN: \textit{YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES} 29 (2012) [hereinafter GROWING UP LOCKED DOWN].
\end{flushleft}
As previously stated, with overcrowding in our prisons, and unwieldy prisoners causing dangerous conditions for correctional officers and fellow inmates, the use of solitary confinement and punitive segregation units has increased exponentially over the last fifty years.\(^{24}\) We will begin our analysis of the effects of solitary confinement and punitive segregation by examining statistics, literature, and case law that sets forth guidelines and imposes limitations on its use in state and federal prisons. Following an in-depth look at the current data on solitary confinement, we will examine the pressing question regarding the negative psychological impacts that solitary confinement. Moving forward from the history of solitary confinement as legal punishment, the data regarding the psychological effects and the threat that this type of confinement poses for the mental health of prisoners must be evaluated from a moral perspective.\(^{25}\) Many prisoners who end up in solitary confinement are not prisoners who refuse to acquiesce to the norms and rules surrounding prison life, but who are incapable of functioning in any capacity in most environments due to their predisposition to mental illness. These often undiagnosed or miscategorized prisoners are left to their own demise, and many times their underlying psychological issues are exacerbated because they do not receive the proper treatment, medical or otherwise, that would enable them to coexist and function optimally in an institutional setting.

The guidelines and procedures that are currently in place to assess whether a prisoner should be placed in solitary confinement are blurry at best, and often abused and misapplied by correctional officers. Unfortunately, a system designed to “protect” the

\(^{24}\) *Supra* GROWING UP LOCKED DOWN
\(^{25}\) *Id.*
correctional officers, as well as other inmates, and themselves, has fallen short on many levels. The guidelines are ignored when correctional officers are put to the task of determining if and when it is appropriate for them to remove an inmate from the general population and place them in solitary confinement. I believe that this is the product of a failure and breakdown of effective training methods to equip the officers on how to properly handle various situations involving incompliant or dangerous inmates. Furthermore, there is also a lack of oversight by supervising officers, either through ignorance or a conscious decision to ignore the institutional guidelines that are in place to protect the prison community. Even in the face of countless empirical studies recognizing the nature and magnitude of the psychological trauma that inmates endure when they are subjected to this archaic form of punishment, perhaps the most fundamental miscarriage of justice occurs when the regulations and policies fail to properly limit the nature and duration of inmates' exposure to days full of solitude.

Juan E. Méndez, United Nations Special Rapporteur on Torture, reports that United States' prisons hold more than eighty-thousand people in solitary confinement on any given day for a wide variety of offenses. Twenty-five thousand of those individuals are being held in "supermax" prisons, which are long-term solitary confinement facilities that are designed to control prisoners through sensory deprivation, isolation, and various forms of psychological and physical abuse. The widespread use of solitary confinement is particularly troublesome in light of the lack of guidelines as to

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27 See Méndez Report
when punitive solitary confinement may be used, whom it may be used against, and the
duration for which it may be used. Moreover, medical experts have confirmed concerns
that the overuse of punitive solitary confinement can cause severe physical and
psychological harm. The Inter-American Commission on Human Rights (IACHR) has
recommended that United States' authorities "restrict the use of solitary confinement of
prisoners in accordance with international human rights standards." The argument is
that the lack of oversight and excessive use of disproportionate punishments violate the
Eighth Amendment.

The rationale behind solitary confinement has been the decrease of violence in
prison systems, however, that type of harsh institutional culture and prisoners have
challenged the detrimental effects of solitary confinement on their psychological and
physical health. Although, as previously discussed, there have been due process
violations regarding the way in which it is determined that a prisoner will do their time in
solitary, the vast majority of cases brought against these institutions are based on the
deplorable conditions of imprisonment for the inmates. Several U.S. courts have
severely criticized conditions in solitary confinement, but long-term isolation alone has

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28 See Physicians for Human Rights, Buried Alive: Solitary Confinement in the US
Detention System viii (April 2013)
29 See Press Release, Inter-American Commission on Human Rights, IACHR Expresses
Concern over Excessive Use of Solitary Confinement in the U.S., IACHR Press Release
No. 51/13 (July 18, 2013) [hereinafter July 18 IACHR Press Release].
30 Id.
31 Wilkinson v. Austin, 545 U.S. 495 (2005)
a Problem?" Punishment and Society 1:163-86.
not been declared unconstitutional in violation of the Eighth Amendment without aggravating factors present.\textsuperscript{33}

The prevalence of mental health disorders and psychological suffering within our prison populations is astoundingly high. A 2002 psychiatric study involving 22,790 prisoners in twelve different countries concluded that 3.7 percent of male prisoners and 4 percent of all female prisoners had psychotic illness, 10 percent of the male and 12 percent of female prisoners were diagnosed with major depressive disorder, and 65 percent and 42 percent, respectively, suffered from a personality disorder.\textsuperscript{34} The study proved that "serious psychiatric disorders are substantially higher in prisoners than in the general population".\textsuperscript{35} Solitary confinement in a supermax facility has long-lasting, negative psychological effects on the majority of inmates. A witness described a scenario at the supermax Pelican Bay State Prison as follows: "One inmate stands in the middle of his cell, hollering at no one in particular. Another bangs his head against the door. Many of the inmates are naked, some exposing themselves."\textsuperscript{36}

Between 1975 and 2000, the rate of incarceration increased by four times, and the increase in supermax prison facilities can be directly linked to such prison overcrowding, and supermax was intended to be the solution.\textsuperscript{37} In 1983, the first supermax prison

\textsuperscript{33} \textit{Id.}
\textsuperscript{35} \textit{Id.} at 548.
facility in the United States opened in Marion, Illinois, in reaction to inmates killing two of the Marion prison guards on the same day.\textsuperscript{38} Today, most supermax facilities are fashioned after the "Marion Model."\textsuperscript{39} This model focuses on disciplining the inmate rather than rehabilitation,\textsuperscript{40} and this model spurred the creation of the Pelican Bay State supermax as well.\textsuperscript{41} In excess of sixty supermax institutions were open in the United States in the year 1997, and in 2004, there was at minimum one supermax facility in forty-four states.\textsuperscript{42}

The cells in supermax prisons are constructed with the intent "to monitor, to control, to isolate"\textsuperscript{43}, prisoners by depriving them but all of the basic necessities of life. They have only "minimal freedom of movement, no opportunity to touch another human being in friendship or with affection, no ability to engage in meaningful or productive physical or mental activity, and so on."\textsuperscript{44} With around the clock surveillance and a total lack of human contact, the effects of solitary confinement are experiences of "stark sterility and unremitting monotony."\textsuperscript{45} Each area of the supermax facility has four cellblocks that are called "pods," and each is equipped with its own computer-controlled showers and recreation areas that resemble "dog pens."\textsuperscript{46} Each separate unit where

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{39}\textit{Id.}
\item \textsuperscript{40}\textit{Id.}
\item \textsuperscript{41}\textit{Id.}
\item \textsuperscript{43}Sullivan, \textit{supra} note 34.
\item \textsuperscript{44}\textit{Id.}
\item \textsuperscript{45}Madrid v. Gomez, 889 F. Supp. 1146, 1230 (N.D. Cal. 1995).
\end{itemize}
\end{footnotesize}
prisoners are in solitary confinement are referred to as "secure housing units" (SHUs).47

The walls within each cell are bare and windowless, with the only light being one bulb that stays on twenty-four hours a day, so inmates cannot tell what time it is, and to add insult to injury, inmates will face further punished if they attempt to cover the light.48 The doors are made of solid steel, interrupted only by a small approximately eye-level clear window and a waist-level food slot", and are soundproof to prevent any type of conversation from taking place.49 The doors also prevent one from seeing anything and cut off ventilation, so that the air becomes "heavy and dank."50 There is no recreational equipment in the cell, so prisoners just pace back around their cells like "caged animals".51 Furthermore, when an inmate leaves his cell, he must usually undergo a "visual strip search" in front of the correctional officers, so they usually opt not to stay in their cells to avoid humiliation.52 Interaction with prison guards is extremely limited because prison officials blare instructions to the inmates through loud speakers.53 The only form of human contact that a prisoner in solitary has is when his meal is pushed through a slot in the door.54 This meal consists of tasteless block called "nutra-loaf", containing "just enough nutrition for survival", and must be consumed in alone in their

47 Id.
49 Id.
50 Id.
51 Id.
52 Id.
54 Id.
cells to avoid interaction with anyone.\textsuperscript{55} Additionally, inmates in solitary cannot have any educational or personal materials.\textsuperscript{56} As an example of this, an inmate in solitary in Colorado was denied books written by President Obama because allowing the inmate to have such literature would be "potentially detrimental to national security."\textsuperscript{57} Once a prisoner is designated to a SHU, they could realistically go years without seeing another human.\textsuperscript{58}

Once an inmate is in solitary, the prisoner is confined to the SHU for about twenty-two or twenty-three hours a day, with the remaining hour or two are for a shower or recreation time.\textsuperscript{59} The new technology and heightened security make it possible for inmates to "go for months or even years without any meaningful social or physical contact."\textsuperscript{60} Some supermax facilities go so far as to use "tele-medicine" and "tele-psychiatry," which allow physicians who are located off-premises to "examine" the inmates through TV screens.\textsuperscript{61} This falls far short of the medical care many inmates need, especially when speaking of the silent misery of mental illness that many of them face. Only ten percent receive visits, where they remain shackled and belly chained, and are

\begin{footnotes}
\item[57] Id.
\item[59] Hresko, supra note 53.
\item[61] Mental Health Issues, supra note 37, at 126.
\end{footnotes}
forced to speak into small screens on the other side of the room that have terrible audio quality.\textsuperscript{62}

The mental effects caused by prolonged solitary confinement are recognized and well-documented in extensive, clinical research and empirical data.\textsuperscript{63} These "serious psychological, psychiatric, and sometimes physiological effect on many prison inmates ranges from hallucinations to insanity."\textsuperscript{64} Sadly, when a former warden of a modern supermax facility wrote in 2004 that "after long-term confinement and the loss of hope for offenders controlled under [supermax] conditions, mental deterioration is almost assured," he said nothing that had not been recognized for well over one-hundred and fifty years.\textsuperscript{65}

Psychiatrist Dr. Stuart Grassian, a former member of Harvard Medical School, now associates Reduced Environmental Syndrome (RES) or "isolation sickness" with prolonged administrative segregation.\textsuperscript{66} The symptoms include PTSD, perceptual distortions, illusions and hallucinations, panic attacks, hypersensitivity to external stimuli, difficulties in thinking, concentration, and memory, "intrusive obsessional thoughts" or "emergence of primitive aggressive ruminations," overt paranoia, and problems with impulse control.\textsuperscript{67} Dr. Grassian has also called this condition "acute

\textsuperscript{62} Id.
\textsuperscript{63} Health Issues \textit{supra} at note 40.
\textsuperscript{64} Id.
\textsuperscript{65} Mental Health Issues \textit{supra} at note 37.
\textsuperscript{67} Id.
organic brain syndrome" or "delirium"\textsuperscript{68}, and more startlingly it results in electroencephalogram (EEG) abnormalities in the brain showing "diffuse slowing of brain waves" in prisoners after just a week in solitary.\textsuperscript{69} The decline in EEG activity is connected to "a reduction in stimulation seeking behavior"\textsuperscript{70}, as inmates withdraw and their mental functioning becomes diminished.\textsuperscript{71} This actually causes a "drop in mental alertness", thereby making concentration difficult, which causes a marked decrease in motivation.\textsuperscript{72} As a result, prisoners suffer physically to remain active and struggle to use speech and motor systems, while they experience a "disinclination to learn".\textsuperscript{73}

Dr. Craig Haney, a professor of psychology at the University of California, Santa Cruz, studied one hundred prisoners in the Pelican Bay Security Housing Unit and reported that ninety-one percent of the prisoners suffered from anxiety and nervousness; eighty percent suffered from headaches, lethargy, and insomnia; and seventy percent were concerned about having an "impending breakdown."\textsuperscript{74} Some of the social pathologies that Haney discovered were that prisoners are unable to organize their lives around a purpose or goal, they begin to suffer from apathy, lethargy, and despair, they lose the ability to concentrate and complete basic of task, they no longer have a sense of self and become "literally at risk of losing their grasp on who they are, of how and

\textsuperscript{68} Id.
\textsuperscript{69} Id.
\textsuperscript{70} Sharon Shaley, \textit{A Sourcebook on Solitary Confinement, Mannheim Center for Criminology & London School of Economics 31} (Oct. 2008), www.solitaryconfinement.org/sourcebook.
\textsuperscript{71} Id. at 20.
\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Mental Health Issues, \textit{supra} at note 37.
whether they are connected to a larger social world." These severe issues that develop throughout solitary confinement can "significantly interfere" with the hope of any successful adjustment back into society upon release. The inmates become "unnaturally sensitive, and vulnerable to the influence of those who control the environment around them" and begin acting out in fits of rage, anger and become "consumed with revenge fantasies." 

Dr. Grassian believes that all of these cumulative effects are devastating for prisoners who will be integrated back into population because it leaves the inmate "socially impoverished and withdrawn, subtly angry and fearful when forced into social interaction." They can no longer know how socially interact, they are prone to severe bouts of depression, and lack impulse control. One's identity is formed through social interactions, and once that has been compromised, people lose complete grasp of who they are and how they conduct themselves in a civilized society. To simply ignore the ramifications of solitary confinement on the individual and the community would be ethically and morally irresponsible.

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75 Mental Health Issues, supra note 37, at 137.
76 Id. at 144.
77 Id.
78 Grassian, supra note 6, at 333.
79 Id.
PART I A: LOCAL STUDY OF THE EFFECTS OF SOLITARY CONFINEMENT

Based on a year of study and analysis, the New York Civil Liberties Union found that New York’s use of severe isolation is arbitrary, unjustified, inhumane and dangerous. This mode of extreme punishment is often used as a “disciplinary tool of first resort” and prison officials have unbridled discretion to levy such harsh isolation and deprivation sanctions against inmates. The range of infractions that are deemed SHU-worthy include minor, non-violent, non-compliant and vulnerable inmates, such as the elderly, mentally infirm, juveniles, and prisoners with substance abuse issues, whose underlying problems are intensified due to the inhumane conditions in solitary. Not only does extreme solitary confinement put corrections staff in harms way when dealing with the aftermath of this disciplinary process, but it also causes prisoners “emotional and psychological harm, inducing apathy, lethargy, depression, despair, rage, and uncontrollable impulses, even among the mentally stable.” Extreme isolation, especially for those with mental illness, is incredibly damaging and even life threatening, because their emotional and psychological issues are amplified by the deprivation of “food, exercise, basic hygiene, and lack of medical and mental health care.” Sadly, prisoners who suffer from unaddressed mental health issues often resort to self-harm and suicide.

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81 Id. at 2.
82 BOXED IN, at 2.
83 Id. at 2.
84 Id.
85 Id. at 2.
Prison staff working in this environment also suffer severe psychological issues that not only affect their professional lives, but the issues also play a role in aggression and the deterioration of interpersonal relationships due to depression and anger management issues.\(^6\) In addition, prison and community safety are jeopardized as well. Not only are these prisoners more unstable when released back into the general prison population, but the nearly two-thousand prisoners who are released from isolation into the streets on a yearly basis are oftentimes so psychologically damaged that they and prone to attacks and violent outbursts.\(^7\) Solitary confinement socially stunts inmates during their prison sentence and leaves prolonged and permanent psychiatric disabilities including impairments, which "may seriously reduce the inmate's capacity to reintegrate into the broader community upon release from prison."\(^8\) When the prisoners are in solitary, they receive absolutely "no educational, vocational, rehabilitative, or transitional programming."\(^9\) They are simply not equipped with the tools necessary to rejoin the prison population, and they certainly are not prepared to rejoin the ranks of society.\(^10\)

\(^6\) Id. at 2.
\(^7\) Id.
\(^10\) Id.
PART II: A MORAL ANALYSIS: AN INTRODUCTION TO FINNIS AND NATURAL LAW

John Mitchell Finnis is an Australian legal scholar and pioneer in the field of Moral Theory, Jurisprudence, and Political and Legal theory.\textsuperscript{91} Finnis was educated at St. Peters College in Adelaide and attended the University of Adelaide, where he was a member of St. Mark's College.\textsuperscript{92} He based his thesis on the concept of judicial power with reference to Australian federal constitutional law, winning a Rhodes scholarship to University College, Oxford, in 1962, where he successfully obtained his Doctorate in Philosophy.\textsuperscript{93} He has also taught at the University of California, Berkeley, and then returned to the University of Adelaide. He then taught at Boston College and was also appointed as the head of the law department at University of Malawi.\textsuperscript{94}

As a Fellow of the British Academy, he advised a number of Australian governments on federal-State and UK-Australia constitutional relations, and also argued appeals in the Divisional Court and the Court of Appeals at the English Bar.\textsuperscript{95}

He is an esteemed Emeritus Professor at University College, Oxford and a Professor of Law at University of Notre Dame, where he teaches Jurisprudence, based on

\textsuperscript{91} The University of Notre Dame Law School, Staff and Faculty, http://law.nd.edu/people/faculty-and-administration/teaching-and-research-faculty/john finnis/; last viewed on November 12, 2014
\textsuperscript{92} Id.
\textsuperscript{93} Id.
\textsuperscript{94} Oxford Law Staff and Professors, http://www.law.ox.ac.uk/profile/john.finnis/; last viewed on November 12, 2014
\textsuperscript{95} Id.
the social, moral, and legal theory of Thomas Aquinas.\textsuperscript{96} Seven hundred years later, he revisited Aquinas' ideas and dedicated the greater part of his scholarly work to the reformulation of a modern theory of Natural Law, while simultaneously teaching both Political and Constitutional Law.\textsuperscript{97}

The fundamental belief and predominant principle of his theory of natural law is that "[t]o establish 'what is really good for human persons'. "\textsuperscript{98} The "theory of natural law claims to be able to identify conditions and principles of right-mindedness, of good and proper order among persons, and in individual conduct."\textsuperscript{99} Finnis begins his analysis, following in the footsteps of Socrates in Plato's dialogues. He asks the all-important question: "What constitutes a worthwhile and valuable life?"\textsuperscript{100} Finnis is astutely cognizant of the fundamental notion expressed by Socrates that "The unexamined life is not worth living" and uses this premise as a springboard for structuring his analysis.\textsuperscript{101}

His seminal text, Natural Law and Natural Rights (1980), provides an in-depth analysis of two seemingly diametrically opposed notions.\textsuperscript{102} "Natural" typically denotes nature and an idea of the natural world at large, while "law" is often perceived as an inflexible set of rules imposed by legislative bodies to maintain order for the common

\textsuperscript{96} The University of Notre Dame Law School, Staff and Faculty, http://law.nd.edu/people/faculty-and-administration/teaching-and-research-faculty/john finnis/: last viewed on November 12, 2014

\textsuperscript{97} The University of Notre Dame Law School, Staff and Faculty, http://law.nd.edu/people/faculty-and-administration/teaching-and-research-faculty/john finnis/: last viewed on November 12, 2014

\textsuperscript{98} Wacks, R Philosophy of Law – A Very Short Introduction (Oxford University Press, 2006) at 14-15

\textsuperscript{99} John Finnis, Natural Law & Natural Rights (Oxford University Press, 2nd ed. 2011), page 105. [Hereinafter Finnis].


\textsuperscript{101} Id. at 38a

\textsuperscript{102} See Finnis, supra note 99.
good of society. Finnis lays a foundation of inherent and basic principles and values; the "common good" in relation to the community-at-large, authority, obligation, human rights and the paradox of justice; laws that fail to serve the purpose of justice; and then proceeds to juxtapose these ideas with the meaning of a higher, divine authority. 103 The principle behind the amalgamating of these two theories into one cohesive theory may initially be difficult to comprehend. After studying his text, however, it is clear that the basis of his inquiry is founded on the proposition that the "essence of natural law may be said to lie in the constant assertion that there are objective moral principles which depend upon the nature of the universe..." 104

In applying a moral analysis to the issue of whether solitary confinement can constitute cruel and unusual punishment in contravention of the Constitution, we have to first select one of the three widely recognized moral theories of Relativism, Positivism, or Realism. First, the Relativists' school of thought is that there are no absolute truths because each of the innumerable cultures that exist has their own, distinct and ever-changing and idea of the universal truth. 105 Positivists view the law as a static set of rules, and they believe that morals and law are completely unrelated. They view the law as an exact science and "whether a law was moral or immoral is not within the province of jurisprudence." 106 On the other hand, the concept of Realism is more fluid and based on the idea that a judge or someone with the authority to assume the role of decision maker

103 Id. at 22-24.
104 Michael D.A. Freeman, Lloyd's Introduction to Jurisprudence 90 (7th ed. 2001)
105 Id.
is responsible for the interpretation and application of the rules.\textsuperscript{107} Until that time, the rules are simply unable to be defined and properly applied.\textsuperscript{108} This empowers the decision makers with the ability to introduce their own perceptions, morals, experience, and values into their belief of what is right and wrong in relation to the law.\textsuperscript{109}

On the other hand, natural law merges law and morality, as John Finnis contends that the primary basis for the existence of a law is the promotion of both the individual as well as the common good.\textsuperscript{110} To that end, reason is the quintessence of law, the basis of which is the foundation of justice as its principal purpose.\textsuperscript{111} As a result, whether a law is reasonably justified rests on whether it promotes both the individual and the common good.\textsuperscript{112}

**PART II A: FINNIS’ SEVEN BASIC GOODS AND NINE BASIC REQUIREMENTS OF PRACTICAL REASONABLENESS APPLIED TO SOLITARY CONFINEMENT**

Finnis postulates that there are seven fundamental basic goods that truly embody what it means for one to live a worthwhile existence.\textsuperscript{113} The “basic goods” or essential values that Finnis credits to leading a rewarding existence consist of life, knowledge, play, aesthetic experience, sociability/friendship, practical reasonableness, and

\begin{footnotesize}
\begin{enumerate}
\item See Ambrosio, supra note 106, at 1191.
\item See also Ambrosio, supra note 106, at 1190.
\item Id.
\item Id.
\item Id.
\item See Ambrosio, supra note 106, at 1218.
\item See also Ambrosio, supra note 106, at 1190.
\item John Finnis, *Natural Law & Natural Rights* (Oxford University Press, 2nd ed. 2011).
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religion.\textsuperscript{114} Finnis believes that these goods are "intrinsic", in that their importance lies in what one receives from merely having them, and not, as in the case of Rawls, used as a means to obtain other goods.\textsuperscript{115} They are not coveted for the sake of having them, but instead are absolutely fundamental to the existence of every human being.\textsuperscript{116} Finnis believes that these seven basic goods are all self-evident, should be understood and embraced by all, and all goods are given equal weight equally fundamental to the theory of natural law.\textsuperscript{117} He believes that these goods are universal because they apply to all humans, in all situations, and at all times, and in order for us to reach our full potential, we must incorporate these goods into our daily lives.\textsuperscript{118} Finnis states that this is not an exhaustive list because there are countless objectives of form and good, deriving from self-determination and self-realization, which include "...generosity, moderation, gentleness, and so on, and are not themselves basic values; rather they are ways of pursuing basic values, and fit a person for their pursuit."\textsuperscript{119} He categorically rejects Rawls' "thin theory of the good" which considers liberty, opportunity, wealth, and self-respect as 'primary goods', "not because they are the basic ends of human life but because 'it is rational to want these goods whatever else is wanted, since they are in general necessary for the framing and execution of a rational plan of life'.\textsuperscript{120}

\textsuperscript{114} Id. at 86-90.
\textsuperscript{115} Id.
\textsuperscript{116} Finnis, supra note 99, at 83.
\textsuperscript{117} Id.
\textsuperscript{118} See Finnis, supra note 99, at 81.
\textsuperscript{119} Id. at 90-91.
\textsuperscript{120} See also Finnis, supra note 99, at 82.
Rawls does not subscribe to the belief that one must attribute intrinsic value to such basic forms of good as truth, play, art, or friendship.\textsuperscript{121}

Finnis applies the nine requirements of practical reasonableness that provide a cogent foundation for his moral analysis.\textsuperscript{122} His nine requirements are to formulate “a coherent plan of life”, to refrain from having an arbitrary preference amongst basic goods, to refrain from having an arbitrary preference amongst persons, to have a sense of detachment from all the specific and limited projects one undertakes, not to abandon general commitments lightly, to bring about good with efficiency, to respect every basic value in every act by never choosing against a basic good, to favor and foster the common good of one’s communities, and to follow one’s conscience.\textsuperscript{123} All of the requirements are interconnected, although not every moral analysis will incorporate each of the nine requirements of practical reasonableness to effectively determine moral obligation or accountability.\textsuperscript{124} It is the “practical principles which enjoin one to participate in those basic forms of good, through the practically intelligent decisions and free actions that constitute the person one is and is to be, have been called in the Western philosophical tradition the first principles of natural law, because they lay down for us the outlines of everything one could reasonably want to do, to have, and to be.”\textsuperscript{125}

Finnis’s moral analysis begins with a coherent life plan, which he outlines as the first requirement of practical reasonableness.\textsuperscript{126} The basic aspects of human well-being are only discernible to one who thinks about his opportunities, and thus are realizible

\textsuperscript{121} \textit{Id.}
\textsuperscript{122} \textit{Id.} at 100.
\textsuperscript{123} \textit{Id.} at 100-126.
\textsuperscript{124} \textit{Id.}
\textsuperscript{125} \textit{Id.} at 97.
\textsuperscript{126} \textit{Finnis, supra} note 99, at 103-105.
only by one who intelligently directs, focuses, and controls his urges, inclinations, and impulses.\textsuperscript{127} One cannot simply live by impulse, or stray from their commitments in order to fulfill their goals. There must be direction and control of impulses working in unison to undertake and fulfill commitments. This also requires the “redirection of inclinations, the reformation of habits, and the abandonment of old and adoption of new projects” in order to harmonize one’s deep commitments.\textsuperscript{128} The emphasis is on choosing how to live one’s present life, when he recounts the biblical verse from Ecclesiasticus 7:36: ‘in whatever you do, remember your last days’.\textsuperscript{129} Finnis emphasizes rational choices, and making the most of opportunities that will bring you self-fulfillment, confidence, self-respect, and success.\textsuperscript{130}

In applying the first requirement of practical reasonableness to the use of solitary confinement, we immediately encounter several problems. Rather than working towards reform and the adoption of innovative methods to humanely assert order within their prison systems, correctional officers, wardens, etc., are simply walking in lock-step with outmoded notions of the most extreme form of incarceration, with tragically unsuccessful results. For a time it might be easier to coop inmates up in solitary and inflict complete sensory deprivation on them, causing disorientation and a breakdown of their criminal behavior. But looking beyond that, beyond the orders of superiors, beyond what has become “the norm” in our prison systems, and based on the many horrific cases of the mistreatment and abuse of these prisoners, it is impossible to say that these correctional officers truly employ impulse control in what is supposed to be their commitment to the

\textsuperscript{127} Id.
\textsuperscript{128} Id.
\textsuperscript{129} Ecclesiasticus, 7:36
\textsuperscript{130} Id.
general welfare of themselves, the inmates, and the community. These individuals are forsaking the basic goods of life (often suffering psychologically and creating physically more dangerous environments in which they must function); knowledge (the inherent feeling and hard facts that what they are doing is deleterious to others); sociability (there cannot be peace and harmony amongst inmates and officers in this situation); practical reasonableness (seemingly, they are not calling on their own intelligence to make choices and shape their own character). Instead of doing the same thing over and over again, and expecting different results, there needs to be the formulation of a coherent life plan through psychological and physical training techniques for prison staff to effectively cope with their power positions, which in turn will foster their confidence and self-respect. In falling terribly short of this first requirement, there is no main culprit to point the finger at. Appallingly, this sub-human treatment of inmates in solitary is the standard, which gets passed onto new correctional officers, prison administrators, and the like. Until the point where change is effectuated and a serious harmonization of one’s deep commitments to the welfare of all involved in the system, the cycle will continue.

As the second prong of the practical reasonableness requirements, Finnis asks us to have no arbitrary preferences amongst basic human values. Finnis posits “Any commitment to a coherent plan of life will involve some degree of concentration on one or some of the basic forms of good, at the expense, temporarily or permanently, of another.” This commitment must be rationally based on “one’s actual capacities, circumstance’s and tastes. Finnis flatly rejects Rawls’s ‘thing theory of the good’ as arbitrary because Rawls insists that one mustn’t treat as primary goods life, liberty,

\[131\] Id. at 100-106.
\[132\] Id.
opportunity, wealth, and self-respect, and that one must not attribute intrinsic value to the basic forms of good such as truth, play, friendship, or art.\textsuperscript{133} Finnis uses the example that it is unreasonable for one to subject a child of theirs to the notion that they must conform "willy-nilly" to the standards they've set for themselves.\textsuperscript{134} He believes that to disallow reasonable participation in intrinsic human values can irrationally restrict oneself and anyone in their care\textsuperscript{135}. Knowledge is a form of excellence, and error and ignorance should not be encouraged in oneself or others.\textsuperscript{136}

In the context of solitary confinement, it is unreasonable because the basis of it is the devaluation of any of the basic forms of human excellence, and it also overvalues conditionally valuable goods like reputation. The quality of human life in the context of an inmate in solitary confinement, is completely in the hands of others, be it legislators, correctional officers, or wardens. The way that the system is set up bolsters Rawls's "thin theory of the good", because the basis for and neglect of any reasonable reform of solitary confinement are founded solely on the principles of justice. From the perspective of the individuals who wield the power to make change, their primary focus is on their own liberty (their own liberty interest in remaining safe from "criminals" and "protecting the community"), self-respect (egoism and reputation), opportunity (perhaps there is a better possibility for upward mobility if they didn't rock the boat), and wealth (they are making a living while knowingly inflicting psychological and physical pain on other human beings). If these individuals applied knowledge, friendship/sociability, religion, practical reasonableness, or quality of life as a whole, as Finnis suggests, the end result

\textsuperscript{133} \textit{Id.}
\textsuperscript{134} \textit{Id.}
\textsuperscript{135} \textit{Id.}
\textsuperscript{136} \textit{Id.}
would require positive reform for the common good and a more favorable existence for all.

Finnis' third requirement of practical reasonableness moves into the realm of human goods, and dictates that there be no arbitrary preference amongst persons. One's own well-being can, however, reasonably be the first claim of interest and concern, not simply because it is theirs, but because it is only through this self-determination, self-realization, and participation in the basic goods, that one can do what reasonableness requires. Finnis refers to this as a "reasonable scope for self-preference". An unfortunate by-product that must be avoided is hypocrisy, selfishness, and indifference to others. The non-philosophical resolution to this conundrum can be found in the moral appeal of the biblical "Golden Rule", which postulates that we must do unto others as you are willing to do unto yourself, and put yourself in your neighbor's shoes. Finnis continues, "These are requirements of reason, because to ignore them is to be arbitrary to individuals." Next is the issue as to what degree one can reasonably favor themselves, their family, etc.? Finnis answers that we must look at the "whole arena of human affairs" as an 'ideal observer' who applies the standards and principles of justice to each individual "equally at heart and equally in mind". Finnis concludes that, "Provided we make the distinctions between basic practical principles and mere matters of taste, inclination, or ability, we are able to favor the basic forms of good and to avoid and

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137 See Finnis, supra note 99, at 105-106.
138 Id.
139 Id. at 107.
140 Id. at 108.
discourage their contraries. In doing so we are showing no improper favor to individuals.\textsuperscript{141}

Every fundamental value is at stake when considering the state of the institutionalization of human beings into something “less than” through the process of solitary confinement. One must ensure that one is not arbitrarily giving preference for one’s own good over the greater common good of the community.\textsuperscript{142} Although there is room for self-preference, which in this case would be the protection of the prison staff, this must not be abused, or you run the risk of indifference to others, and all other forms of egoistic and group bias. It is hard to deny that there is fundamental partiality between corrections officers and inmates in solitary confinement, which jeopardizes the good of both the general prison community, as well as the community-at-large. From the barren walls, to computer-controlled showers, and the “nutra loaf” diet, the balance between the rights of the prisoners and those who guard them couldn’t be any more extreme. From a NJ.com article dated December 1, 2014, a former inmate, Tyrone Barnes, who finished his own armed robbery sentence in 2012 stated, “‘You got a guy who steals a Snickers bar in the store room, he’s in segregation for 90 days.’\textsuperscript{143} Barnes now works as a paralegal at a Newark law firm and volunteers legal aid to prisoners. He stated that inmates like him spend the majority of their sentence in solitary and struggle to adjust

\textsuperscript{141} Id.
\textsuperscript{142} Id. at 107
once they’re released.¹⁴⁴ He continued, “They throw them out of here with a mentality that they were mistreated, because of the conditions they was exposed to in solitary confinement,” Barnes said.¹⁴⁵ “The system creates the monsters we have out here on the streets in Newark, New Jersey. There’s no doubt that’s a contributing factor. It’s a public health issue.”¹⁴⁶ The arbitrary preference amongst persons is obvious when it comes to administrative segregation, and it is placing the general prison population and our communities in grave danger.

The fourth requirement of Finnis’ nine basic requirements of practical reasonableness is that “one must have a sense of detachment from all specific and limited projects one undertakes.”¹⁴⁷ What Finnis is referring to is fanaticism, because there are often “evil consequences of succumbing to the temptation to give one’s particular project the overriding and unconditional significance only a basic value and a general commitment can claim.”¹⁴⁸ Thus, detachment is the fourth requirement, because to be all-consuming by a project “irrationally devalues and treats as meaningless the basic human good of authentic and reasonable self-determination”, which at its core is to participate in something sensible and worthwhile.¹⁴⁹

Many of the cases of abuses of solitary confinement, whether physical or psychological, seem to be at the hands of one who has given their post an overwhelming amount of importance. As Finnis suggests, allowing oneself to be unreasonably

¹⁴⁴ Id.
¹⁴⁵ Id.
¹⁴⁶ Id.
¹⁴⁷ Id. at 106-109.
¹⁴⁹ Id.
swallowed up by a project creates the perfect breeding ground for fanaticism and evil. We need not look that far back into our history to see a perfect example of this in Nazi Germany. As a generalization, I feel that the entire prison system, from the top down, is propelled forward and motivated by fear, and at times it can be understood that this harkens back to the notion of one’s self-preference. However, without the necessary checks and balances, this mentality turns toxic and the basic human good of reasonable self-determination falls by the wayside.

The fifth requirement lays the foundation for the essential balance between fanaticism and dropping out, apathy, unreasonable failure, or ‘refusal to get involved in anything’.\textsuperscript{150} Finnis emphasizes fidelity with the basis being that we should not abandon our general commitments lightly, but instead be looking for new and creative ways to carry out their commitments, rather than simply towing the line and restricting oneself to the projects and routines with which one is familiar.\textsuperscript{151} This creativity and progress shows that one is actually “living on the level of practical \underline{principle}, not merely on the level of conventional rules of conduct, rules of thumb, rules of method, etc., whose real appeal is not to reason, but to the sub-rational complacency of habit, mere urge to conformity, etc.”\textsuperscript{152}

Generally, we have studied that our prison officials and corrections officers are guided by rigid and archaic rules, especially when it comes to solitary confinement. As Dr. Haney and Dr. Grassian, among so many others, have systematically studied and proven without a doubt, is that solitary confinement is psychologically and physically

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detrimental, and serves no real useful purpose. With this knowledge, one would think that legislators and prison officials would jump at the opportunity to put this information to good use and institute reform. For the most part, this has not been the case. However, a bill was introduced on December 1, 2014, which was sponsored by Sen. Raymond Lesniak (D-Union) and championed by a coalition of prison reform and civil liberties groups, seeking to significantly reduce the use of solitary confinement in New Jersey’s prisons amid a nationwide push to curtail the practice. 153 The NJ.com article states, “The bill would require inmates receive an initial hearing within 72 to hours of being placed in isolation, and implement a 15-day cap on isolation except in special circumstances. It would virtually eliminate the use of isolation for inmates under the age of 21, over the age of 55 and those who have serious medical conditions or mental illness. It would also require that an inmate receive a medical and mental health evaluation before being isolated, and be assessed by a clinician on a daily basis.” 154 Should legislation like this pass, the floodgates would open to reform and possible banishment of the practice. If this is the case, complacency of habit and urge to conform to rigid, inhumane practices would pave the way for a commitment to the new and most reasonable methods of inmate management.

The sixth requirement of practical reasonableness is to bring about good in the world, with one one’s own life and in the lives of others, through actions that are efficient

154 Id.
for their reasonable purpose.\textsuperscript{155} To do otherwise would be to "waste one’s opportunities by using inefficient methods.\textsuperscript{156} Finnis’ analysis in relation to efficiency is that “one’s actions should be judged by their effectiveness, by their fitness for their purpose, by their utility, and by their consequences…”\textsuperscript{157} Where there is a choice to be made, it is reasonable to prefer basic human goods to merely instrumental goods, and where damage is inevitable it is better to choose being maimed than death. Finnis’ posits a "lesser rather than greater damage to one-and-the-same basic good in one-and-the-same instantiation."\textsuperscript{158} He argues that utilitarianism and consequentialism cannot be rationally applied to comprehend a moral dilemma.\textsuperscript{159} There is no meaning that can be applied to the term ‘good’ that would allow a mere calculus to get to crux of practical reason known as moral questions. The efficiency in pursuing goals that we decide for ourselves, while avoiding harms that we regard as unacceptable, are requirements in both moral and legal applications.\textsuperscript{160}

Applying a cost-benefit analysis when examining the efficacy of solitary confinement, the calculus does not necessarily generate the conclusions. While it is clear from prisoner accounts and countless studies from the medical and psychological communities that solitary confinement is an utter failure, they have been unable to this point to come up with a better solution. The “system” has chosen what they falsely believe to be the lesser of two evils. Perhaps, however, it’s not a false notion, but a lack of experience and ineptitude that has caused them to turn a blind eye to this massive

\textsuperscript{155} Finnis, supra note 99, at 111-118
\textsuperscript{156} Id.
\textsuperscript{157} Id.
\textsuperscript{158} Id.
\textsuperscript{159} Id.
\textsuperscript{160} Id.
problem. While the prisoners are under lock and key and away from the public eye, they have complete control, yet they fail to factor in the long-term consequences of solitary confinement into the calculus. Hopefully, lawmakers like Sen. Raymond Lesniak, will finally spearhead a movement to change the equation.

Finnis’ seventh requirement of practical reasonableness is to respect every basic value in every act by never choosing against a basic good.\textsuperscript{161} One should never commit any act that damages one of the basic goods of knowledge, life, aesthetic experience, friendship, practical reasonableness, or religion.\textsuperscript{162} To do so is to “thereby engage oneself willy-nilly (but directly) in an act of opposition to an incommensurable value which one treats as if it were an object of measurable worth...”\textsuperscript{163} Instead, all acts should promote or protect, directly or indirectly, one or more of the basic goods.

Taking part in the act of confining an individual to solitude, whether you are a lawmaker, judge, correctional officer, etc., flies in the face of Finnis’s seventh requirement on many levels. Generally, the act of imposing solitary confinement on a human being runs contrary to the seventh requirement to respect every basic value by \textit{never} choosing against a basic good because the imposition of such punitive measures negatively affects \textit{every} basic good, and is thus unreasonable.

The eight requirement of practical reasonableness is to favor and foster the common good of one’s communities.\textsuperscript{164} Finnis expresses that the implications of this requirement are complex, but that "Very many, perhaps even most, of our concrete moral responsibilities, obligations, and duties have their basis in the common good."\textsuperscript{165}

\textsuperscript{161} Finnis, supra note 99, 118-125.
\textsuperscript{162} Id.
\textsuperscript{163} Id.
\textsuperscript{164} Id. at 125.
In the case of the aftermath of solitary confinement, we can begin our analysis within the prison community. As we have previously discussed, people who are intentionally deprived of the basic necessities of life and who are locked away in a dank, 4x8 cold steel cell for 23 hours a day are likely to become psychologically unstable at best. At worst, an inmate who has a predisposition to mental illness can become a ticking time bomb, just waiting to explode. Oftentimes, inmates who are released back into the general population have uncontrollable violent outbursts that lead to mayhem, bloodshed, and even death. This anger can be directed at anyone in the prison community, from guards to other inmates. Additionally, the community-at-large faces impending danger when inmates who have been institutionalized and suffered horrendous, untreated psychotic breakdowns in the SHU, are simply released back into the population without undergoing any rehabilitation or reintegration programs whatsoever. The system basically breaks these individuals down into their basest, most animalistic form, treating them as captive creatures, and then unleashes them on an unsuspecting population. To say that this is a grave failure and serious threat to the community is an understatement.

The final requirement of Finnis’ basic requirements of practical reasonableness is based on the theory set forth by Thomas Aquinas that one must follow their conscience.\textsuperscript{166} Finnis believes that “One should not do what one judges or thinks or ‘feels’-all-in-all should not be done.”\textsuperscript{167} This requirement is derived from the fact that practical reasonableness cannot be scene as static method for producing correct

\textsuperscript{165} Id.
\textsuperscript{166} Id. at 125.
\textsuperscript{167} Id.
judgments, but an aspect of personal full-being, to be respected in every act as well as 'over-all', regardless of the consequences.¹⁶⁸

I believe that if a correctional officer acted in accordance with their conscience when it came to imposing the punishment of solitary confinement on an inmate (especially in light of the extreme abuse of prisoners and complete lack of protocol regarding punitive segregation), in most instances, they would admit that it is an immoral act. If they felt otherwise, I firmly believe that they would think through the ramifications such a punishment will have on an inmate, and keep that at the forefront when weighing out whether such extreme punishment fits the crime.

CONCLUSION

Without imminent reform, we are on the verge of a profound moral-legal crisis in our country that undermines our ability to limit the harm that we will allow our law enforcement to inflict upon the population in order to preserve civil order. From our legislators to our corrections officers, we have supported boundless amounts of punitive pain, not necessarily by the overt support of solitary confinement, but in our society’s failure to educate ourselves about the nature and the consequences of abuses perpetrated by those who we place in power. The atrocities that go on in solitary confinement should not be on the conscience of the perpetrators alone, but on all of us who allow the inhumanity to continue. The culpability is shared, and the legal and ethical backbone of our country, specifically the Eighth Amendment of our great Constitution, is a doctrine that has lost the ability to meaningfully regulate these forces. If the Senate were to apply Finnis’s nine steps of practical reasonableness to this issue, it would undoubtedly lead to

¹⁶⁸ Id.
legislation that would banish, or at the very least provide for the federal regulation and strict oversight of solitary confinement. The morally correct course of action dictates action on the subject of solitary confinement, which is in line with that of a just and moral society, and in accordance with our collective conscience and the greater good.