Amnesty Now!: The Need for Collective Measures of Forgiveness to Reform the US Justice System after Mass Incarceration

In different and various ways both ends of America's hyper-punitive crim-migration system are coming under growing recognition that present practices are unsustainable and indefensible. Actual reforms, however, whether President Obama's "Clemency 2014" program under which the Justice Department began sifting through petitions from federal prisoners serving long sentences based on drugs, or the Administration's executive actions on immigration don’t go far enough. Each retains far too much of the past biases that fed mass incarceration and the criminalization of immigration law: (1) the "presumption of dangerousness" that lies against those currently caught up in the system and subject to its punitive laws, (2) confidence in the discretion of law enforcement officials to balance public safety and the need for some measure of relief.

This paper proposes a radical move for a time of extreme need: widespread amnesty laws aimed at state and federal prisoners (and former prisoners) on the criminal justice side, and aimed at currently undocumented persons holding non-US citizenship or "criminal aliens" subject to mandatory deportation. As the paper explores, amnesties are not without risk to a legal system, nor are they always welcomed by their intended beneficiaries. Indeed, they have historically been viewed as "Jubilees" or religious inspired suspensions of the legal system. There are dangerous examples where amnesty has become a regular feature of a persistently politicized justice system. This paper argues that there is a strong case today in the US for a one-time amnesty aimed at the victims of over-criminalization and over-punishment in both criminal justice and immigration. Amnesty can be justified when due to a systematic breakdown in the autonomy of the legal system from politics, the persistence of degrading treatment and the resistance of entrenched state bureaucracies to significant departures from a past of highly punitive and moralized policies. The example of Italy's 2006 Collective Clemency Bill and its results will be examined. Analogies between criminal punishment and immigration consequences will be drawn for purposes of applying common principles of amnesty across these fields.

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