Making More Effective Use of Our Prisons Through Regimented Labor

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Making More Effective Use of Our Prisons Through Regimented Labor

“We all want progress. But . . . [i]f you are on the wrong road, progress means doing an about-turn and walking back to the right road; and in that case the man who turns back soonest is the most progressive.”

In 1966, Richard Franklin Speck broke into a Chicago townhouse and murdered eight nursing students. Speck would spend the rest of his life in Statesville Correctional Center, Illinois’ maximum security prison. In 1988, three years before his death, Speck made a secret videotape with his lover, in which he brags about sex, drugs, and “good times” behind bars. The videotape lasts two hours, with Speck and his lover engaging in sex, snorting a mountain of cocaine, smoking marijuana, and counting off multiple hundred-dollar bills. Speck himself marveled at his good luck to be in prison: “If they only knew how much fun I was having, they would turn me loose.” In May of 1996, A&E Investigative Reports aired the videotape on television for the first time. What shocked most people was that the two prisoners obviously had no fear of getting caught, that they were able to perform these activities in prison, and that they had the means of capturing all this on videotape.

America has the honor of achieving “the highest rate of incarceration in the world, outdistancing by a comfortable margin every other nation in prison inmates per 100,000 residents.” The issue has thus become how can we rid ourselves of this “honor” while maintaining integrity in our present system of incarceration?

As noted by one police officer in a Cook County, Illinois, penitentiary, American prison systems are a revolving door for criminals: people will commit a crime just to come in and keep themselves warm, receive “three hots and a cot”

4. See id. at 4:23.
5. See id. at 5:22.
6. Id. at 5:50.
7. See id. at 6:02.
8. See id. at 8:34.
9. See William H. Rentschler, Lock 'Em Up and Throw Away the Key: A Policy That Won't Work, USA TODAY, November 1, 1997.
(three square meals and a bed in which to sleep), full medical benefits, complete
dental services, and access to a library. She adds wryly, "[prisoners get] anything
they basically want." In Moscow's newest prison, Prison Number Five, inmates
chuckle when they remember an American who was incarcerated with them for two
weeks on the charge of hooliganism: "he wouldn't have survived any longer." They
dream of American prisons, talking of foreigners who have told them how
easy life is in American prisons. Even a current inmate in the American prison
system acknowledges, "[t]here's too much idleness, okay, in a system like this.
And when you have too much idleness, you have a tendency to breed violence.
You know, an idle mind is the devil's workshop."

This Comment suggests that if the American prison systems adopt the policies
and procedures of particular prisons which are successfully rehabilitating offenders
through labor, these practices would serve to reduce the recidivism rate by either
actually rehabilitating offenders or at least making prison life more undesirable
than living in society according to lawful bounds. Part I of this Comment briefly
looks at the history of the American incarceration system and suggests why the
modern prisons are not rehabilitating prisoners. Part II analyzes the United States
Constitution's requirements for prison conditions and policy requirements, and
briefer analyze how present conditions may be violative of the Eighth Amendment
prohibition against cruel and unusual punishment because of the havoc wreaked
upon human dignity. Part III presents various modern prison systems which have
adopted strict discipline procedures and maintain a strong emphasis upon prisoner
work, and suggests that these procedures should be adopted because they serve to
rehabilitate the offender and thus reduce recidivism.

I. HISTORY OF AMERICAN IMPRISONMENT

The ancestors of the modern American prisons were English institutions called
"bridewells." However, bridewells were not solely for confinement; they served
the dual purposes of punishment and reformation through the discipline of hard
labor. The bridewells' mission was to drain the "filthy puddle of idleness."

In William Penn's Frame of Government in 1682, he declared that "all

10. See "Behind Bars," supra note 2, at 10:55.
11. See id. at 11:02.
12. See id. at 10:30.
13. See id. at 29:56.
14. Id. at 1:49:47.
16. See JOANNA INNES, PRISONS FOR THE POOR: ENGLISH BRIDEWELLS, 1555-1800, IN LABOUR,
LAW, AND CRIME: AN HISTORICAL PERSPECTIVE 42, 42-43, 52 (Francis Snyder & Douglas Hay eds.,
1987).
17. See id. at 55.
18. WILLIAM PENN, FRAME OF GOVERNMENT OF PENNSYLVANIA—1682 (1682), reprinted in 5
FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE
STATES, TERRITORIES, OR COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA
prisons shall be work-houses, for felons, vagrants, and loose and idles persons; whereof one shall be in every county." In 1776, Pennsylvania's Constitution similarly declared that "houses ought to be provided for punishing by hard labour . . . to make sanguinary punishments less necessary." The reformers understood that labor attacked the principal cause of crime: idleness. "If solitude deployed the conscience to break the inmates down, constant labor would discipline the body, teach new habits, and lead to a recovery of lost virtue."

The founders of the early American prisons, such as New York's Auburn Prison in 1819 and Pennsylvania's Penitentiaries in 1827, sought to transform inmates through a regime of solitude, labor, and contemplation: solitude to prevent the spreading of social contagion; labor to instill the virtues of discipline and honest industry; and contemplation to allow reflection upon one's wayward past. Although these early prisons failed in reforming the prisoners, they succeeded in permanently combining the notion of imprisonment with the notion of punishment.

Prisons then turned to the "reformatory" stage, in which offenders were to be rehabilitated through academic and vocational programs. In the 1950s, the "Big House" dominated the prison scene. The typical Big House prison consisted of many large cell blocks on multiple tiers, and on average it held 2,500 men. Unlike the prisons of today, the cell blocks in the Big House were unbearably hot in the summer and freezing cold in the winter. Today's correctional institution replaced the Big House in some respects, but not all: the modern institutions continue the tradition of many cell blocks on multiple levels, but they have more recreational privileges, more liberal mail and visitation policies, and much more amenities available to inmates. Institutions today are also implementing academic, vocational, and therapeutic programs in an effort to more thoroughly

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3052 (Francis Newton Thorpe ed., 1909).
19. Id. at 3061.
20. Pa. Const. of 1776, art. I, § 39, reprinted in 5 Federal and State Constitutions, supra note 18, at 3090. The constitution also provided that "criminals shall be employed for the benefit of the public, or for the reparation of injuries done to private persons." Id.
24. See id.
25. See id. at 1013.
26. See id.
27. See id.
28. See id.
29. See id.
rehabilitate the prisoners.\textsuperscript{30}

This brief history of penitentiaries suggests that the early architects of these systems believed strongly that successful rehabilitation through imprisonment must include a labor system.\textsuperscript{31} For John Howard, the eighteenth-century “father of the penitentiary,” inmate labor was a requisite: “[m]ake men diligent, and they will be honest.”\textsuperscript{32} The modern prison systems do not make men diligent because they do not require regimented labor on the part of the prisoners.\textsuperscript{33} This lack of diligent labor has caused the modern correctional facilities to lose their rehabilitative abilities.

A. Why Current Procedures in the Prison System Do Not Rehabilitate

A recent study in recidivism in eleven states concluded that, during the past ten years, over 60% of released prisoners were rearrested; almost half of all prisoners released during the same period were reincarcerated.\textsuperscript{34} This recidivism suggests that many criminals are more dangerous when they leave prison than when they entered.\textsuperscript{35} The current incarceration system simply does not rehabilitate offenders nor deter most criminals.\textsuperscript{36} This lack of rehabilitation and deterrence may be because the American public focuses solely upon imprisonment as punishment rather than focusing upon promoting individual and social responsibilities during the incarceration period in order to avoid needing the future punishment of further imprisonment.\textsuperscript{37}

The current imprisonment consists mainly of placing one or two offenders in a cell, and leaving them in that cell for the majority of the day.\textsuperscript{38} Caging men up like animals and treating them as less than human creates rage and helplessness.\textsuperscript{39}

\textsuperscript{30} See id.
\textsuperscript{31} See Garvey, supra note 15, at 340 (The early penitentiaries were conceived as “laborator[ies] of virtue . . . founded on the hope of moral reform, which was in turn based in large part on the redeeming power of hard labor”).
\textsuperscript{32} JOSEPH P. BEYERS, PRISON LABOR, IN 2 CORRECTION AND PREVENTION: PENAL REFORM AND REFORMATORY INSTITUTIONS 193, 198 (Charles Richmond Henderson ed., 1910).
\textsuperscript{33} See Garvey, supra note 15, at 341 (“[T]oday’s prison is more often characterized as a ‘seminary of vice’ or ‘criminal university,’ where moral decay is more likely than moral reform and where hard labor has transmogrified into hard time.”).
\textsuperscript{34} See David C. Leven, Curing America’s Addiction to Prisons, 20 FORDHAM URB L.J. 641, 642 (1993).
\textsuperscript{35} See id. at 641-42.
\textsuperscript{37} See id. at 970.
\textsuperscript{39} See Justin Brooks, Essay, How Can We Sleep While the Beds are Burning? The Tumultuous Prison Culture of Attica Flourishes in American Prisons Twenty-Five Years Later, 47 SYRACUSE L. REV. 159, 162-63 (1996) (citing statements of Reginald Wilkinson, Director of Ohio Department of
Unless there is a death sentence, or a life sentence, they will be released into society some day, and they will live in the community. Because of this rage and helplessness, and because of knowledge gleaned from fellow inmates, these newly-released prisoners will be more dangerous upon leaving prison than they were when they entered.

Some people advocate making prison more difficult to endure simply by removing many of the recreational activities which prisoners currently have. These advocates usually believe that the increased crime rate and overcrowded prisons are caused by making prisons “not so bad” to common felons in comparison with their lives outside of prison. Although this reasoning may ring true, complete elimination of weight-lifting rooms and other amenities will not solve the problem of idleness in the prison: removal of one source of work must be replaced by another. According to Mike Quinlan, former Director of the Federal Bureau of Prisons, “if inmates aren’t kept busy when you take away all [the weight-training equipment and television], they will find something to do with their time, and it probably will not be in the best interest of the staff trying to monitor their activities.” Eliminating weight lifting equipment and other recreational activities can be problematic: excessive idleness and lack of constructive programs creates a potential for violence. When prisoners spend hours sitting in their cells they must occupy their time with thinking, and these thoughts usually turn to determining how to escape from prison or how to hurt other people in prison, whether it be fellow prisoners or the prison guards. This ingenuity born upon idleness was demonstrated by an inmate who formed a deadly weapon using only items in his cell: elastic from his underwear, writing paper rolled up to form a barrel, a plastic spoon sharpened to lethal capacity. He designed this make-shift weapon to fit through the slots in the cell door so that he could propel it across the block hallway. When released, the weapon flew across the hallway and lodged firmly

Rehabilitation and Correction).
40. See id.
41. Id.
42. See Jim Cata, Life Behind Bars should be More Difficult, DESERET NEWS, August 27, 1997.
43. Id.
46. See id.
47. See id.
48. See “Behind Bars,” supra note 2, at 1:50:34.
49. See id. at 1:50:44.
into a thick box approximately ten feet from the cell door.\textsuperscript{50} Athletic facilities, cable television, and other amenities should be eliminated so that inmates are not rewarded for disobeying societal laws, but only upon the adoption of a labor program which will ensure that prisoners function effectively while incarcerated and not allow them idle time which will lead to the creation of more problems.

B. Before Determining the Type of Program, One Needs to Understand the Mindset of the Criminal

People who have disciplined themselves to have the necessary work ethic to live lawfully misunderstand the mindset of the criminal, and they assume that criminals break the law because they lack the skills, knowledge, or other criteria necessary to earn an honest living.\textsuperscript{51} This misunderstanding breeds the notion that providing the means and skills for employment to prisoners will reduce the incentive to commit crime and therefore will control recidivism.\textsuperscript{52} In order to build a successful rehabilitation program within our prison system, we need to understand that criminals do not view their law-breaking lifestyles in the same manner as do law-abiding citizens:

Criminals do not want to find legal jobs and stop using alcohol and drugs. Moreover, they do not interpret their lifestyles as lawful citizens do . . . . Persistent criminals see an unlawful lifestyle as relatively carefree and morally acceptable. Living a lawful lifestyle, however, would force them to relinquish the freedom of social irresponsibility. These criminals have little interest in society’s rules and have learned to use the criminal justice system to their advantage. To them, prisons are sanctuaries that deliver social, medical, and recreational services. A system of effective crime control measures may be developed, but to do that, policymakers must learn more about the lives of street criminals . . . . For adolescent and young adult criminals, a stint in prison often proved an acceptable alternative, offering them goods and services unavailable on the street. Prison is stable and provides plenty of food, a clean bed, recreation, and access to medical and dental services.\textsuperscript{53}

Leslie Stein, Assistant Director of Psychological Services for Cook County, states matter-of-factly that for many American inmates, going to jail or prison is part of their culture—going to prison is simply a part of growing up because the majority of their family and friends have spent time in prison.\textsuperscript{54} Some inmates

\begin{itemize}
\item \textsuperscript{50} See id.
\item \textsuperscript{52} See id. (stating that “[s]ince providing the means and attitudes to be a success at employment reduces the need, and hence, the incentive, to commit crime, then providing employment training and saleable skills could assist prisoners to avoid recidivating”).
\item \textsuperscript{53} Mark S. Fleisher, Can we break the pattern of the criminal lifestyle?, USA TODAY, Vol. 125, No. 2624, May 1, 1997.
\item \textsuperscript{54} See “Behind Bars,” supra note 2, at 13:03.
\end{itemize}
arrive in prison because of involvement of gangs; they did what the gang asked them to do.\footnote{55} Many individuals have been coming to prisons to visit relatives since they were children, so they expect to come to prison as an extension of their life as they too become involved in similar crime careers.\footnote{56} Imprisonment in and of itself therefore is not viewed as a punishment, but simply as a part of one’s life.

It is only once we have this understanding of the criminal attitude towards incarceration that we can build successful rehabilitative penitentiaries.\footnote{57} The people mandating what type of labor is acceptable, and when it is acceptable, need to recognize that part of the rehabilitation process must encompass forcing the prisoner to realize that what he has done was wrong.\footnote{58} Although there are varying alternatives in teaching morality and ethics, one alternative which strikes home to every person’s heart is physical retribution upon the offender.\footnote{59} Such retribution in the present analysis would be accomplished by requiring physical labor of every offender.\footnote{60}

Putting prisoners solely into education or vocational programs fails the purpose of rehabilitation simply because such programs do not teach criminals that their crimes were wrong, but rather teaches them an alternative method to the lifestyle that they have already chosen.\footnote{61} Although these programs may educate and teach offenders the benefits of changing their lifestyle so that they may live within lawful boundaries while supporting themselves, the programs do not give inmates any incentive to change from their current chosen lifestyle to a different lifestyle:

The centerpiece of criminal justice rehabilitation is education. Taxpayers are
told that educated inmates will change their lifestyles. If alcohol and drug addicts were treated for addictions and understood the destructiveness of alcohol and drugs, they would stop drinking and using drugs and the crime linked to substance abuse would end. If delinquents and adult criminals received vocational training, they would find legitimate jobs and stop selling drugs, firearms, and stolen property. Criminal sentenced to prison would learn a “lesson” and when released, acquire a job and live a lawful lifestyle. The education model of social change assumes, of course, that criminals gladly would meet society’s lawful expectations once given a chance to do so. That is a foolish assumption...

Education as a remedy for a criminal lifestyle for the most part has been a failed experiment simply because the policymakers do not understand that criminals do not see imprisonment in itself as being punishment, and thus they do not understand why they must discontinue their chosen occupation of crime. By giving prisoners the same educational and vocational opportunities in prison that they had outside prison without making any demands upon them for these opportunities, we are teaching prisoners that, in essence, they have done nothing wrong. This teaching is reinforced by the fact that most prisoners do not need to “pay” any price for the training; they thus have an advantage over those outside the prison walls, who are required to pay for their education and vocational training, while also working to maintain themselves through this training process.

For those who still advocate the benefits which education solely can produce upon prisoners, allow me to introduce you to “Monster” Kody, a long-time Crypt gang member in Los Angeles’ South Central area. Monster, at the time of his interview while incarcerated, had spent nineteen of his thirty-two years in prison. “Going to jail was something that we [gang members] had to do, almost. When you get there you are either going to be embraced or you are going to be stabbed.” He discussed his years at the San Quentin prison in California. At San Quentin, there are huge concrete recreation yards in which prisoners may lounge around or lift weights, some prisoners have their own televisions in their cells, and the prisoner cells number fifty-seven to a tier on five tiers. People at San Quentin thus have the time to think of and make trouble, and unfortunately trouble is the only thing they currently make, as noted by Monster Kody:

It’s just a microcosm of society, prison is, on a small scale. It’s just that, in that smaller scale, it’s just so much tension as a consequence of some many predators

63. See id. at 1:33:26.
65. See id.
66. See “Behind Bars,” supra note 2, at 1:33:00.
67. See id. at 1:33:26.
68. Id. at 1:33:44.
69. See id. at 1:34:01.
being in one place at one time. It’s like a feeding frenzy: if you don’t eat, you are going to be eaten.\textsuperscript{70}

Monster Kody is very intelligent: when discussing his years at Pelican Bay, a maximum security prison where California sends its most violent inmates, he says, “\textquoteleft[It’s] possibly the most violent place I’ve been in because it is violence to the mind. Physical violence, wounds, stab wounds, heal, but how do you heal the mind\textquoteright?\textsuperscript{71}” He adds later, “Your sense is of being starved slowly. You get no sunlight; you get no environmental stimulation.”\textsuperscript{72} Monster Kody learned how to read and write in prison and is the author of a best-selling novel entitled \textit{Monster: The Autobiography of an L.A. Gang Member.}\textsuperscript{73} After he was released from incarceration, he bought a house in a suburb of Los Angeles where he lived with his wife and three children.\textsuperscript{74} Monster Kody, however, soon broke parole, was recaptured in his old neighborhood in South Central, and is now in prison once again, continuing his chosen lifestyle cycle.\textsuperscript{75} He had proven himself intelligent, not only through his spoken philosophies but also through writing a best-selling novel: why did he return to his old lifestyle after succeeding in the law-abiding world outside the criminal lifestyle? The answer is simple: although he learned \textit{how} to live a lawful life outside of prison, he never learned \textit{why} he should live lawfully.\textsuperscript{76} Without this understanding of \textit{why} they should live lawfully, criminals will resort to the lifestyle they know and understand, which is a life of crime.\textsuperscript{77}

According to psychological studies, the majority of people gain a certain degree of satisfaction in doing all types of productive work, which shows the worker a result at the end, or work that “involves the ego.”\textsuperscript{78} Therefore, in order to make prison a more hellish, punishing experience, the work a prisoner initially undergoes should not provide the prisoner with any satisfaction.\textsuperscript{79} It would be in

\begin{footnotesize}
\textsuperscript{70} Id. at 1:35:10.
\textsuperscript{71} Id. at 1:36:22.
\textsuperscript{72} Id. at 1:38:49.
\textsuperscript{73} See id. at 1:39:12.
\textsuperscript{74} See id. at 1:39:41.
\textsuperscript{75} See id. at 1:39:42.
\textsuperscript{76} See Robert Blecker, \textit{Haven or Hell? Inside Lorton Central Prison: Experiences of Punishment Justified}, 42 STAN. L. REV. 1149, 1179 (1990) (“Criminals don’t understand that they have to have long-range goals [to earn success in life]. They grow up, taking it for granted that they need [success], without learning what it takes to get there.”).
\textsuperscript{77} See id.
\textsuperscript{79} See id. at 996.
\end{footnotesize}
this initial stage of imprisonment that strictly hard labor would come into play. While education and vocational training should remain a part of rehabilitation, they should not be available to all offenders at the same time. In order for prisoners to appreciate the education or training received while imprisoned, they need to strenuously work for these privileges, and through this work realize that the programs are in fact privileges and not entitlements.

II. CONSTITUTIONAL REQUIREMENTS FOR PRISON CONDITIONS

A. Does Requiring Regimented Labor Constitute Cruel and Unusual Punishment?

The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The terms "cruel" and "unusual" have been defined differently over time. The Supreme Court has never determined at what point a practice that had not been used for a period of time, such as hard, physical labor for convicted individuals, becomes unusual.

To determine whether requiring prisoners to perform physical labor violates the Eighth Amendment, it is necessary to review the leading Eighth Amendment Cruel and Unusual Punishment Clause cases. In Weems v. United States, the United States Supreme Court determined that the Eighth Amendment is progressive and needs to fluctuate with changing public sentiment. The Court found that proportionality is inherent in the Eighth Amendment, and determined that under these standards, Weems’ punishment was excessive in both method and quantity. In Trop v. Dulles, the Court found that stripping a soldier of his citizenship as a punishment for desertion violates the Eighth Amendment. The Court reasoned

80. See id.
82. See id. at 71.
83. U.S. CONST. amend. VIII.
84. See Yale Glazer, Note, The Chains May Be Heavy, But They are not Cruel and Unusual: Examining the Constitutionality of the Reintroduced Chain Gang, 24 HOFSTRA L. REV. 1195, 1204-05 (1996).
86. 217 U.S. 349 (1910).
87. See id. at 378 (“The [Cruel and Unusual Punishment] clause . . . is progressive, and is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice.”).
88. See id. at 367.
90. See id. at 87-88, 101.

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that the Eighth Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” The Court furthered this reasoning in Coker v. Georgia, when it determined that the Eighth Amendment bars punishments which are barbaric and excessive. The Court held that a “punishment is ‘excessive’ and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime.

The Supreme Court first carried its Eighth Amendment analysis from sentencing claims to penal institution claims in Estelle v. Gamble. In Estelle, an inmate was injured while performing prison labor and received negligent medical treatment. The Court reasoned that because the medical treatment received showed a deliberate indifference to the serious medical needs of the prisoners, this indifference constituted forbidden “unnecessary and wanton infliction of pain,” but noted that inadvertence by the medical treatment provided does not constitute wanton infliction of pain. The Court determined that to successfully plead an Eighth Amendment violation, the prisoner must allege either acts or omissions which were sufficiently harmful that they evidenced deliberate indifference to the serious medical needs.

The Court addressed the actual physical conditions of prison confinement in Rhodes v. Chapman, in which it held that double-ceiling inmates in cells designed for one inmate does not violate the Eighth Amendment. The Court noted that “the Constitution does not mandate comfortable prisons,” and that prisons do not need to be free from physical discomfort in order to meet Eighth Amendment standards.

In Wilson v. Seiter, the Court reiterated the Estelle intent standard when it limited prisoners’ rights. It determined that a prisoner claiming that prison conditions constituted cruel and unusual punishment needed to establish “a

91. Id. at 101.
93. See id. at 592.
94. Id.
96. See id. at 98.
97. Id. at 104 (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976)).
98. See Estelle, 429 U.S. at 105.
99. Id. at 106.
101. See id. at 347.
102. Id. at 349.
culpable state of mind on the part of prison officials,” by showing that the officials acted with deliberate indifference towards the needs of the prisoners. The Court held that some conditions of confinement, that individually would not be a violation, may violate the Eighth Amendment when combined together or with other conditions, but the Court noted that this combination suffices only when the conditions are mutually reinforcing and result in the deprivation of a “single, identifiable human need, such as food, warmth, or exercise.”

The Court expanded this definition of basic human needs in *Helling v. McKinney*. The Court found that a prisoner could obtain relief from hazardous prison conditions under the Cruel and Unusual Punishment Clause if he could prove three criteria: first, the prisoner must show that the prison officials deliberately intended to cause the prisoner harm; second, he must provide objective statistical data supporting the alleged risk of harm; and third, the prisoner must show that no individual in American society would choose to tolerate the disputed risk.

The Court further limited prisoners’ rights in *Farmer v. Brennan*, holding that a prison official could only be found liable for conditions of confinement if the official knew of and disregarded an excessive risk to the inmate’s health or safety, the official was aware of facts from which he could infer a substantial risk of harm, and the official had made that inference. The Court gave examples of how to apply this deliberate indifference standard, then vacated and remanded the case.

Using these standards, courts have held that mandatory prison labor may violate the Eighth Amendment if the inmates are compelled to perform physical labor that “(1) causes undue pain; or (2) endangers the prisoner’s life or health; or (3) exceeds the prisoner’s physical capacity.” *Holt v. Sarver*, the district court followed the *Wilson* reasoning and held that even though confinement with hard labor and without compensation is not itself per se cruel and unusual punishment, “it may be [cruel and unusual] in certain circumstances and by reason

104. See id. at 296.
105. Id. at 304.
107. See 509 U.S. at 36; see also Garvey supra note 15, at 1093.
109. See id.
110. See id. “[A]n Eighth Amendment claimant need not show that a prison official acted or failed to act believing actual harm would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” Id. at 842. The prison official cannot escape liability “by showing that while he was aware of an obvious, substantial risk . . . he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault.” Id. at 843. Prison officials who responded reasonably to a substantial risk would not be liable, even if harm later occurred. Id. at 844.
111. Toombs v. Hicks, 773 F.2d 995, 997 (8th Cir. 1985) (forcing an inmate to work on “two-handed hoe squad” with arm injury may entitle inmate to claim). See also Ray v. Mabry, 556 F.2d 881, 882 (8th Cir. 1977).
According to the courts' analyses of prison conditions, it is clear that requiring prison inmates to work in hard labor conditions without compensation is not cruel and unusual punishment under the Eighth Amendment provided that the prisoners are not deprived of human needs, such as "food, warmth, or exercise." Moreover, courts generally have taken a "hands-off approach" regarding issues which may arise in prison administration. In Procunier v. Martinez, the Supreme Court held that the ultimate responsibility for maintaining order and discipline with the prisons themselves are the prison administrators. The Court continued this hands-off policy in Bell v. Wolfish, giving wide deference to prison officials in the adoption and execution of policies which they deem necessary for institutional security, and further held that "[s]uch considerations are peculiarly within the province and professional expertise of corrections officials."

The Court has addressed specific prisoner rights, however, and has determined that overcrowding prison institutions may rise to an Eighth Amendment violation. The Court has further held that prisoners retain due process rights and may not be deprived of life, liberty, or property without a hearing, that prisoners

113. Id. at 373, 384-85 (holding that the combination of an overreaching trusty system, men confined in large numbers in open barracks, and the absence of a meaningful rehabilitation program in an Arkansas penitentiary made the entire system unconstitutional).
114. See Wilson, 501 U.S. at 304.
115. See Procunier v. Martinez, 416 U.S. 396, 404-05 (1974). [T]he problems of prisons in America are complex and intractable . . . . Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform . . . . Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities.
117. See id.
118. 441 U.S. 520 (1979).
119. Id. at 547-48 (quoting Pell v. Procunier, 417 U.S. 817 (1974)).
120. See Hutto v. Finney, 437 U.S. 678, 685-88 (1978) (agreeing with the district court's characterization of the prison conditions as "a dark and evil world completely alien to the free world").
121. See Wolff v. McDonnell, 418 U.S. 539, 553-56 (1974) (holding that due process required that prisoners whose conduct resulted in loss of good-time or in the imposition of solitary confinement must be afforded advance written notice of claimed violation, and be afforded the right to call witnesses and present documentary evidence).
have the right to marry, and to receive subscription publications and mail, and the right to have serious medical needs attended to.

B. Modern American Prisons May Violate the Eighth Amendment's Requirement to Acknowledge the Dignity of Man

"It is with the unfortunate, above all, that humane conduct is necessary."[126]

The Supreme Court recognized in Trop v. Dulles[127] that the "basic concept underlying the Eighth Amendment is nothing less than the dignity of man."[128] Some claim that it is not the chains on the inmates in chain-gangs which violate the Eighth Amendment, "[r]ather it is deplorable conditions of confinement, physical brutality, and humiliation that constitute ... unconstitutionally cruel and unusual punishment by violating human dignity ..."[129] Many modern American prisons only warehouse prisoners by subjecting them to regimented idleness instead of regimented labor.[130] "Warehouse prisons are our modern-day houses of the dead, to draw on Dostoyevsky, not because of brutality but because of inertia."[131] This forced inertia, or regimented idleness, is a violation of a human being's dignity. Modern prisons violate the Eighth Amendment by ignoring the human dignity of every prisoner: every prisoner has a moral claim upon American society to respect

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122. See Turner v. Safley, 482 U.S. 78, 96 (1987) (determining that the inmate marriage regulation, which prohibited inmates from marrying inmates or civilians unless prison administration found there were compelling reasons for the marriage, was not reasonably related to any legitimate penological objective).
123. See Thornburgh v. Abbott, 490 U.S. 401, 402 (1989) (holding that "publishers who wish to communicate with those who, through subscription willingly, seek their point of view have a legitimate First Amendment interest in access to prisoners").
124. See Procunier v. Martinez, 416 U.S. 396, 412-13 (1974) (determining that censorship of direct personal correspondence involved incidental restrictions on the right of free speech of both correspondents and prisoners, but was justified if the censorship furthered a government interest in security, order, and rehabilitation).
125. See Estelle v. Gamble, 429 U.S. 97, 103-04 (1976). An inmate, who was injured performing a prison work assignment claimed an Eighth Amendment violation when a prison physician failed to perform an X-ray or use additional diagnostic techniques. See id. The inmate had seen medical personnel seventeen times in three months. See id. The Court, remanding for further factual inquiry, held that the government has an obligation to provide medical care for those whom it is punishing through incarceration. See id. at 103.
126. JOHN BARTLETT, FAMILIAR QUOTATIONS 618 (13th ed. 1995) (quoting FYodor Dostoyevsky (discussing prison life in Siberia)).
128. Id. at 100.
131. Id. at 1012.
his humanity although he is being punished. The state cannot deny that “this man, though condemned, is still inalienably a man. To fail to treat him as a human being is to commit a new crime and to cause the shadow of guilt to fall on those who punish as well as on him who is punished.”

C. The Thirteenth Amendment and Regimented Labor

The Thirteenth Amendment to the United States Constitution provides, “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

"It has long been held that hard labor as a penalty for a crime is expressly permitted by the Thirteenth Amendment . . . ."

Interestingly enough, prisoners do not have the right to refuse to work if such work is required by prison administration. Forced labor has been held to be consistent with the prison institution’s duty to maintain effective discipline upon the inmates. Prisoners may be forced to work, even if not for proven rehabilitation purposes, with the sole limitation being that the work may not constitute cruel and unusual punishment under the Eighth Amendment standard discussed previously. The analysis for violations of the Constitution, when prisoners are required to perform hard labor, thus returns to whether the physical labor violates the Eighth Amendment. The Supreme Court has held, as discussed above, that mandatory physical labor by incarcerated persons is not unconstitutional unless the inmates are deprived of basic human needs. Therefore, strict hard labor should be required of all prisoners until they prove themselves worthy of progressing to a different rehabilitative level. The question thus is not whether hard labor is cruel or unusual under the Eighth Amendment or forbidden under the Thirteenth Amendment.

132. See James S. Campbell, Note, Revival of the Eighth Amendment: Development of Cruel-Punishment Doctrine by the Supreme Court, 16 STAN. L. REV. 996, 999 (1964).
133. Id. at 1000.
139. See Hudson v. McMillian, 503 U.S. 1 (1992) (holding that punishment may be cruel and unusual even though the inmate suffers no serious injury); Wilson v. Seiter, 501 U.S. 294 (1991) (holding that the prisoner must show that a prison official had a culpable state of mind to maintain an Eighth Amendment claim); Rhodes v. Chapman, 452 U.S. 337 (1981) (holding that double-celled housing is not cruel and unusual punishment); Bell v. Wolfish, 441 U.S. 520 (1979) (holding that absent an express intent to punish, a particular condition of pretrial detention that is necessary to maintain order is not constitutionally violative).
Amendment, but how we can implement regimented labor into the modern American prisons, which mostly maintain idle prisoners.

III. OVERVIEWS OF MODERN PRISON SYSTEMS ADOPTING STRICT DISCIPLINE PROCEDURES

A. Why Forced Labor “Works”

“Labor gives to the solitary cell an interest; it fatigues the body and relieves the soul.”

Labor, which was once central to American penitentiaries, today has almost completely disappeared from American prisons. This lack of productivity makes each prison “an ominous and forbidding place where violence exists side by side with enervating tedium.” The key for preventing disruptive, problematic behavior in prisons is to train inmates in basic work ethics and teach them the satisfaction of having a productive job. This regimented labor would reduce inmate idleness and thus reduce the potential for security problems within the prisons.

The Post-Release Employment Project study determined that prison work reduces recidivism. The study followed over 7,000 federal offenders between 1983 and 1987, comparing participants in UNICOR and other work programs with non-participant offenders. The groups were “equivalent . . . in every respect except for their participation in the work or vocational training program.” The study found that UNICOR participants recidivated within twelve months of release at a rate of 6.6%, while nonparticipants recidivated at a rate of 10.1%. UNICOR participants were 14% more likely to be employed during the twelve months...


142. See id.


144. See id. at 34-35.

145. See id. at 36.

146. See id. at 39-40.
following their release than were nonparticipants. Also, the inmates who were less likely to be recommitted to prison, even eight to twelve years after their release, were the inmates who participated in work or job skills programs.

B. Prison Systems Which “Work”

State correctional agencies have caught on to the correct method of rehabilitation: Oregon Prison Industries manufactures a line of clothes, “Prison Blues,” and exports them to Italy, Japan, and other countries. California Prison Industries also exports prisoner-made clothing to Japan and Malaysia. State inmate workers are paid six to eight dollars an hour. Wages go first to payment for their own room and board, then to restitution. These programs recognize the ethic that “[w]ork is rehabilitating, rehabilitation is work.”

1. Foreign Prison Systems

a. Japan

Outside of Tokyo at the Fuchu Prison, Japan’s most secure prison, groups of twelve to fourteen inmates live together in rooms slightly larger than one would find in a good hotel. The rooms are bare except for a low table around which the inmate sit cross-legged on the floor, and at night, tatami mats for sleeping are spread next to each other on the floor. For Japanese inmates, these accommodations do not provoke complaints of overcrowding or demand for single cells. Instead, punishment in Japanese prisons consists of removing an inmate from his group and putting him in a single, solitary cell. Solitariness is viewed as a punishment, and being a contributive part of a group effort is not only mandatory but dignifying.
b. China

At Chen Pi’u, a maximum-security prison, prisoners begin the day at six a.m. by jogging in military-style ranks, eight people across and fourteen deep, along the prison’s gravel quarter-mile oval track. The prison guards jog along with the prisoners, the exercise ending with military-type inspections of the ranks of prisoners, including right-face and left-face movements in unison by the prisoners upon barked-out instructions by prison officials. Structure, discipline, and order are emphasized in the prison: the prisoners remain in their ranks to observe the raising of the Chinese flag and to hear the playing of the Chinese national anthem. They then march back in ranks to the cells. Twelve men live in each cell, sleeping on six bunk beds. The Chinese inmates meticulously clean their cell, scrubbing corners and folding sheets in tight corners. The inmates cannot have photographs or family pictures on the wall—the emphasis in the prison focuses upon collective harmony of the whole. Access to the outside world is controlled strictly by the administration: inmates are permitted to watch television for a limited amount of time, the programs which can be viewed on the television are chosen by the prison administration, and the sole television is in the corner of a long, very narrow room.

"Reform through labor" exemplifies the Chinese correction model which is designed to teach the inmates "discipline, positive work habits, and moral responsibility." Inmates work eight hours a day mowing the prison lawn by tearing at the grass with their hands, making boxes by hand, or preparing meals for the entire facility. Labor for every hour of every day is carefully planned and carried out with precision. The prison allows family visits once a month during which guards monitor conversations. If inmates exhibit good behavior during their imprisonment, the guards allow unmonitored family visits. Moreover, upon prison officials’ recommendation based upon good behavior, an inmate’s sentence
can be reduced.\textsuperscript{173} Security measures are minimal as compared to those used in American prisons, and the guards carry no weapons as they are not seen as necessary.\textsuperscript{174} The rate of recidivism for this prison system is only four percent.\textsuperscript{175}

c. South Africa

In furtherance of prisoner rehabilitation in South Africa, police, magistrates, and prison officers, are all part of a plan in which thousands of South African prisoners are released to work in local communities.\textsuperscript{176} Because the ratio of guard to inmates is fifteen to one, the lack of rehabilitation abilities in the prisons concerns officials: the guards sole intention is to ensure that inmates do not escape.\textsuperscript{177} South African officials identify who does not “belong” in prison (for example, those who committed petty crimes such as “stealing oranges, getting drunk, or stealing women’s underwear”\textsuperscript{178}), and these prisoners are given community service for their punishment and rehabilitation.\textsuperscript{179}

d. Armenia

Six thousand prisoners in Armenia are incarcerated in thirteen facilities: two are maximum security prisons, one is for former members of the police and national security services, and ten are rehabilitative work centers.\textsuperscript{180} A work center is a type of barracks with a guarded perimeter, in which the prisoners work on the grounds until the evening.\textsuperscript{181} In Meghri, a city near the Iranian border, prisoners work in the fields and do various farm work.\textsuperscript{182} Prisoners who work are responsible for their own upkeep.\textsuperscript{183} Following their release, approximately fifteen percent of the prisoners have found work as carpenters or stone-cutters in small cities due to their ability to work while incarcerated.\textsuperscript{184}

\textsuperscript{173} See id. at 1:04:45.
\textsuperscript{174} See id. at 1:01:57.
\textsuperscript{175} See id. at 1:04:56.
\textsuperscript{177} See id.
\textsuperscript{178} See id.
\textsuperscript{179} See id.
\textsuperscript{180} See 6,000 Prisoners are Serving Time in Armenia: 70 are Teens, 233 are Women, ARM. INT’L MAG., July 31, 1998, at 31.
\textsuperscript{181} See id.
\textsuperscript{182} See id.
\textsuperscript{183} See id.
\textsuperscript{184} See id.
2. United States Prison Systems

a. Florida

Florida’s legislature reinstated chain gangs on November 21, 1995. Florida’s chain gangs may include maximum-security prisoners, not including sex offenders or prior escapees, and they work eight hours a day, five days a week. The prisoners receive rest breaks, bag lunches, water, and portable toilets at the work site. Prisoners are given baseball caps, gardening gloves, and thick leather pants to protect against snake bites.

The prisoners chop down trees, clean ditches and cut brush and thick grass. Instead of gasoline-powered mowers to cut the grass, they have the old-fashioned, reel-type mowers to increase the physical labor necessary to accomplish the end result.

b. Virginia

The federal prison in Petersburg, Virginia, uses the job program Federal Prison Industries, which provides jobs for 400 inmates by using three factories at Petersburg and provides jobs for thousands more prisoners at other federal prisons across the country. Inmates acquire job skills through the work provided, and are kept busy by working approximately thirty-seven hours per week. Federal Prison Industries’ Chief Operating Officer Steve Schwalb acknowledges that in addition to job skills, “the [employment] program teaches work ethics to inmates who have never held a job before.” However, this program employs only one-fourth of available inmates, the majority of inmates work within their institutions by mowing lawns, landscaping, and cleaning.

185. See John Fernandez, Chain Gangs No Roadside Attraction—Yet, PALM BEACH POST, Nov. 22, 1995, at 1A.
187. See Williams, supra note 186.
188. See Back on the Ol’ Chain Gang, CHARLESTON DAILY MAIL, Dec. 9, 1995, at 9A.
189. See Inmates’ Yard Work to Get Harder, ST. PETERSBURG TIMES, Aug. 20, 1995, at 1B.
190. See Williams, supra note 186, at 4E.
191. See Jeff Erlich, Competing With Convicts, GOV’T EXECUTIVE, June 1, 1997, at 30.
192. See id.
193. See id.
194. See id.
c. Ohio

At the Dayton Correctional Institute, a 480-man facility that holds both adults and youth, many inmates work in a state-run factory within the prison for approximately six hours a day. If a prisoner wants to enroll in high school equivalency or vocational training classes, he must complete thirty hours of community service per week, plus he must pay minimal course fees. The prison maintains a 150-foot by 40-foot garden, in which prisoners grow vegetables to help feed residents of a local homeless shelter. Critics like Jana Schroeder censure the program because “[i]t’s not voluntary . . . . It’s not like saying, ‘If you want to do something you can.’ It’s saying, ‘If you want vocational training beyond the high school level then you’ve got [to do this].’” However, it is this author’s position that this work-requirement need not be voluntary under the Constitutional mandates, as discussed previously, and that requiring further effort by the inmates to gain the reward of a higher education simply mirrors the requirements placed upon individuals who are not incarcerated who wish to obtain that education or training.

C. Rehabilitation May Need to Be Accomplished Using Means Other than Labor

There are situations in which requiring prisoner labor may not be the most rehabilitative option, as demonstrated in the Colorado State Penitentiary, the highest security prison in Colorado. This penitentiary holds inmates who have been aggressive and violent when incarcerated elsewhere. Regarding the level of intensive security, inmate Tony King stated, “[t]here’s so much security, it make your head kind of trip a little bit, you know, . . . because you’d think . . . what’s going on right here?” He adds, “[i]f you’re not really ready for this, . . . I wouldn’t really advise you f—ing up, in no other facility, and coming over here to this, because . . . you got nothing over here.” In this penitentiary, inmates are locked up for twenty-three hours each day and they are allowed one hour each day

196. See id. at 21 (course fees range from $10 to $25).
197. See id. at 20.
198. Id. at 21.
199. See “Behind Bars,” supra note 2, at 44:08.
200. Id. at 42:00.
201. Id. at 44:42.
202. Id. at 44:54 (emphasis original).
to exercise and shower. The facility appears more sterile than a hospital, and a three-story guard tower surveys all the cells inside each section of the penitentiary. Each cell contains one bed with a thin mattress, a few concrete shelves built into the cell walls, and a thin window. Only one prisoner is permitted outside his cell at a time, and each prisoner is escorted by at least two guards while outside his cell. Every cell door is controlled electronically from the e-pod control center, and in this e-pod control center guards can monitor each inmate’s every move. Warden Donice Neal states simply that:

the inmates have shown at the other facilities that they can’t control their behavior: we control it here... it’s a behavior modification program, more than anything else. When the inmates follow the rules, there’s a way... out of here. We emphasize that the inmates earned their way into this facility, there are ways for inmates to earn their way out.

This penitentiary boasts a 4.4% recidivism rate. The prison, although harsh, serves the purpose of reducing recidivism: in the words of one inmate: "[t]his is one place I never want to come again. I’m working on that." Another inmate states, “I should get out of prison in about 2002, [and] it seems like it’s not really worth doing anything if you got to go through this here.”

D. Potential Abuses in Prison Systems

The “hands-off” approach adopted by the Supreme Court could have drastic consequences, as evidenced in Arizona: Sheriff Joe Arpaio of Maricopa County has inmates sleeping in tents in the middle of the desert in Arizona, eating bologna sandwiches, and watching Newt Gingrich videos. The inmates, male and female, work on chain gangs in the hot Arizona sun where the temperature often exceeds 115 degrees. Arpaio has defended his tactics: “I want to make this place so unpleasant that they won’t even think about doing something that could bring them back .... I want them to suffer.” He further questions the current methods of imprisonment, “[w]hy build jails when you can put them in tents for free? ...
[Inmates] should be made to suffer, in a humane sort of way." Arpaio strongly advocated that prisons should be so brutal that inmates never want to return.

Although Arpaio's attitude towards imprisonment is politically popular, Arpaio has been sued by the federal government for using excessive force against inmates. There are two damning reports against Arpaio's practices by a United States Department of Justice consultant, condemning Arpaio's use of pepper spray, alleged hog-tying of inmates, using restraint chairs on inmates, and his use of "unprovoked" and "unjustified" force. Arpaio remained unabashed by these criticisms, and expressed glee over his inmates' suffering, which, according to one lawyer, is "saying to your employees that they have a license to brutalize."

E. The Proposed “Ladder” System of Regiment Labor: An Inmate Must Work His Way Out Of Prison

A 1995 survey by the Bureau of Criminal Justice Statistics reported that ninety-two percent of those responding to the survey favored a requirement that inmates should not be released until they learn a skill or trade. Almost eighty-seven percent determined that prisoners should be kept busy by doing some type of constructive work which the State would otherwise need to hire outside persons to accomplish.

This Comment does not suggest which type of work prisons should engage their prisoners, but merely suggests that regimented labor requirements of every prisoner will more effectively rehabilitate the offender. The prisons should adopt the daily regiment which exists in China's maximum security prisons: prisoners should obey a strict hourly schedule, each prisoner should have a specific labor function, and any contact with the outside world should be limited and

215. See id.
217. See id.
218. Id. at 5.
220. See id.
controlled. All prisoners should engage in organized exercise each morning, and their permitted recreational activities should be positive-employment hobbies such as painting, playing an instrument, or other disciplined activities. In order to help the offender understand that he committed a wrong against society, his labor requirements should begin with strict physical labor. This physical labor will be, in effect, the “punishment” which society seeks to place upon offenders. It might include the physical labor used by the Virginia prison, such as landscaping, cleaning, laundry, and cooking. The labor might also include mowing the prison’s grass using only one’s hands, or working on the prison farmland, or in the prison garden. When the prisoner demonstrates self-discipline through his work and through good behavior, he may be removed from the hard physical labor into a skilled or vocational area of labor. Like the Chinese prison, this promotion would be based upon guard recommendation and upon a definite showing by the prisoner of good behavior and self-discipline through his or her work ethic when engaged in hard labor.

Moreover, for prisoners who wish to receive an education or more skilled vocational training, they should still complete their normal eight hours of work each day, partaking in the specialized training after their workday is over. The prisoners should also pay fees for these courses, just as people in the world outside of prison have to pay tuition and fees in order to receive their education or training. Furthermore, once a prisoner has demonstrated his abilities and self-discipline, the policies of Armenia should be adopted to the extent that the prisoner would be encouraged to find work within the surrounding community while remaining a resident of the prison. Finding work within the community while continuing detention within the prison is sanctioned by Title 18 of the United States

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223. See supra notes 161-76 and accompanying text.
225. supra notes 197-99 and accompanying text.
226. See supra notes 192-95 and accompanying text.
227. See supra notes 196-99 and accompanying text.
228. See supra note 174 and accompanying text.
229. See Paul Cavadino, Lynette Burrows, Debate: Are Cold Showers and Route Marches the Answer for Our Troubled Adolescents?, THE INDEPENDENT—LONDON, January 17, 1999, 5. The article compared the militaristic juvenile “boot camps” which exist internationally, and determined that the most successful incarceration programs consisted of both intense physical labor and education/vocational training. See id.
230. See, e.g., Microcomputer Tech. Inst. v. Riley, 139 F.3d 1044, 1047 (5th Cir. 1998) (holding that provisions for expenses under the Pell Grant program did not extend to prisoners because they incurred no expenses in attending the institute, and that no reimbursement to prisoners for tuition and fees was reasonable considering that the Higher Education Act permits subclassifying students to determine what they are “normally charged”).
231. See supra notes 181-85 and accompanying text.
Code, section 3622, which provides that "[t]he Bureau of Prisons may release a prisoner from the place of his imprisonment ... for limited periods if the prisoner will be participating in a training or educational program in the community, or will be working at paid employment within the community." 232

Most importantly, all these labor programs must be regimented and must be strictly adhered to. 233 In order for prisoners to develop their own self-discipline necessary to live lawfully once they are released, they must be surrounded by a system in which self-discipline is the norm. 234 A prisoner's showing of self-discipline should thus affect his or her opportunities for an earlier release: a prisoner who has established that he is capable and willing to live lawfully in society should be allowed to be an effective member of society, and thus remove some of the fiscal burden from the government in needing to maintain the person while incarcerated.

The big issue is whether this "ladder" system within prisons will conform with


The Bureau of Prisons may release a prisoner from the place of his imprisonment for a limited period if such release appears to be consistent with the purpose for which the sentence was imposed and any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. § 994(a)(2), if such release otherwise appears to be consistent with the public interest and if there is reasonable cause to believe that a prisoner will honor the trust to be imposed in him, by authorizing him, under prescribed conditions, to -

(a) visit a designated place for a period not to exceed thirty days, and then return to the same or another facility, for the purpose of -
(1) visiting a relative who is dying;
(2) attending a funeral of a relative;
(3) obtaining medical treatment not otherwise available;
(4) contacting a prospective employer;
(5) establishing or reestablishing family or community ties; or
(6) engaging in any other significant activity consistent with the public interest;
(b) participate in a training or educational program in the community while continuing in official detention at the prison facility; or
(c) work at paid employment in the community while continuing in official detention at the penal or correctional facility if—
(1) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the community; and
(2) the prisoner agrees to pay to the Bureau such costs incident to official detention as the Bureau finds appropriate and reasonable under all the circumstances, such costs to be collected by the Bureau and deposited in the Treasury to the credit of the appropriation available for such costs at the time such collections are made.

233. See DENNIS COON, INTRODUCTION TO PSYCHOLOGY, EXPLORATION AND APPLICATION 194-204 (West Publishing Co., 7th Ed. 1995) (stating that in order for a person to "learn a relatively permanent change in behavior that can be attributed to experience," the "reinforcement any event which increases the probability that a response will occur again" or consequence must continue uniformly or the conditioning will extinguish).

234. See id.
the mandates of the Eighth and Thirteenth Amendments to the Constitution. "A practice that may be bad from the standpoint of penology may not necessarily be forbidden by the Constitution. And a prison system that would be excellent from the point of view of a modern prison administrator may not be required by the provisions of the Constitution . . .."235

In Holt v. Sarver,236 the district court considered claims by prisoners that their Thirteenth Amendment rights were violated when they were required to work long hours without pay in the prison’s farm fields.237 The court listed working conditions at the prison which were far from attractive, and stated that “the system would not be called humane by modern standards.”238 However, the court further reasoned that because the servitude was imposed as punishment for crimes of which the inmates had been convicted, the system did not violate the Thirteenth Amendment.239 Because the prohibition on involuntary servitude does not extend to those who have been convicted of crimes, compelling prison inmates to work does not violate the Thirteenth Amendment.240 It therefore seems unlikely that any prison system, no matter how strenuous or arduous upon the prisoners, would be deemed violative of the Thirteenth Amendment.241 The main concern regarding harsh prison conditions thus becomes the prohibition against cruel and unusual punishment by the Eighth Amendment.242

In determining whether prison conditions violate the Eighth Amendment, the distinguishing aspects of the system must be considered together.243 As the Supreme Court determined in Farmer v. Brennan,244 for a prison system to be found in violation of the Eighth Amendment, the prison officials must know of, and

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236. Id. at 362.
237. See id. at 370. Prisoners were required to “work long hours six days a week, except for a few holidays.” Id. They worked in excessive heat, and in cold weather just above freezing. See id. They were not given sufficient gear for the weather conditions, and some men did not even have shoes. See id. “[T]he men [were] paid nothing for their work.” Id. at 371.
238. See id. at 372.
239. See id.
240. See United States v. Reynolds, 235 U.S. 133, 149 (1914) (holding that the state can impose involuntary servitude as punishment for a crime); see also Mosby v. Mabry, 697 F.2d 213 (8th Cir. 1982) (holding that punishing a prisoner for refusing to work is not a violation of the constitution).
241. See Meachum v. Fano, 427 U.S. 215, 224 (1976) (holding that a state may confine a prisoner and subject him to the rules of its prison system so long as the conditions of confinement are not “cruel and unusual”); see also Holt v. Sarver, 309 F. Supp. at 372 (E.D. Ark. 1970) (determining that forced uncompensated labor by state prisoners does not violate the Thirteenth Amendment).
242. See Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996) (holding that while the Eighth Amendment does not mandate comfortable incarceration, it does not permit inhumane conditions); see also Earrey v. Chickasaw County, 965 F. Supp. 870 (N.D. Miss. 1997) (determining that convicted inmates are protected from harm by the Eighth Amendment’s prohibition against cruel and unusual punishment).
244. 511 U.S. 825 (1994).
disregard, an excessive risk to the inmate’s health and safety. A prison system may constitute cruel and unusual punishment in violation of the Eighth Amendment if prison officials knowingly compel inmates to labor in capacities which are beyond the inmates’ strength, which endanger their lives or health, or which labor is unduly painful. Although the main analysis of the constitutionality of the prison system would thus turn upon the subjective intents of the prison administrators, the core function of the system must also be examined. Because the main purpose of prisons is to reform and rehabilitate, the absence of an affirmative training and education program may have constitutional significance, if such absence of a program militates against reform and rehabilitation. However, the proposed ladder system centers upon rewarding inmates through an affirmative training and education program, and thus serves the purpose of reform and rehabilitation while avoiding an absence which may be a constitutional violation.

According to the analysis of the Supreme Court, as discussed above, the regimented physical labor itself would not violate the Eighth Amendment, nor would the requirement that inmates earn the right to educational and vocational training: it would be the lack of such requirements or improper supervisory motives under which the Eighth Amendment would be transgressed. As such, provided that the basic human needs of the prisoners are met and no deliberate indifference is exercised by prison officials, the proposed ladder system passes constitutional muster.

This ladder system of labor, in which a prisoner literally works his way out of prison, also conforms to the United Nations Minimum Rules for the Treatment of

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245. See id. at 837.
246. See Ray v. Marbry, 556 F.2d 881, 882 (8th Cir. 1977) (citing Tuller v. Stevens, 247 F. Supp. 683, 687 (E.D. Ark. 1965)); Howard v. King, 707 F.2d 215, 219 (5th Cir. 1983) (holding that hyperexhaustion is a cognizable Eighth Amendment claim); Franklin v. Banks, 979 F.2d 1330 (5th Cir. 1992) (holding that the compulsion must be knowing); McMaster v. Minnesota, 819 F. Supp. 1429, 1441 (D. Minn. 1993) (holding that withholding pay is not cruel and unusual punishment).
249. See Helling v. McKinney, 509 U.S. 25, 32 (1993) (prisoner stated a cause of action under the Eighth Amendment when he alleged that prison officials acted with deliberate indifference); see also Wilson v. Seiter, 501 U.S. 294, 296 (1991) (holding that prisoners claiming that prison conditions violated the cruel and unusual prohibition clause of the Eighth Amendment were required to show deliberate indifference on the part of prison officials); Whitley v. Albers, 475 U.S. 312, 319 (1986) (holding that infliction of pain in prison for a security measure was an Eighth Amendment violation only if the pain was inflicted unnecessarily and wantonly).
Prisoners. These Rules mandate education and vocational training as "treatment," and provide that "[a]ll prisoners . . . shall be required to work, subject to their physical and mental fitness, a normal working day." The objective of prison work should be to prepare the prisoners "for the conditions of normal occupational life." Under this ladder system, the prisoners are required to work for a normal working day, whether the work is strictly physical or also vocational. The ultimate objective of this system is to prepare offenders for the normal conditions of the world outside the criminal lifestyle, which requires both educational or vocational skills plus self-discipline to survive.

The majority of modern American prisons currently do not conform to the United Nations standards nor to the mandates of the Eighth Amendment because the prisoners spend the majority of time in their cells, and the time allowed for recreation is spent lounging, weight-lifting or, sometimes, playing sports. Prisoners are not required to work a normal working day, nor are they prepared for "the conditions of normal occupational life" upon release. As noted by Monster Kody,

You got this cat who is going to be let out of prison someday . . . . When you're let out, after having been put in a one-hundred percent criminal population, and not learning the basic skills of survival on the street, other than being a predator. You don't learn how . . . to relate and articulate with people . . . you don't have no vocational skills, so what do you do when you're let out. You're given $200 gate money, and you're right back to the same environment you came from.

The system suggested in this Comment would not face this problem because a prisoner ready to be released would have developed the skills necessary to survive outside the prison walls, and would have the discipline to effect this survival. Rather than releasing persons who do not know how to conform to society, the new prisons would create people who want and know how to live accordingly in society.

Of course, the last question is whether such a system of total discipline would rehabilitate prisoners or at least to keep offenders from recidivating. One example


251. See id.

252. See id.

253. See Canterino v. Wilson, 546 F. Supp. 174, 188 (W.D. Ken. 1982) (noting that the purpose of providing vocational training to prisoners is to help facilitate their re-integration into society).

254. See David McCord, Imagining a Retributivist Alternative to Capital Punishment, 50 FLA. L. REV. 1, 47 (1998); see generally, Peter Finn, No-Frills Prisons and Jails: A Movement in Flux, 60 FED. PROBATION 35 (1996) (analyzing the beginning of the movement to remove "frills," such as weight-lifting rooms and cable television, from prisons).

255. See "Behind Bars," supra note 2, at 1:35:34.
of a similar discipline system is the corrections and rehabilitation juvenile boot
camps, which is an alternative to prison for inmates between the ages of 18 and
28.256 These para-military centers are designed to teach responsibility, respect for
others, and a strong work ethic.257 Tina Louise Johnson, a drill instructor at one
such boot camp, stated, "That first week, we have guys trying to quit, begging us
to send them to prison, they'll do their time. They aren't used to someone telling
them what to do."258 The correctional boot camps are run in a military style similar
to the maximum-security Chinese prison: the inmates sleep in bunk beds in
barracks, they begin the day with regimented exercise, they file in ranks to observe
the raising and lowering of the American flag, and every moment of the inmates'
day is planned.259 Johnson compared this system of rehabilitation with breaking a
pot, then reshaping it to make it better than it was before.260 This reshaping makes
"them realize that they have inner skills they never knew how to use."261 The
recidivism rate for those who complete this "shock incarceration" is twenty percent
lower than for those who serve time in regular prisons.262

The system of rehabilitation in this article, however, suggests more than just
strict discipline. Labor is requisite for true rehabilitation. Physical labor is strictly
necessary to initially break down the offenders, then more skilled labor is necessary
to build them back up by helping them realize that they have the skills to succeed

256. See id. at 2:10:00.
257. See id. at 2:10:23.
258. Id. at 2:10:53
259. See id. at 2:15:20 - 2:20:00.
260. See id. at 2:14:12.
261. Id. at 2:14:18.
262. See id.; see also Title 18, U.S.C., § 4046. This Section provides for "shock incarceration
      program[s]", stating that

The Bureau of Prisons may place in a shock incarceration program any person who is
sentenced to a term of imprisonment of more than 12, but not more than 30, months, if such
person consents to that placement.

For such initial portion of the term of imprisonment as the Bureau of Prisons may determine,
not to exceed 6 months, an inmate in the shock incarceration program shall be required to—
(1) adhere to a highly regimented schedule that provides the strict discipline, physical training,
hard labor, drill, and ceremony characteristic of military basic training; and
(2) participate in appropriate job training and educational programs (including literacy
programs) and drug, alcohol, and other counseling programs.

c) An inmate who in the judgment of the Director of the Bureau of Prisons has successfully
completed the required period of shock incarceration shall remain in the custody of the Bureau
for such period (not to exceed the remainder of the prison term otherwise required by law to
be served by that inmate), and under such conditions, as the Bureau deems appropriate.

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in society.\textsuperscript{263} Strict discipline overall is also a requisite to ensure that the person himself will be self-disciplined upon release. Without such self-discipline, the offender will be strongly tempted to return to the criminal lifestyle he left behind.\textsuperscript{264} Education and vocational programs should be made available to those prisoners who desire such training; however, the inmates must still complete their normal work shift, before participating in such training. If prison truly is to prepare offenders to reenter society, the prison microcosm must mirror society in many respects: many students work eight to ten hours a day to support themselves in their education—we should expect no less from prisoners.\textsuperscript{265} Until we force offenders to realize that they committed a wrongful act through punishment of hard physical labor, and then teach them how to be effective members of society through discipline and skilled training, we cannot expect our prison system to be truly rehabilitative and to reduce recidivism.

\textbf{IV. CONCLUSION}

Effective prison systems exist: we now need to emulate such systems throughout our own prisons in order to maintain correctional facilities which truly correct their inhabitants. Although none of the prisons cited in this article has adopted the “ladder” method of rehabilitation suggested, a combination of the successful rehabilitative prisons’ procedures results in such a system. Current legislative procedures concern more “lock ‘em up and throw away the key” procedures and harsher sentencing than creating a system which rehabilitates, while punishing, the offender.\textsuperscript{266} The problem with focusing solely upon punishment is that, with the exception of prisoners serving life sentences or those on death row, these offenders whom society is ignoring will someday return to society without the self-discipline or skills necessary to survive in a law-abiding lifestyle. If the focus remains solely upon punishing offenders, American prison systems will continue only as warehouses where people who are already criminal predators merely hone their predatory skills until they are released again into society. The focus needs to shift to rehabilitating the persons currently in prison: a strict, disciplined procedure for rehabilitation will serve both to prepare the offender to live lawfully in society and to reduce recidivism by making prison life more challenging than the real world. “Work, work, work if you’d save your soul and

\textsuperscript{263} This skilled labor will assist the prisoners in finding work outside the prison, pursuant to Title 18, U.S.C., § 3622, which in turn leads to earning money. “[W]age payments are desirable for several reasons: they give a man an incentive to work; they improve his morale; they enable him to be of some assistance to his dependents.” Holt v. Sarver, 309 F. Supp. 362, 371 (E.D. Ark. 1970).

\textsuperscript{264} See Torres v. Wisconsin Dep’t of Health and Social Serv., 859 F.2d 1523, 1532 n.4 (7th Cir. 1988) (“Rehabilitation involves more than avoiding recidivism. It involves enhancing the individual’s potential for personal achievement. This factor is not easily subject to empirical study.”).


\textsuperscript{266} See “Behind Bars”, supra note 2, at 2:19:00.
your body. It is honestly a necessity, dear boy.... A nation who can produce men of that sort [who desire work] may well be proud."²⁶⁷

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²⁶⁷ See E.M. FORSTER, HOWARDS END 88-89 (1910).