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Law School Report

Troubling trends

Ethics scholar tackles increasing privatization of the U.S. prison system



An Israeli scholar and professor at Jerusalem's Hebrew University came to UB Law School on March 28 to address what he sees as a troubling trend: the increasing privatization of the U.S. prison system and other non-governmental sanctions, such as shaming penalties.

Alon Harel, currently a visiting fellow at the Centre of Ethics at the University of Toronto, discussed his recent paper on the subject with faculty and others in the Law School's new fifth-floor meeting room.

Responding to an ever-increasing number of criminals sentenced to serve time, the penal industry has been responding to the argument that private enterprise can accomplish this incarceration cheaper and more efficiently than governments can. One estimate says about 100,000 inmates are currently held in privately operated prisons, mostly in the South and the West.

A separate trend involves shaming penalties, imposition of which has grown substantially since the late 1980s. These "scarlet letter" penalties address offenses such as drunken driving, larceny, embezzlement, burglary and assault. Such penalties may include requiring petty thieves to

wear T-shirts or fluorescent bracelets announcing their crimes; displaying special license plates or bumper stickers revealing their conviction status; and posting warning signs on their property.

Harel, whose areas of research include moral and political philosophy, criminal law, law and economics, and human rights, argued that both trends circumvent an important connection: the link between the state's judgment of the wrongfulness of the action and the appropriateness of the sanction.

Privately run prisons, he said, are responsible for only one piece of that formula: the infliction of punishment. "Privatization undermines the very foundations of the criminal justice system," he said. "Criminal sanctions should be grounded in the state's judgment of the wrongfulness of the act. Privatizing the punishment severs the link between the state and the sanctions it imposes."

When courts impose shaming penalties, Harel said, "privately inflicted sanc-

tions are grounded in the private beliefs of those who inflict them." When the state asks "A" to impose sanctions on "B" – for example, by ostracizing him or limiting social interactions with him – it invests "A"

with a moral authority that properly belongs to the state.

Officials of the state – such as judges, prison guards and executioners – do not need to form private judgments of the appropriate punishment for an offender, Harel said; they are citizens functioning as an agent of the state's judgment. But shaming penalties, he said, impose that duty on average citizens who come into contact with the offender. Except for those acting in an official capacity, he said, "It is immoral to inflict sanctions unless you exercise independent judgment."

Questions from those in attendance dealt with plea bargaining, which enters into the vast majority of U.S. criminal cases; the power of victims to influence what sanction is imposed; and the role of non-profit entities, such as faith-based groups, in the criminal justice system.



"Privatization undermines the very foundations of the criminal justice system."

—Alon Harel