Prometheus Rebound by the Devolving Standards of Decency: The Resurrection of the Chain Gang

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The clanking of chains on a person's body is an ominous and incongruous sound in a country that was born amid the music of a Liberty Bell.3

Americans frightened by an increase in crime4 have urged elected officials to adopt “tough-on-crime” platforms that empha-

1 See AESCHYLUS, Prometheus Bound, in 1 GREEK TRAGEDIES 62, 65-105 (David Green & Richmond Lattimore eds., David Green trans., Univ. of Chicago Press 1960) (telling story of Titan Prometheus chained to boulder endlessly to be tormented by vultures); PERCY BYSSHE SHELLEY, Prometheus Unbound, in SELECTED POETRY AND PROSE 299, 304 (Kenneth Neill Cameron ed., Holt, Rinehart & Winston 1951) (noting Prometheus's liberation and reunion with humanity); WEBSTER'S NEW COLLEGIATE DICTIONARY 941 (9th ed. 1983) (defining Prometheus as “a Titan who is chained and tortured by Zeus for stealing fire from heaven and giving it to man”). As his punishment, Prometheus was chained to a desert boulder while vultures ate his liver each day and it was regenerated each night, so the vultures could torture him again the following day. Id.

2 See Rhodes v. Chapman, 452 U.S. 337, 363-64 (1981) (Brennan, J., concurring) (discussing standards of decency in evaluating prisons); Trop v. Dulles, 356 U.S. 86, 101 (1957). What constitutes cruel and unusual punishment may be determined in accordance with “evolving standards of decency that mark the progress of a maturing society.” Id.; Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968) (indicating Eighth Amendment is not easily defined, but “broad and idealistic concepts of dignity, civilized standards, humanity and decency are useful and usable”); M.C.I. Concord Advisory Bd. v. Hall, 447 F. Supp. 398, 404 (D. Mass. 1978) (“Penal measures are to be evaluated against ‘broad and idealistic concepts of decency.’”) (citation omitted); see also WEBSTER'S NEW COLLEGIATE DICTIONARY 329 (9th ed. 1983) (defining decency as “conformity to standards of taste, propriety, or quality”).


size deterrence over rehabilitation.\(^5\) Legislators have responded by reinstating capital punishment,\(^6\) enacting “no-frills” prison bills\(^7\) and supporting stricter sexual recidivist statutes.\(^8\) Recently,


\(^7\) E.g., H.R. REP. No. 663, 104th Cong., 1st Sess. (1995) (proposing Representative Zimmer’s amendment to Violent Crime Control and Law Enforcement Act of 1994 to prevent luxurious prison conditions); H.R. REP. No. 515, 104th Cong., 1st Sess. (1995) (submitting Representative Frye’s plan to prevent federal prisoners from strengthening their ability to fight); see CAL. PENAL CODE § 2601 (West 1994) (noting prison administration authority not limited to restrict privileges); N.C. GEN. STAT. § 15-196.3 (1995) (outlining “Credits Against the Service of Sentences and for Attainment of Prison Privileges” in Article 19A); see also Joe Hallinan, *Return to ‘No-Frills’ Prison is the Latest Rage*, HOUS. CHRON., Aug. 6, 1995, at 7 (noting lawmakers are seeking return to “no frills” prisons); Iver Peterson, *Cutting Down on Amenities to Achieve No-Frills Jails*, N.Y. TIMES, July 10, 1995, at B7 (hereinafter *Cutting Down on Amenities*) (noting three New Jersey county jails have begun to charge inmates for medications); Iver Peterson, *Researchers Divided Over Whether No-Frills Prisons Work*, HOUS. CHRON., July 16, 1995, at 12 (hereinafter *Researchers Divided*) (discussing anti-crime mood has led to “crackdown on the amenities and free services” inmates receive).

\(^8\) See, e.g., N.J. STAT. ANN. § 2C:7-6 (West 1995) (“Notification of community of intent of sex offender released from correctional facility or adjudicated delinquent to reside in municipality.”) (“Megan’s Law”) (enacted October 31, 1994, providing public notification provisions for repeated sex offenders); 1990 Wash. Laws ch. 3 §§ 1401-06 (permitting police to notify communities about sex offenders living nearby when necessary for public protection); see Michelle P. Jerusalem, *A Framework for Post-Sentence Sex Offender Legislation: Perspectives on Prevention, Registration, and the Public’s “Right” to Know*, 48 VAND. L. REV. 219, 221 (1995) (indicating angry parents insisted on legislative change to prevent sexual
legislators at every level have campaigned successfully on strong anti-crime platforms. The anti-crime climate that led to the election of conservatives and the enactment of no-frills prison measures, also led to the reconsideration of chain gang sentences.


the reemergence of chain gangs. Reinstatement of this mode of punishment, however, evokes Eighth Amendment concerns.

The United States Supreme Court consistently has acknowledged a broad and flexible standard of decency as the foundation of the Eighth Amendment. Nevertheless, the Court has developed a narrow practical standard that is increasingly difficult for

12 See Richard Lacayo, The Real Hard Cell: Lawmakers are Stripping Inmates of Their Perks, TIME, Sept. 4, 1995, at 31 (noting Americans are "fed up" with crime and looking to impose mild forms of torture). In a recent TIME/CNN poll, 65% of those questioned approved use of chain gangs. Id.; Poll: Arizonans Back Chain Gangs More Than 75+ Approve of the Reinstiution of the Procedure, TUCSON CITIZEN, May 26, 1995, at 2C (reporting three-fourths of state's registered voters approved reinstating of chain gangs); Shackles of Shame, ST. LOUIS DISPATCH, May 13, 1995, at 14B [hereinafter Shackles of Shame] (stating that "sounds of the men working on the chain gang are drowned out by the clinking of their chains and the public's roar of approval"). contra 48 Hours (CBS television broadcast, June 22, 1995) (reporting Alabama Representative John Knight's discussion of district poll opposing chain gangs).


an aggrieved prisoner to establish.\footnote{See Wilson v. Seiter, 501 U.S. 294, 311 (1991) (White, J., concurring) (stating that “ultimate result of today’s decision, I fear, is that ‘serious deprivations of basic human needs’ will go unredressed due to an unnecessary and meaningless search for ‘deliberate indifference’”) (citation omitted); Whiteley v. Albers, 475 U.S. 312, 329-30 (1986) (Marshall, J., dissenting) (stating that “unnecessary and wanton standard . . . establishes a high hurdle to be overcome by a prisoner seeking relief for a constitutional violation”); see also Irving Joyner, Litigating Police Misconduct Claims in North Carolina, 19 N.C. CENT. L.J. 113, 122 (1991) (indicating cruel and unusual standard is difficult one to meet); Ian M. Ogilvie, Comment, Cruel and Unusual Punishment: The Ninth Circuit Analyzes Prison Security Policy With “Deliberate Indifference” to Penological Needs in Jordan v. Gardner, 68 ST. JOHN’S L. REV. 259, 259 (1994) (suggesting standard of proving deliberate indifference is difficult hurdle in prisoners’ Eighth Amendment claims); JoAnne A. Pierce, Comment, Constitutional Law, Eighth Amendment Proportionality Analysis of Terms for Years Uncertain, Harmelin v. Michigan, 26 SUFFOLK U. L. REV. 210, 213 (1992) (indicating Supreme Court looks to society’s “evolving standards of decency” to evaluate Eighth Amendment claims, which is difficult concept to define); Doretha M. Van Slyke, Note, Hudson v. McMillian and Prisoner’s Rights: The Court Giveth and the Court Taketh Away, 42 AM. U. L. REV. 1727, 1728 (1993) (suggesting Supreme Court makes upholding prisoner’s rights increasingly difficult by creating legal barriers to Eighth Amendment claims through high standards of proof).} By international norms,\footnote{See Trop v. Dulles, 356 U.S. 86, 102-03 (citing United Nations surveys and international practices); HUMAN RIGHTS WATCH, WORLD REPORT 313 (1996) (noting Congressional crime bill expected to worsen United States prison problems); HUMAN RIGHTS WATCH, WORLD REPORT 343 (1994) (noting United States prisons violated International Covenant on Civil and Political Rights which required that prisoners “be treated with humanity and with respect for the inherent dignity of the human person”).} this narrowing standard is in conflict with the Eighth Amendment’s presumption of “progressively evolving standards of decency”\footnote{See Trop, 356 U.S. at 101 (asserting Eighth Amendment parameters are determined by “evolving standards of decency that mark a maturing society”).} and humanity.\footnote{See DeShaney v. Winnebago County Dep’t of Soc. Serv., 489 U.S. 189, 200 (1989) (indicating that when state restrains prisoner so that he is not self-sufficient, Eighth Amendment requires provision of basic human necessities such as food, clothing, shelter, medical care, and reasonable safety); Whiteley v. Albers, 475 U.S. 312, 326 (1986) (noting Eighth Amendment serves as primary source of substantive protection in cases where deliberate use of force is challenged as excessive and unjustified); Weems v. United States, 217 U.S. 349, 369 (1910) (stating Eighth Amendment “expresses a great deal of humanity”).} However, current Eighth Amendment jurisprudence eschews this international, philosophical foundation.\footnote{See Stanford v. Kentucky, 492 U.S. 361, 368 n.1 (1989) (rejecting expressly any consideration of international practices).} In this context, the Court has noted its obligation to identify rather than establish societal mores.\footnote{Id. at 378 (affirming role of judiciary to determine societal norms, not set them).} Thus, what otherwise would be “cruel and unusual punishment” under the Eighth Amendment may yield to a less tolerant society that is reshaping its notions of isolationism, cruelty and punitive goals.\footnote{See West’s ANNOTATED CALIFORNIA CODE Election Results (West 1995) (indicating approval of Proposition 187 “Illegal Aliens. Ineligibility for Public Services. Verification and Reporting”); CAL. EDUC. CODE § 66010.8 (West Supp. 1995) (“Exclusion of Illegal Aliens from Public Postsecondary Educational Institutions.”); CAL. HEALTH & SAFETY CODE § 130 (West Supp. 1995) (“Exclusion of Illegal Aliens from Publicly Funded Health Care.”); CAL. WELF. & INST. CODE § 10001.5 (West Supp. 1995) (“Exclusion of Illegal Aliens from Public
Although the Supreme Court has addressed confinement conditions as well as individual elements of chain gangs, it has never explicitly addressed whether the chain gang concept itself constitutes cruel and unusual punishment. Nevertheless, established safeguards and constitutional requirements, combined with the narrowing interpretation and application of the Eighth Amendment, may be sufficient to ensure that the new chain gangs to survive constitutional challenge.

This Note examines the chain gang and its prior abolition due to unconstitutional conditions of confinement. It will discuss whether its return is a devolution contrary to the underlying
spirit of the Eighth Amendment. Part One traces the history of chain gangs in America and discusses the reasons for their abandonment. Part Two describes the political climate that has led to the revival of chain gangs. It will describe modifications in the administration of chain gangs specifically designed to withstand constitutional attack. Part Three discusses the tension between the philosophical underpinnings of the Eighth Amendment and its practical application by the Supreme Court. This Note will conclude that although the chain gang violates the traditional philosophy of Eighth Amendment jurisprudence, it is unlikely that either its individual components or the aggregation of its elements will be found unconstitutional under the Court’s current narrow, practical analysis.

I. THE HISTORY OF THE CHAIN GANG

The American chain gang has predominantly southern roots. The poor economic and labor conditions of the South following the Civil War enhanced the attractiveness of convict road work. The chain gang was seen as a solution to the existing economic and labor strife while fulfilling the penal goals of retribution and deterrence.

Historically, chain gangs were criticized as disproportionately severe punishment for relatively minor offenses. Additionally,
labor unions opposed "convict leasing," whereby prisoners were temporarily assigned to another prison or state public works agency to complete projects, in exchange for which the transferring prison collected a fee. The chain gang was also challenged as involuntary servitude violating the Thirteenth Amendment. Ultimately, however, insufficient funding and inexperienced supervision led to abominable conditions of confinement that violated the Cruel and Unusual Punishments Clause of the Eighth

See Feeley et al., supra note 25, at 155 (describing convict lease system as "an inglorious history of American penal policy"). See generally Dipiano, supra note 29, at 188 (noting "leasing" of convict labor is quasi-slave labor).

See U.S. CONST. amend. XIII. The Thirteenth Amendment provides that: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States ...." Id.; U.S. v. Kozminski, 487 U.S. 931, 943 (1988) (stating Thirteenth Amendment expressly permits labor imposed as criminal sentence); Butler v. Perry, 240 U.S. 328, 331 (1961) (sentencing prisoner convicted of misdemeanor to highway labor not involuntary servitude under Thirteenth Amendment).

See Smith v. Sullivan, 611 F.2d 1039, 1043-44 (5th Cir. 1980) (holding inadequate funding is not excuse to perpetuate inhuman conditions of confinement); Williams v. Edwards, 547 F.2d 1206, 1212-13 (5th Cir. 1977) (finding prison must operate within constitutional mandates despite inadequate funding from legislature).

See Steiner & Brown, supra note 25, at 10, 51 (noting requirement of one armed guard for every 10 to 15 prisoners to ensure efficiency and prevent escape and noting principle purpose of chain gang was to punish by labor exploitation rather than reform). Lack of adequate training was exacerbated by housing and assigning petty offenders to work with repeat violent felons. Id. at 81. Southern penal policy maintained that chain gangs existed "primarily for the protection of society" and that:

[Under] any theory of punishment other than of vengeance or of deterrence, the chain gang can justify its right to existence only when officials placed in charge of the prisoners are men of character, skilled in methods of controlling men by inspiring respect. Such men among chain gang officials are very rare. Usually, the men in immediate charge of county prisoners working the road are by character and training unfair to have any such authority over other men as is thought necessary in the typical prison. Unfortunate, ignorant men, strained beyond capacity, incapable of fortitude and needing some outlet and escape or a fruitless, barren existence, impose their wills upon other men more unfortunate and more helpless. Quite often both the supervisor, as the ranking official in charge of the county prison camp is most frequently called, and the guards, who are usually not merely guards but also general assistants to the supervisor, are in standards of conduct and ideals of life but little above the average prisoner.
Amendment.\textsuperscript{34} Court-appointed receivers ordered legislators and prison administrators to consider alternative modes of punishment and to improve prison conditions.\textsuperscript{35} Eventually, chain gangs were replaced by modern prisons subject to administrative and constitutional guidelines.\textsuperscript{36}

A. Southern Source of Labor Gone Awry

Chain gangs arose predominantly in the post-Civil War, agrarian South, after the abolition of slavery.\textsuperscript{37} Southern states focused on deterrence and retribution,\textsuperscript{38} while Northern states emphasized the rehabilitative goals of incarceration\textsuperscript{39} and funded prison construction.\textsuperscript{40} Many former slaves, now unemployed and homeless\textsuperscript{41} were arrested under the pretext of vagrancy, loitering,
disorderly conduct, and public intoxication to provide cheap labor for plantation owners and municipalities. The inability of most African-American men to pay their fines gave rise to the peonage system, essentially returning them to involuntary servitude.

Part 2: The Peonage Cases, 82 COLUM. L. REV. 646, 648 (1982) (suggesting fines and vagrancy statutes had heightened impact on unemployed, former slaves); Myers, supra note 37, at 320-323 (suggesting chain gang sentencing was racially motivated). Reduced farm profits were blamed on produce theft attributed to “natural propensities of the Negroes, intensified by their necessities, but they were also encouraged in it by white thieves who dealt largely in farm products purchased at night in small quantities with no questions asked.” Id. Most of the state and county prisoners were African-American men, representing a ratio greatly disproportionate to population demographics. Id. at 14-15, 18; see also Myers, supra, at 321-33 (discussing ratio of black convicts to chain gangs based on type of crime, length of sentence, and effect of sentence). Race was clearly a factor in physical brutality meted out in labor camps. Id.

42 See Jamison v. Wimbish, 130 F. 351, 352 (W.D. Ga. 1904), rev’d, 199 U.S. 599 (1905). Prisoner brought habeas corpus proceeding challenging recorder’s authority to impose chain gang sentence for petty offense absent jury or counsel. Id. The Court referred to chain gangs as “the most melancholy and distressing spectacle which afflicts the patriot and humanitarian.” Id. The district court noted the role of degradation and humiliation implicit in chain gangs and suggested a return to more humane methods. Id. The court also discussed the inequity of a system whereby poor, often African-American, laborers who were unable to pay a $60 dollar fine were sentenced to seven months on a chain gang. Id. at 353, 363; see also Clarke v. Carlan, 26 S.E.2d 362, 363 (Ga. 1943) (imposing twelve-month sentence on public works for abandonment of children); Reper v. Mallard, 19 S.E.2d 525, 525 (Ga. 1942) (concerning misdemeanors punishable “by fine not to exceed $1,000, imprisonment not to exceed six months to work in the chain gang . . . not to exceed 12 months . . . in the discretion of the judge”); Pearson v. Wimbish, 52 S.E. 751, 752 (Ga. 1906) (sentencing defendant to chain gang after arrest without warrant for petty offense and trial without counsel); STEINER & BROWN, supra note 25, at 35 (citing inability to pay fine for trivial offense often resulted in housing of petty offenders with violent felons); Schmidt, supra note 29, at 1411 (outlining offenses charged resulting in involuntary servitude).


44 See STEINER & BROWN, supra note 25, at 42-43 (noting judges may sentence those unable to pay fines to road labor).

45 See Cyatt v. United States, 197 U.S. 207, 209 (1905) (defining peonage as “status or condition of compulsory service, based upon the indebtedness of thepeon to the master . . . [for] compulsory service to secure the payment of a debt.”); see also STEINER & BROWN, supra note 25, at 25 n.18 (suggesting peonage systems were intended to benefit African-American men who had no relatives or friends to help them avoid prison by paying fines). See generally Schmidt, supra note 29 (discussing peonage system, its racial implications, and abolition). Peonage was another method of ensuring a continual supply of labor. Id. at 1411. Recently-freed slaves, without homes or work, were arrested for minor offenses such as vagrancy and public intoxication. Id. They were subsequently unable to pay the fine imposed. Id. Someone would then come forward and offer to pay the fine in exchange for a promise of work from the convict. Id. Failure to appear for work for even one day resulted
Convicts built and maintained public roads or were "leased" to other counties and private industries for profit. The law enforcement community and courts soon began to see convicts as a valuable source of labor, which resulted in longer and stricter sentences. Portable workhouses were erected at work sites to avoid transportation costs. Inexperienced and untrained supervision led to unsanitary and inhumane housing conditions in workhouses and prisons. Guards and trustees maintained discipline with force, humiliation and physical brutality. Convicts endured these deplorable conditions while wearing painful shackles soldered onto their ankles to prevent escape. In the evening, the men were chained to their beds as well as to one an-

in arrest for violating this private employment contract. Id. This resulted in imprisonment after which the contract had to be fulfilled or additional fines and the circle began anew. Id.

See Taylor v. Georgia, 315 U.S. 25, 29 (1942) (declaring peonage unconstitutional). Peonage fell under the Thirteenth Amendment's proscription of involuntary servitude. Id. Former slaves often became trapped in the cycle of involuntary servitude or imprisonment. Id. Workers failing to appear for work or complete work on time were arrested for failure to complete their contract and incurred second penalty upon completion of first contract or fine payment. Id.; see also Ex parte Drayton, 153 F. Supp. 986, 986-89 (D.S.C. 1907) (declaring contract termination cannot be criminal offense).


See Parish, supra note 5 (noting Civil War destruction of property and prisons resulted in leasing convicts as plantation labor and that until late 1880s chain gangs were main form of convict labor in eight Southern states).

See Steiner & Brown, supra note 25, at 55-58 (describing work houses).

See Steiner & Brown, supra note 33 and accompanying text (discussing consequences of untrained chain gang guards).

See Steiner & Brown, supra note 25, at 74-75. Convicts afflicted with contagious tuberculosis or venereal disease were not quarantined. Id. The workhouses were not designed for long-term housing of many men so that the facilities suffered inadequate ventilation, substandard sanitation, climatic extremes, fetid food, infestation and disease. Id. at 75-79.

See id. at 105. Chain gangs were comprised of up to 100 men. Id. Since economy was the primary goal, discipline was enforced by restraints, threats and physical abuse. Id.

See Parish, supra note 5 (noting that, in past, chain gang convicts were tethered to 14 lb. ball).

See Harper v. Wall, 85 F. Supp. 783, 785-87 (D.N.J. 1949) (holding that extracting confession by beating African-American teenager was sufficient constitutional violation to warrant denial of extradition). In Harper, the petitioner was released on a writ of habeas corpus. Id. at 787. The United States District Court for the District of New Jersey, as the asylum state, found petitioner's treatment in Alabama violated his Fourteenth Amendment rights. Id. At 15, without benefit of counsel, petitioner was beaten until he confessed to stealing five dollars. Id. at 784. Once incarcerated, he was flogged for not eating the worm-infested food. Id. at 785. The district court found that compared to other conditions, his leg irons were only a minor cruelty. Id. at 786. In light of the circumstances, the same court held that the beatings prior to the confession, the lack of representation by counsel, the county camp labor system, along with the conditions to which he was subjected, "spell[ed] out cruel and unusual punishment...." Id. at 787; see also In re Middlebrooks, 88 F. Supp. 943, 952 (S.D. Cal. 1950) (refusing to grant request of state demanding extradition of convict subjected to cruel and unusual punishment); Steiner & Brown, supra note 25, at 89-99 (describing disciplinary measures such as restraints and flogging).
other. Under these conditions, the average life span of a convict was five years, making assignment to a chain gang tantamount to a death sentence. These inhumane conditions flourished because of the complexities of extradition principles, a "hands-off" approach by the federal courts in deference to the states with regard to penological issues, and inadequate legal remedies for the convicts.

B. Abandonment of Chain Gangs

The barbaric and inhumane conditions endured by chain gang convicts caused prisoners to seek refuge in other states. States then initiated extradition proceedings to regain custody of these

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55 See id. at 40 (stating average life of convict after sentencing to chain gang road crew was less than five years).

56 See Jamison v. Wimbish, 130 F. 351, 361 (W.D. Ga. 1904) (describing chain gang prisoner as "toiling on the public roads in the frantic energy of one who works under fear of death, or of punishment to which in the mind of a vast majority of men, death itself would be preferable"); Roback, supra note 29, at 1170 (noting 45% mortality rate on chain gangs); Schmidt, supra note 29, at 653 (confirming drastically shortened life expectancy of chain gang convicts).

57 See infra notes 60, 62-70 and accompanying text (discussing difficulties in seeking remedy for constitutional violation through extradition proceedings).

58 See Ruiz v. Estelle, 679 F.2d 1115, 1126 (5th Cir. 1982) (noting courts are "ill-equipped" to manage prisons); Wright v. Rushen, 642 F.2d 1129, 1132 (9th Cir. 1981) (limiting court intervention to correction of unconstitutional prison conditions); see also Procunier v. Martinez, 416 U.S. 396, 403 (1974) (finding that where prison conditions violate Constitution, federal court has duty to intervene); Smith v. Sullivan, 611 F.2d 1039, 1044 (5th Cir. 1980) (noting federal court may impose conditions on state to remedy unconstitutional prison conditions). But see Rhodes v. Chapman, 452 U.S. 337, 348 ("Courts cannot assume that state legislators and prison officials are insensitive to constitutional requirements."); Spain v Procunier, 600 F.2d 189, 193 (9th Cir. 1979) (explaining that prisoners do not relinquish Eighth Amendment protections at "prison gate").

59 See Sweeney v. Woodall, 344 U.S. 86, 91-93 (1952) (Douglas, J., dissenting) (stating that to require petitioner to exhaust state remedies would require him "to suffer torture and mutilation or risk death itself to get relief in Alabama" and "run a gamut of blood and terror to get to his legal rights").

fleeing prisoners. The only mechanism available for escapees to resist extradition was to file a writ of habeas corpus in the asylum state. These escapees maintained that return to the "home state" would be met with retribution and further brutality. The typical habeas corpus petition asserted that the "totality" of prison conditions violated established standards of decency, humanity, as well as the Constitution. Since extradition laws did not permit an asylum state to review claims challenging the constitutionality of conditions in a demanding state, federal courts pre-

61 See, e.g., Middlebrooks, 88 F. Supp. at 945 (California warrant issued pursuant to Georgia extradition demand); Harper, 85 F. Supp. at 784 (New Jersey warrant issued in response to Alabama extradition demand); Marshall, 85 F. Supp. at 772 (New Jersey warrant issued following Georgia extradition demand); Stewart, 475 P.2d at 600-01 (Mississippi sought extradition writ from Oregon).

62 See Sweeney v. Woodall, 344 U.S. 86, 89-90 (1952) (requiring exhaustion of state remedies before bringing federal habeas corpus proceeding); Res v. Middlebrooks, 188 F.2d 308, 311 (9th Cir. 1951) (noting that state provides adequate remedy but requires return of petitioner to demanding state requiring "substantial inconvenience"); Davis v. O'Connell, 185 F.2d 513, 517 (8th Cir. 1951) (stating chain gang fugitive must exhaust state remedies before seeking federal court protection).

63 See Sweeney, 344 U.S. at 89. In Sweeney, a fugitive from an Alabama prison was arrested in Ohio and held for extradition. Id. at 87. The fugitive sought a writ of habeas corpus and asked the federal court in the asylum state to pass upon the constitutionality of his treatment in Alabama. Id. at 88-89. The Supreme Court held that "[c]onsiderations fundamental to our federal system require that the prisoner test the claimed unconstitutionality of his treatment by Alabama in the courts of that State." Id. at 90; Davis, 185 F.2d at 517 (holding before party may invoke jurisdiction of federal court in habeas corpus proceeding to test legality of sentence in demanding state he "must have exhausted his state remedies in that state"); State ex rel. Toht v. McClure, 96 N.E.2d 308, 309-10 (Ohio Ct. App. 1950) (holding state had no power upon habeas corpus proceedings to consider whether constitutional rights of petitioner were likely to be violated by sibling state for which he was held on writ of extradition). The McClure court maintained that a writ of habeas corpus was an "extraordinary remedy" granted only upon a clear showing, not "on a mere expectancy of a violation of a constitutional right." Id. at 310. Since the court presumed that Florida prison authorities would not violate petitioners constitutional rights, they held such a writ was unwarranted. Id. at 311. Furthermore, if there were any constitutional rights violated, the proper forum for such an action was in the demanding state. Id.; see also Marshall, 85 F. Supp. at 772-73. At a habeas corpus proceeding in New Jersey, a sheriff testified that alleged inhuman punishment had ceased and that the guards responsible had been prosecuted and convicted. Id. at 774. Based on this, the court concluded that the prisoner would not be released on writ of habeas corpus in Georgia. Id. at 775; accord Baldi, 106 A.2d at 780 (holding that violation of constitutional rights in demanding state could not be allowed to interfere with extradition proceeding). Contra Harper 85 F. Supp. at 787 (granting habeas corpus and releasing prisoner based on unconstitutional conditions of state labor system).


65 See Res, 188 F.2d at 918 n.1. Despite such findings, however, prisoners seeking to avoid extradition were often unsuccessful because of the hands-off approach courts believed was required. Id. However, the United States District Court for the Southern District of
sumed that the demanding state acted in accordance with the United States Constitution.\textsuperscript{66} Therefore, the only forum in which an escapee could challenge the constitutionality of his sentence was in the demanding state.\textsuperscript{67} However, the availability of this remedy was further limited because the Eighth Amendment was not applied uniformly to the states until 1962.\textsuperscript{68}

Eventually, the rising number of claims attracted the attention of the federal courts.\textsuperscript{69} In response to the continuing inhumane

California, in \textit{Middlebrooks}, granted a writ of \textit{habeas corpus} because the Georgia sentence violated due process and constituted cruel and unusual punishment. \textit{Id. In re Middlebrooks}, 88 F. Supp. 943, 951 (S.D. Cal. 1950). Petitioner was an uneducated, young African-American male who was repeatedly arrested for burglary, the last time for which he was convicted and sentenced without benefit of counsel or a trial. \textit{Id.} at 945-46. He recounted uncivilized and unsanitary confinement conditions, claimed that the prisoners worked from sunrise to sunset with only a short break, and that the food caused nausea and dysentery. \textit{Id.} at 946. The prisoners were also chained and often beaten and whipped. \textit{Id.} Petitioner's release on writ of \textit{habeas corpus} was later reversed for failure to exhaust state remedies. 188 F.2d at 310-11; see also \textit{Sweeney}, 344 U.S. at 88, 90 (1952) (holding prisoner's claim of unconstitutional treatment must be brought in court of demanding state); Davis, 185 F.2d at 517 (requiring remedies in demanding state be exhausted before invoking federal court jurisdiction in \textit{habeas corpus} proceeding); Adams v. Indiana, 271 N.E.2d 425, 430 (Ind. 1971) (finding judge's personal approval or disapproval of punishment mandated by legislature irrelevant); Commonwealth v. Baldi, 106 A.2d 777, 791 (Pa. 1954) (Musmanno, J., dissenting) (suggesting poor, uneducated Black prisoners did not have access to courts or remedies); Peter Morrison, \textit{The New Chain Gang}, \textit{NAT'L L.J.}, Aug. 21, 1995, at A1, A22 (confirming recent trend in courts deferring to state officials and prison administrators and movement towards more "punitive prisons").

\textsuperscript{66} See McClure, 96 N.E.2d at 311 (finding asylum state court denied petitioner's writ of \textit{habeas corpus} because of presumption that demanding state's prison authorities act in conformity with Constitution).

\textsuperscript{67} See Sweeney v. Woodall, 344 U.S. 86, 90 (1952) (holding escapee's claim of unconstitutional treatment was matter for demanding state); Davis v. O'Connell, 185 F.2d 513, 517 (8th Cir. 1950) (denying \textit{habeas corpus} petition for failure to first exhaust remedies available in demanding state). See generally \textsuperscript{supra} notes 58 and 60 (discussing "hands-off" posture of federal courts in extradition proceedings). \textit{But see Baldi}, 106 A.2d at 786 (Musmanno, J., dissenting) (commenting on petitioner's unlikely opportunity to secure counsel or successfully challenge claim in demanding state).

\textsuperscript{68} See Robinson v. California, 370 U.S. 660, 666-67 (1962) (holding state statute imposing prison sentence for drug addiction was cruel and unusual punishment). The \textit{Robinson} Court also found the Eighth Amendment to be applicable to the states through the Due Process Clause of the Fourteenth Amendment. \textit{Id.} at 675; see also Newman v. Alabama, 559 F.2d 283, 287 (5th Cir. 1977) (stating "[i]t was not until 1962 that the Supreme Court applied the Eighth Amendment to the states through the Fourteenth Amendment"); Middlebrooks, 88 F. Supp. at 951 (stating Eighth Amendment protections did not apply to states).

\textsuperscript{69} See Sweeney, 344 U.S. at 90 (1952) (explaining that constitutionality of prison conditions is to be tested in state court); Ruiz v. Estelle, 679 F.2d 1115, 1126, 1133-36 (5th Cir. 1982) (discussing federal court intervention and prison receiverships); Wright v. Rushen, 642 F.2d 1129, 1132 n.1 (9th Cir. 1981) (discussing traditional "hands-off" approach of federal judicial to prison administration); Res v. Middlebrooks, 188 F.2d 308, 310-11 (9th Cir. 1951); Davis v. O'Connell, 185 F.2d 513, 517 (8th Cir. 1951) (requiring exhaustion of state remedies to challenge extradition); State ex rel Toht v. McClure, 96 N.E.2d 208, 309-10 (Ohio Ct. App. 1950) (noting that state courts are appropriate fora for redressing constitutional violations of prisons where Eighth Amendment not limit of state action). \textit{But see Bell v. Wolfish}, 441 U.S. 520, 562 (1979). The \textit{Bell} Court recognized that intervention by federal
and unconstitutional conditions of confinement in state prisons, federal courts ordered reforms in administration, supervision, and sanitation. Many prisons defied such decrees, however, under the pretense of insufficient funding by state legislatures. The federal courts ultimately responded by placing uncooperative prisons into receivership or by shutting them down, forcing reexamination and reform of penal institutions and punishments. Although never expressly abolished, chain gangs ultimately were abandoned as a result of insurmountable administrative, economic, and constitutional hurdles.

II. Revival of Chain Gangs

Present-day judiciary and state legislatures have imposed stricter punishments in an increased effort to deter crime and prison violence, as well as to reduce expenses incident to fighting crime. In particular, three states have resorted to chain gangs courts to stop "these sordid aspects of our prison systems" was necessary, but felt that sometimes courts became too "enmeshed in the minutiae of prison operations." Id. The Supreme Court noted that federal court review was limited to issues of "whether a particular system violates any prohibition of the Constitution or in the case of a federal prison, a statute," and that they were not permitted to invoke their own solutions to these problems. Id.


See Smith v. Sullivan, 611 F.2d 1039, 1044 (5th Cir. 1980) (noting "it is well-established that inadequate funding will not excuse the perpetuating of unconstitutional conditions of confinement"); Williams v. Edwards, 547 F.2d 1206, 1211-13 (5th Cir. 1977) (discussing need to provide constitutional prison conditions may necessitate state expenditures).

See Newman, 466 F. Supp. at 630, 635, 638 (placing Alabama prison system into receivership after finding Board of Corrections had failed to make genuine effort to remedy unconstitutional prison conditions); Crain v. Bordenkircher, 454 S.E.2d 101, 111 (W. Va. 1994) (demonstrating receivership appropriate remedy for prison failure to comply with court orders to eliminate Eighth Amendment violations); see also Shaw v. Allen, 771 F. Supp. 760, 761-62, 764 (S.D. W. Va. 1990) (holding failure to bring jail's conditions up to constitutional standards warranted appointment of receiver).

to accomplish all three goals, to in hopes that a harsher prison experience will be a disincentive to future crime. Additionally, mandatory labor is expected to provide enough physical activity to alleviate boredom and create “healthy exhaustion” so that inmates will be too tired to fight each other or prison guards. These states have structured their chain gangs to conform to the guidelines outlined in past case law. Nevertheless, inmates have al-


E.g. ALA. CODE § 14-3-53 (1995) (shackles and chains worn by prisoners on consent of corrections board); id. § 14-4-2 (county determines site where hard labor performed by prison inmates); id. § 14-5-5 (county may assign convict to work in and around public building or on county projects); id. § 23-1-37 (permitting highway work, construction and maintenance); ARIZ. REV. STAT. ANN. § 31-252 (1994) (“cooperative prison labor system” permitting chain gang highway crews); 1995 FLA. SESS. LAW SERV. § 283 (West) (requiring implementation of plan by December 1, 1995, requiring inmates to wear leg irons and work in chain gang teams); see also Morrison, supra note 65 (discussing rise of chain gangs); 48 Hours, supra note 9 (noting return and spread of chain gangs due to rising crime and expense of imprisonment); Today (NBC television broadcast, Mar. 28, 1995) (interviewing Alabama Prison Commissioner Ron Jones and American Civil Liberties Union, National Prison Project Director Alvin Bronstein discussing expense of imprisonment and constitutionality of chain gangs); Telephone Interview with William Grey, Counsel to Alabama Governor Fob James (Aug. 16, 1995) [hereinafter Telephone Interview with William Grey] (stating that “cost is the ultimate factor.”).

See 48 Hours, supra note 9 (quoting Alabama Governor Fob James as stating chain gang employed for “deterrent impact”); CBS This Morning, (CBS television broadcast, Apr. 28, 1995) [hereinafter Telephone Interview with William Grey] (reporting Mississippi State Representative Ron Jones suggesting chain gang experience expected to deter crime; Navarro, supra note 11 (quoting Florida Corrections Department spokesman explaining goal of chain gang is deterrence); Scott Wade, Forced Labor Gets Second, Closer Look; Are Chain Gangs a Crime Deterrent?, LOUISVILLE COURIER-JOURNAL, July 30, 1995, at A1 (reporting benefit of exhaustion after 12-hour day on chain gang); Telephone Interview with William Grey, supra note 74 (stating long day at hard labor expected to sufficiently tire convicts to reduce prison violence); see also CBS This Morning, (CBS television broadcast, May 26, 1995) [hereinafter Phone Interview with William Grey] (reporting Arizona Sheriff notes chain gang goal to “[save] taxpayers’ money”).

See 48 Hours, supra note 9 (quoting Alabama Governor Fob James as stating chain gang employed for “deterrent impact”); CBS This Morning (April 28), supra note 75 (reporting Mississippi State Representative Tom Cameron suggesting chain gang experience expected to deter crime; Navarro, supra note 11, at A12 (quoting Florida Corrections Department spokesman explaining goal of chain gang is deterrence). See generally Weiser, supra note 5 (discussing how stricter sentencing policies reduce crime rate).

Wade, supra note 75, at A1 (reporting benefit of exhaustion after 12-hour day on chain gang); Telephone Interview with William Grey, supra note 74 (stating long day at hard labor expected to sufficiently tire convicts and reduce prison violence).

See ALA. CODE § 14-4-7 (1975) (prohibiting women from working “as a laborer on any public highway in this state”); 1995 Iowa Legis. Serv. HF 215 (West) (stating hard labor “shall be available to both male and female inmates”).

See Morrison, supra note 65, at A1. In the modern Alabama chain gang, an epileptic prisoner was accused of “shirking” and was chained to the hitching post for 10 hours as punishment. Id. Subsequently, a nurse confirmed that he had suffered an epileptic seizure. This is a disturbing continuation of similar practices that occurred during the 1920s. Id. See also STEINER & BROWN, supra note 25, at 76 (referring to epileptic as “malingering”).
leged that several aspects of the modern chain gangs are unconstitutional.79

A. Political and Societal Predicates

Americans have become increasingly concerned about the cost and effect of rising crime rates.80 The public supports reduced tax dollars spent on prisoner care, comfort, and confinement.81 The expansion of prisoners’ rights over the past thirty years has been blamed for current increases in crime82 as it is widely viewed as pampering the criminal, thereby reducing the punitive effect of incarceration.83 Consequently, Americans support less costly meas-

practice of chaining a convict to a hitching post as described has been held to be a violation of the Eighth Amendment.

See Gates v. Collier, 501 F.2d 1291, 1306 (5th Cir. 1974) (handcuffing inmates to fence for long periods of time either standing or maintaining awkward positions is corporal punishment violating contemporary standards of decency, human dignity, and Eighth Amendment).

79 See Austin v. James, No. 95-T-637-N (M.D. Ala. filed Sept. 19, 1995) (Second Amended Complaint at 1, 10) (alleging Eighth Amendment violations including chain gang concept, unsanitary toilet facilities, hitching post punishments).

80 See CBS This Morning (April 28), supra note 75 (stating return of chain gang is America’s response to high crime rate by “mak[ing] hard time even harder”); see also Weiser, supra note 5 (showing “get-tough attitude” toward criminals caused five percent drop in crime rate). See generally Hearings before the Senate Judiciary Comm. on National Drug Control Policy, 104th Cong., 1st Sess. (1995) (statement of Louis J. Freeh, Director, Federal Bureau of Investigation) (indicating heightened public fear over increasing crime rate); Braun & Pasternak, supra note 4, at 11 (suggesting that perception of increased crime is result of local crime and media focus on violence); Cullen, supra note 6, at 16 (noting Pennsylvania Governor Weld said his campaign to restore death penalty was “response to ‘moral consensus’ that death is an appropriate punishment for same crimes”); Gallagher, supra note 6 (noting New York Governor fulfilled campaign promise by signing death penalty bill into law); Hallinan, supra note 7, at 7 (noting lawmakers seek to return to “no frills” prisons); Jerusalem, supra note 8, at 221 (indicating angry parents insisted on legislative change to prevent sexual offenders from repeating offenses); Mendez, supra note 4, at 802 (noting increased fear of crime resulted in emphasis on safety and new legislation); Peterson, supra note 7, at 12 (discussing anti-crime mood has led to “crackdown on the amenities and free services inmates receive”); Thornburgh, supra note 4, at 14-15 (suggesting politicians should act on “tough talk about crime” in political rhetoric); 48 Hours, supra note 9 (stating cost of corrections is nationwide problem); supra note 5 and sources cited therein (discussing public support for “tough-on-crime” political platforms).


82 See Weiser, supra note 5 (noting American Legislative Exchange Council report asserting “more lenient approach” led to “tripling of the crime rate”).

83 Id.
ures which also increase deterrence\textsuperscript{84} by making the prison experience more severe\textsuperscript{85} by limiting prisoners’ rights and reducing amenities.\textsuperscript{86} Thus, criminal justice goals have shifted toward emphasizing deterrence and punishment\textsuperscript{87} because rehabilitation has been perceived as an unrealistic goal of the American penal system.\textsuperscript{88}

Recent trends in state and federal legislatures,\textsuperscript{89} as well as in the judiciary,\textsuperscript{90} seem to mirror the country’s growing concern with


\textsuperscript{86} See generally Jeff Potts, American Penal Institutions and Two Alternative Proposals for Punishment, 34 S. TEX. L. REV. 443, 455-60 (1993) (discussing penal system’s failure to prevent recidivism).

\textsuperscript{87} See, e.g., Robert P. Gritton, Capital Punishment: New Weapons in the Sentencing Process, 24 GA. L. REV. 423, 441 (1990) (stating goal of death penalty is retribution); see also Jonathan Freedland, Law and Order: Cruel and Unusual: Sheriff Joe Strikes Home, OTTAWA CITIZEN, June 10, 1995, at B3 (quoting Arizona sheriff, “I use my jails as a crime deterrent . . . .") This sheriff has an 80% approval rating “in a county with a population of 2.5 million—larger than that of 18 U.S. states.” Id. The “primary goal of Alabama’s chain gang” was to soothe voter anxiety about rising crime rates; it has succeeded. Id.

\textsuperscript{88} E.g., Raymond Y. Lin, A Prisoner’s Constitutional Right to Attorney Assistance, 83 COLUM. L. REV. 1279, 1315 n.229 (1993) (citing Serril, Is Rehabilitation Dead?, CORRECTIONS MAG., May/June 1995, at 3-12, 21-32 (discussing loss of hope for rehabilitation)).

\textsuperscript{89} See Steve Berg, Peeling the Orange, STAR TRIB. (Minneapolis-St. Paul), Sept. 1, 1995, at A20 (commenting on “new conservative Congress” shifting economic burdens to local levels); Harwood, supra note 21 (discussing California Governor Pete Wilson’s campaign as mirroring national political climate).

“law and order.” Longer, tougher sentences and the elimination of nonessential privileges for inmates, perceived as heightening the punitive impact of imprisonment, are the conse-

provided two consecutive “conservative” Presidents with similar ideologies opportunity to reverse “liberal” trend of Warren and Burger Courts. See generally Sandin v. Conner, 63 U.S.L.W. 4601, 4604-05, 4609-10 (U.S. June 19, 1995) (declining to expand circumstances under which prisoner's liberty interests are implicated); David G. Savage, Vanishing Voice of Liberalism: The Supreme Court's Conservative Pace is Expected to Quicken with Thurgood Marshall's Retirement. Winners are Likely to Be Prosecutors and Police, L.A. Times, June 29, 1991, at 1 (suggesting Justice Marshall's retirement would quicken Court's "conservative shift").

91 Paul Katzeff, Criminal Defense Lawyers Boost Bar Groups, Nat'l L.J., Jan. 27, 1992, at 7 (asserting rehabilitation was failure of "permissive liberalism"); David Rose, UK: Back to Jackboot Justice, Guardian (London), Mar. 12, 1995, at 27 (noting focus on retribution through "physical hardship and pain" rather than rehabilitation); 48 Hours, supra note 9 (quoting Alabama Governor Fob James, "[y]ou're going to serve your time and then you don't want to come back"); see also Smith v. Sullivan, 611 F.2d 1039, 1042 (5th Cir. 1980) (stating it was not court’s responsibility to “supervise those elected officials whose responsibility it is to administer the day to day operation of [jails]").


93 See Mark Curriden, Hard Time, 81 A.B.A. J. 72, 73 (1995); Dennis, supra note 29, at 1 (noting prison should not be “country club” experience). Budget cuts and strong anti-crime public sentiment in the 1990s have some states reducing living standards for prison inmates. Id. Believing that the courts have elevated prisoners' living conditions to a level above that enjoyed prior to incarceration, Congress and state governments have begun to take action. Id. Proposed changes to increase the punitive aspects of imprisonment include limiting prisoner standing to sue, removing luxuries and privileges such as weight rooms and television, and making prisoners pay for their room and board. Id. Predictably, civil rights advocates oppose such sweeping changes and warn that worsened prison conditions will prevent rehabilitation. Id.; Morrison, supra note 65, at A23 (citing American Civil Liberties Union opposition to chain gangs and removal of prison privileges).

94 See Rhodes v. Chapman, 452 U.S. 337, 347 (1981) (declaring harshness of prison life is “part of the penalty that criminal offenders pay”); Susan Sturm, Resolving the Remedial Dilemma: Strategies of Judicial Intervention in Prisons, 138 U. Pa. L. Rev. 805, 912 n.62 (1990) (noting belief of some that prison conditions should be harsh); Worth, supra note 10 (quoting Massachusetts Governor Weld approving harsh prison conditions which should be "a tour through the circles of hell"). But see Morrison, supra note 65, at A1 (noting academics’ theory that austere conditions create hardened criminals).
quences of this changing attitude.\(^\text{95}\) The taxpaying public holds the view that inmates at most prisons receive excessive benefits and privileges.\(^\text{96}\) Both state and federal legislators have proposed a return to the bare minimum conditions required under the Constitution.\(^\text{97}\) For example, the “No Frills Act”\(^\text{98}\) recently proposed in Congress\(^\text{99}\) would restrict access to federal funds for prison construction to those states which eliminate prison “luxuries” such as computers, R-rated films and weightlifting equipment.\(^\text{100}\) These restrictions risk a return to the same circumstances which originally gave rise these prisoner privileges.\(^\text{101}\) In the past, prison overcrowding, coupled with a lack of recreation or work, often re-

\(^{95}\) See supra note 92.

\(^{96}\) See Morrison, supra note 65, at A22 (reporting tougher prisons are perceived more effective than those with prisoner amenities).

\(^{97}\) See id. The American Civil Liberties Union points out that “[s]ome of the things people consider frills are constitutionally mandated.” \textit{Id.} Adequate recreation time, access to lawyers, a fully stocked and accessible law library, adequate diet, hygiene and medical care are constitutionally required. \textit{Id.} \textit{See also Cutting Down on Amenities, supra note 7, at B7.} However, eliminating weight rooms, television, coffee, and cigarettes cannot be included in the list of requirements. \textit{Id.} Indeed, New Jersey Republican Representative Dick Zimmer, sponsored two “no-frills” proposals. 

\textit{See} \textit{H.R. REP. No. 663, supra note 7.} Congressman Zimmer recognizes the inequity of taxpayers working hard to subsidize criminals “eating[ing] steak and watch[ing] television.” \textit{Cutting Down on Amenities, supra note 7, at B7.} He proposes that prison food should be “no better food than the U.S. Army.” \textit{Id.} \textit{CBS This Morning} (April 28), \textit{supra note 75.} Tennessee Democratic Congressman Don Bird (D-Tenn.) has also sponsored stricter prison legislation. \textit{Id.} Nevertheless, some experts maintain that making imprisonment so onerous as to be a deterrent itself may be an incorrect premise. \textit{Id.} “They think they’ll never be caught. These people advocating the return of the chain gangs are saying they want to treat prisoners like wild animals,” suggests National Prison Project Director Alvin Bronstein. \textit{Id.} “Unfortunately, it may become a self-fulfilling prophecy.” \textit{Id.}


\(^{100}\) See \textit{Peterson, supra note 7.} There is much controversy over the appropriate goals of imprisonment, and whether those goals will be served by stripping inmates of privileges. \textit{Id.}

\(^{101}\) See \textit{Newman v. Alabama, 466 F. Supp. 628, 634-35 (M.D. Ala. 1979)} (suggesting boredom and frustration cause prisoner violence); \textit{see also} Morrison, supra note 65, at A22 (reporting idleness creates potential for violence). \textit{But see Curriden, supra note 93, at 72-74} (discussing tougher prisons). Tennessee Representative Don Bird believes that after an eight-hour day swinging “[a] heavy sledge hammer” prisoners will not need exercise equipment to alleviate prison tensions. \textit{Id.}
sulted in inmate boredom and inertia that led to uprisings and riots.\textsuperscript{102}

Politicians and the electorate, in a search for more effective methods of reducing crime,\textsuperscript{103} recidivism,\textsuperscript{104} and prison overcrowding,\textsuperscript{105} began to fashion new punishments\textsuperscript{106} and curtail privileges.\textsuperscript{107} Reexamination of the use of capital punishment and

\textsuperscript{102} See Morrison, supra note 65, at A23 (discussing conditions culminating in Attica prison riots).

\textsuperscript{103} See Hearings before the Senate Judiciary Comm. on National Drug Control Policy, 104th Cong., 1st Sess. (1995) (statement of Louis J. Freeh, Director, Federal Bureau of Investigation, proposing potential solutions to rising crime rate); H.R. Rep. No. 663, supra note 7 (proposing Representative Zimmer's amendment to Violent Crime Control and Law Enforcement Act of 1994 to prevent luxurious prison conditions); H.R. Rep. No. 515, supra note 7 (submitting Representative Pryce's plan to prevent federal prisoners from strengthening their ability to fight); CAL. PENAL CODE § 2601 (West 1994) (noting prison administration authority not limited to restriction of privileges); N.C. GEN. STAT. § 15-196.3 (1995) (outlining "Credits Against the Service of Sentences for Attainment of Prison Privileges" in Article 19A); Owens, supra note 4, at 881-82 (indicating public fear resulting from increased media coverage of violence); Wave of Fear, supra note 4, at A1 (noting individual fear of Americans); Peril on its Mind, supra note 7, at A1 (suggesting that perception of increased crime is result of local crime and media focus on violence); Hallinan, supra note 7, at 7 (noting lawmakers are seeking return to "no frills" prisons); Cutting Down on Amenities, supra note 7, at B7 (noting three New Jersey country jails have begun to charge inmates for medications); Researchers Divided, supra note 7, at 12 (discussing anti-crime mood has led to "crackdown on the amenities and free services" inmates receive); Thornburgh, supra note 4, at 12 (reporting former United States Attorney General's suggestion that practical application of anti-crime campaign rhetoric parallels predominate social concern).

\textsuperscript{104} See GA. CODE ANN. § 17-10-7 (1994) (outlining mandatory sentencing guidelines upon fourth felony offense); N.J. STAT. ANN. § 2C:7-6 (West 1995) ("Notification of community of intent of sex offender released from correctional facility or adjudicated delinquent to reside in municipality."); ("Megan's Law") (enacted Oct. 31, 1994, providing public notification provisions for repeated sex offenders); N.M. STAT. ANN. §§ 18-18-23 (Michie 1994) (outlining mandatory life-imprisonment for three violent felony convictions); S.C. CODE ANN. § 17-25-45 (Law. Co-op. 1995) ("three strikes" statute); 1990 Wash. Laws ch 3 §§ 1401-06 (permitting police to notify communities about sex offenders living nearby when necessary for public protection.); Jerusalem, supra note 8, at 221 (indicating angry parents insisted on legislative change to prevent sexual offenders from repeating offenses); Mendez, supra note 8, at 1; 48 Hours, supra note 9 (discussing preference for stricter criminal penalties leading to reconsideration of chain gangs).

\textsuperscript{105} See Morrison, supra note 65, at A23 (suggesting prisoner idleness leads to violence); Adam Nossiter, Fight Erupts In Prison, Injuring 13, N.Y. TIMES, July 5, 1995, at B4 (noting effect of overcrowding on prison violence); Jacques Steinberg, Doubling Up in Prison Cells Saves Money but Stirs Inmates Anger, N.Y. TIMES, July 8, 1995, at 21 (reporting overcrowded prison leads to inmate violence).

\textsuperscript{106} See Kimberly A. Peters, Chemical Castration: An Alternative to Incarceration, 31 DUQ. L. REV. 307, 313-15 (1993) (evaluating chemical castration as alternative to incarceration of sex offenders); Shuster, supra note 13, at 1003 (noting use of bumper stickers and signs indicating criminal conviction as punishment).

\textsuperscript{107} See H.R. REP. NO. 663, supra note 7 (proposing Representative Zimmer's amendment to Violent Crime Control and Law Enforcement Act of 1994 to prevent luxurious prison conditions); H.R. REP. NO. 515, supra note 7 (submitting Representative Pryce's plan to prevent federal prisoners from strengthening their ability to fight); CAL. PENAL CODE § 2601 (West 1994) (noting prison administration authority not limited to restrict privileges); N.C. GEN. STAT. § 15-196.3 (1995) (outlining "Credits Against the Service of Sentences and for Attainment of Prison Privileges" in Article 19A).
chain gangs,108 once considered unconstitutional,109 typifies the current trend of promoting punishment and deterrence110 as a solution to the perceived failure of the American criminal justice system.111

B. Modern Chain Gangs

Three states have enacted legislation reinstituting chain gangs,112 and several others have proposed similar legislation.113 In modern chain gangs, labor and confinement conditions now

108 See Curriden, supra note 93, at 74 (discussing Tennessee’s proposed "No Frills Prisons" legislation). Democratic State Representative Bird also favors revival of chain gangs in Tennessee. Id. Mississippi prison officials are requiring inmates, especially those on work crews, to wear black and white striped uniforms emblazoned with the word “convict” on the back as a form of humiliation. Id. Humiliation as a punishment form is reminiscent of the early American common law penal system. Toni M. Massaro, Shame, Culture and American Criminal Law, 89 Mich. L. Rev. 1880, 1881-82 (1992) (discussing use of public humiliation as punishment in Colonial America).

See Goldschmitt v. Florida, 490 So. 2d 123, 125 (Fla. Dist. Ct. App. 1986) (requiring convicted driver to affix bumper sticker reading “CONVICTED D.U.I.—RESTRICTED LICENSE” was not violated of Eighth Amendment). New and creative penalties that include an element of humiliation, such as bumper stickers declaring an individual to be “D.U.I. CONVICTED,” initially seemed to offend Eighth Amendment notions of civility and dignity, but have been upheld. Id. But see People v. Letterlough, 86 N.Y.2d 259, 265-66, 268-69, 655 N.E.2d 146, 149-51, 631 N.Y.S.2d 105, 108-10 (1995) (requiring “CONVICTED DWI” bumper sticker as probation condition was beyond authority of court and served no rehabilitative purpose); see also Artway v. Attorney Gen’l of New Jersey, 876 F. Supp. 666 (D.N.J. 1995) (finding New Jersey sexual recidivist registration statute unconstitutional under Ex Post Facto Clause and recognizing possible Eighth Amendment concerns), aff’d in part and modified in part, 81 F.3d 1235 (3d Cir. 1996).


111 See 48 Hours, supra note 9 (discussing revival of Alabama’s chain gangs); see also Curriden, supra note 93, at 74 (reporting Alabama Corrections Commissioner Ron Jones’ opinion that chain gangs are effective against recidivism). Commissioner Jones commented that “some people say it’s not humane, but I don’t get too much flack about it [from Alabama voters].” Id.

112 See Ala. Code § 14-3-53 (1995) (corrections board authorizing shackling and chaining of prison inmates); id. § 14-4-2 (county to determine site where hard labor performed by prison inmates); id. § 14-5-5 (country may assign convict to work in and around public building or on county projects); id. § 23-1-37 (permitting highway work, construction and maintenance); Ariz. Rev. Stat. Ann. § 283 (West) (requiring implementation of plan by Dec. 1, 1995, requiring inmates to wear leg irons and work in chain gang teams).

113 See Curriden, supra note 93. Legislators in several states, including Tennessee, say they are giving serious consideration to the introduction of chain gangs to their penal systems. Id.; see also 48 Hours, supra note 9 (reporting several states, Canada, and Britain are considering chain gang punishment); Wade, supra note 75 (reporting proposed return to chain gang advocated by Democratic candidates for Lieutenant Governor).
comport with minimum constitutional standards,\textsuperscript{114} such as adequate medical care, access to counsel or a law library, proper sanitation, and recreation.\textsuperscript{115} Most states have statutory guidelines for prison administration and maintenance of prisoners.\textsuperscript{116} Thus, while assignment to a chain gang may be the penalty for various offenses,\textsuperscript{117} it is now governed by sentencing and disciplinary guidelines.\textsuperscript{118} Modern chain gangs are not limited to male convicts\textsuperscript{119} and they may not be imposed upon sick or elderly prisoners.\textsuperscript{120} Further, they must reflect the racial composition of the general population of that particular prison.\textsuperscript{121} Prisoners are restrained by lightweight chains\textsuperscript{122} which are attached only upon

\textsuperscript{114} See Wilson v. Seiter, 501 U.S. 294, 304 (1991) (noting basic necessities include food, warmth, and exercise); Rhodes v. Chapman, 452 U.S. 337, 347 (1981) (finding deprivation of "minimal civilized measure of life's necessities" violates Eighth Amendment). In order to be found unconstitutional, a punishment must deny a prisoner the basic necessities of life. \textit{Id.} In the context of prison, the Supreme Court has established these constitutional minima to be adequate food, shelter, medical care, access to counsel, and recreation. \textit{Id.}; see also supra notes 60-72 and accompanying text (discussing basis and result of extradition proceedings). Indeed, challenges to chain gangs in the past were detailed in extradition proceedings. \textit{Id.} Courts granted \textit{habeas corpus} petitions brought under the Eighth Amendment or uniformly denied writs of extradition as a result of deplorable conditions of confinement under a totality of the circumstances analysis. \textit{Id.}

\textsuperscript{115} See Wilson, 501 U.S. at 304 (noting basic necessities include food, warmth, and exercise); \textit{Rhodes}, 452 U.S. at 347 (finding "minimal civilized measure of life's necessities" includes adequate food, shelter, medical care, access to counsel, and recreation).


\textsuperscript{117} See Telephone Interview with Tom Gilkeson, \textit{supra} note 11 (stating that minimum-security and medium-security prisoners as well as parole and probation violators may be assigned to chain gang).

\textsuperscript{118} \textit{E.g.}, \textsc{ Ala. Code} § 14-3-53 (1994) (outlining guidelines for use of shackles and chains); \textit{See} Pounders v. State, 74 So. 2d 640 (Ala. Ct. App. 1954) (holding jail sentence coupled with hard labor sentence to pay for court costs are two separate, permissible punishments (citing Bragan v. State, 95 So. 2d 123 (Ala. Ct. App. 1942)); \textit{see also S.C. Code Ann.} § 24-7-30 (Law Co-op. 1976) (restricting convict area to specific locations).

\textsuperscript{119} See \textsc{ Ala. Code} § 14-4-7 (1975) (prohibiting women from working "as a laborer on any public highway in this state"); 1995 Iowa Legis. Serv. HF 215 (West) (stating hard labor "shall be available to both male and female inmates").

\textsuperscript{120} \textit{See, e.g.}, 1995 Iowa Legis. Serv. HF 215 (West) (stating hard labor shall be "suited to the inmate's age, gender, physical and mental condition").

\textsuperscript{121} See Telephone Interview with William Grey, \textit{supra} note 74 (stating that although greater percentage of prison population is African-American, "it's not black crime or white crime").

\textsuperscript{122} \textit{See} \textit{48 Hours}, \textit{supra} note 9 (noting chains weigh approximately three pounds); \textit{see also} Dorman, \textit{supra} note 11, at A7 (recounting interviews with chain gang members).
arrival at a work site.\textsuperscript{123} Prisoners are rewarded for compliance with prison regulations with such privileges as television, better work assignments, or accrued "good time."\textsuperscript{124} Most importantly, prisoners have access to counsel, prisoners' unions, and the courts to pursue available remedies for unconstitutional treatment.\textsuperscript{125}

Though some prisoners concede that the chain gang is an effective crime deterrent,\textsuperscript{126} many also contend that some disturbing similarities to old chain gangs remain.\textsuperscript{127} Prisoners assigned to modern chain gangs still complain of racial bias, slavery and cruelty.\textsuperscript{128} Indeed, the very purpose of reinstating chain gangs—subsidization of the prisoner work system\textsuperscript{129} as well as deterrence—are reminiscent of "convict leasing".\textsuperscript{130} Similarly, parole and probation violators\textsuperscript{131} may be assigned to a chain gang with minimum-security prisoners\textsuperscript{132} and medium-security inmates,\textsuperscript{133}

\textsuperscript{123} See Bates, \textit{supra} note 11, at 23 (discussing Alabama's reinstitution of chain gangs); Telephone Interview with Tom Gilkeson, \textit{supra} note 11 (confirming chains not attached until convict's arrival at work site).

\textsuperscript{124} See Telephone Interview with Tom Gilkeson, \textit{supra} note 11 (stating prisoners may trade earned time on chain gang for "salary," reduced sentences, or shorter work shifts).


\textsuperscript{126} See, e.g., \textit{48 Hours, supra} note 9 (quoting inmate stating chain gang assignment "would make me not want to come back here").

\textsuperscript{127} See Bates, \textit{supra} note 11 ( likening modern chain gang to abandoned punishment); Robert Evans, \textit{Switzerland: UN Torture Body "Alarmed" at US Chain Gang Return}, \textit{Reuters}, May 4, 1995 (noting European objection to American chain gang particularly in light of United States as signatory to Treaty on Torture and Punishment); \textit{Shackles of Shame, supra} note 12 (suggesting chain gangs should not be restored); \textit{48 Hours, supra} note 9 (quoting chain gang inmate claiming "it's a form of modern-day slavery").

\textsuperscript{128} See \textit{infra} note 153 (quoting inmates complaining of slave-like treatment). \textit{See generally Parish, supra} note 5 (claiming chain gang similar to slavery).

\textsuperscript{129} Telephone Interview with William Grey, \textit{supra} note 74 (stating "cost is the ultimate factor").

\textsuperscript{130} See \textit{generally supra} notes 30 and 46 and accompanying text (describing "convict leasing").

\textsuperscript{131} See Telephone Interview with Tom Gilkeson, \textit{supra} note 11 (describing which prisoners are assigned to chain gang).

\textsuperscript{132} See Telephone Interview with Tom Gilkeson, \textit{supra} note 11 (discussing composition of chain gang); \textit{see also 48 Hours, supra} note 9 (discussing security risks of chain gangs). An unchained minimum security prisoner who escaped from a prison work gang abducted, raped and murdered a woman. \textit{Id.} However, "30-35% of the individuals locked up are minimum security non-violent" according to a commercial prison security company representative. \textit{Id.}

\textsuperscript{133} Telephone Interview with Tom Gilkeson, \textit{supra} note 11. These medium-security workers fall into two categories: prisoners who work on the prison grounds who are unchained but supervised by armed guards, and those performing public works projects who are chained because of the higher risk of escape and risk to community safety posed by the off-grounds work. \textit{Id.}; \textit{48 Hours, supra} note 9 (explaining residents fear community work because unchained worker once escaped and committed murder); \textit{see also Morrison, supra}
which may actually create a greater risk of violence and instability.\textsuperscript{134}

Prisoners' rights and standards of care and confinement, developed over the past thirty years, also give rise to new questions.\textsuperscript{135} The risk of harm\textsuperscript{136} created by the fact that convicts are tethered by fifteen-foot chains presents new liability issues.\textsuperscript{137} Risk of increased violence and hostility as a result of more austere conditions and degradation are also factors.\textsuperscript{138} Significantly, the international community has suggested that the concept of American
chain gangs itself is contrary to established standards of humanity and decency.\textsuperscript{139}

III. EIGHTH AMENDMENT ANALYSIS

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment.\textsuperscript{140} However, this prohibition is subject to broad and flexible interpretation,\textsuperscript{141} incorporating the elusive concepts of human dignity\textsuperscript{142} and “evolving standards of decency in a maturing society.”\textsuperscript{143} Further, the Eighth Amendment has been interpreted to respond implicitly to the vicissitudes of American society.\textsuperscript{144}

\textsuperscript{139} See infra notes 168-70 and accompanying text (discussing Trop’s requirement that international standards of decency be considered).
\textsuperscript{140} See U.S. Const. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted.”). A punishment must be both cruel and unusual to violate the Eighth Amendment. Id.; see also Harmelin v. Michigan, 501 U.S. 957, 967 (1991) (discussing distinction between “cruel” and “unusual”).
\textsuperscript{141} See Hudson v. McMillian, 503 U.S. 1, 3 (1992) (holding “use of excessive physical force against a prisoner may constitute cruel and unusual punishment even though the inmate does not suffer serious injury”); Rhodes v. Chapman, 452 U.S. 337, 346-47 (1981) (stating Eighth Amendment analysis is not a “static test”); McLamore v. South Carolina, 409 U.S. 934, 935 (1972) (declaring that “delineation of just what conditions constitute cruel and unusual punishment is not well defined”); Trop v. Dulles, 356 U.S. 86, 101 (1958) (declaring Eighth Amendment derives meaning from changing decency standards of a progressive populace); Weems v. United States, 217 U.S. 349, 378 (1910) (explaining that “cruel and unusual” is a progressive concept defined by “more enlightened” public); Spain v. Procunier, 600 F.2d 189, 200 (9th Cir. 1979) (noting language of Eighth Amendment is general while its underlying principals remain constant permitting its standards to be imprecise); Commonwealth v. Hendrick, 280 A.2d 110, 115 (Pa. 1971) (noting cruel and unusual punishment “defies concrete definition”).
\textsuperscript{142} See, e.g., Gregg v. Georgia, 428 U.S. 227, 229 (1976). The Court emphasized that “[P]rominent among the ‘moral concepts’ recognized in our cases and inherent in the Clause is the primary moral principle that the State, even as it punishes, must treat citizens in a manner consistent with their intrinsic worth as human beings a punishment must not be so severe as to be degrading to human dignity. Id. at 229 (Brennan, J., dissenting); see also Furman v. Georgia, 408 U.S. 238, 270 (1972) (noting “Cruel and Unusual Punishments Clause prohibits the infliction of uncivilized and inhuman punishments . . . . A punishment is ‘cruel and unusual’ therefore if it does not comport with human dignity”); Spain v. Procunier, 600 F.2d 189, 198 (9th Cir. 1979) (stating that “[U]nderlying the Eighth Amendment is a fundamental premise that prisoners are not treated as less than human beings”).
\textsuperscript{143} See Spain, 600 F.2d at 200 (deciding whether conditions of confinement violate Eighth Amendment requires application of “current and enlightened scientific opinion as to the conditions necessary to insure good physical and mental health for prisoners”); Hendrick, 280 A.2d at 115, 117 (holding that unconstitutional punishment must be “so bad as to be shocking to the conscience of reasonably civilized people” established by “more enlightened concepts of criminal justice”); see also Williams v. Edwards, 547 F.2d 1206, 1212 (5th Cir. 1977) (noting cruel and unusual punishment applies to conditions of confinement as well as to specific acts against particular individuals).
\textsuperscript{144} See Rhodes, 452 U.S. at 351 (suggesting purpose of Eighth Amendment is to yield to changing judgments of society). The Supreme Court noted that “[t]his Court must proceed cautiously in making an Eighth Amendment judgment because, unless we reverse it, [a] decision that a given punishment is impermissible under the Eighth Amendment cannot be
The Eighth Amendment prohibition against cruel and unusual punishment has been applied to cases involving the death penalty, sentencing proportionality, and excessive force and corporal punishment by prison officials. Moreover, the Supreme Court has extended Eighth Amendment protection to prison conditions that were not part of the convict's original sentence. In reversed short of a constitutional amendment, and thus [revisions] cannot be made in light of further experience." (quoting Gregg, 428 U.S. at 171, 176; Gregg v. Georgia, 428 U.S. at 171. The Gregg Court explained that, "a principle to be vital must be capable of wider application than the mischief which gave it birth. Thus the Clause forbidding cruel and unusual punishments is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." Id.; see also Estelle v. Gamble, 429 U.S. 97, 102 (1976) ("The Amendment embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . against which we must evaluate penal measures."); Furman, 408 U.S. at 268-69 (Brennan, J., concurring). Justice Brennan stated that:

The right to be free of cruel and unusual punishments, like the other guarantees of the Bill of Rights, may not be submitted to vote; [it] depend[s] on the outcome of no elections. "The very purpose of a Bill of rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.'

Id. (quoting West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943); Ruiz v. Estelle, 679 F.2d 1115, 1138 (Former 5th Cir. 1982) (noting "conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional"). Contra Stanford v. Kentucky, 492 U.S. 361, 369-70, 379 (1989) (holding standards of decency to be determined by objective data); Palmigiano v. Garrahy, 443 F. Supp. 956, 979 (D.R.I. 1977) (declaring that Eighth Amendment was intended to protect against "passions, or the reckless neglect, of the majority and its leaders").


See Harmelin, 501 U.S. at 965 (questioning proportionality requirement of Eighth Amendment); Solem, 463 U.S. at 303 (considering whether imprisonment for non-violent crimes was cruel and unusual punishment); Furman, 408 U.S. at 239-40 (finding death penalty under certain circumstances to be cruel and unusual punishment).

See Hudson v. McMillian, 503 U.S. 1, 4, 7 (1992) (holding use of excessive physical force may be cruel and unusual punishment even if inmate does not suffer "serious injury"); Whitley v. Albers, 475 U.S. 312, 312-13 (1986) (holding prison official's conduct must be unnecessary and wanton under circumstances to violate Eighth Amendment).

See Whitley, 475 U.S. at 318-19 (stating "harsh conditions of confinement" may violate Eighth Amendment unless they are part of penalty imposed); Rhodes v. Chapman, 452 U.S. 337, 347 (1981) (holding conditions of confinement depriving prisoners of basic human needs were unconstitutional); Ruiz, 679 F.2d at 1126 (holding "totality of conditions" including inadequate medical care, overcrowding, inadequate security and supervision tantamount to cruel and unusual punishment); Gates v. Collier, 501 F.2d 1291, 1303, 1306 (5th Cir. 1974) (concluding corporal punishment, and deprivation of basic elements of hygiene, safety and medical care in conjunction with other deficiencies may rise to cruel and unusual punishment); Crain v. Bordenkircher, 342 S.E.2d 422, 426-27 (W. Va. 1986) (finding inadequate food, clothing, shelter, sanitation, medical care and personal safety may constitute cruel and unusual conditions of confinement under a totality approach); Jeffrey D. Bukowski, Comment, The Eighth Amendment and Original Intent: Applying the Prohibition Against Cruel and Unusual Punishments to Prison Deprivation Cases is Not Beyond the Bounds of History and Precedent, 99 DICK. L. REV 419, 419-20 (1995) (noting prohibition
addition, cruel and unusual punishment need not be limited to the physical;^{149} psychological "pain," such as humiliation and degradation, is sufficient punishment to violate the Eighth Amendment.^{150} A pending Alabama class action suit asserts that the similarity of the chain gang to slavery inflicts such psychological pain upon African-American convicts.^{151} If successful, exemption of African-American prisoners on this basis, might lead to an Equal Protection challenge by remaining Caucasian, Asian, and Hispanic chain gang prisoners and necessitate abandonment of this mode of punishment.^{152}

The revival of chain gangs as punishment has raised the spectre of slavery^{153} and prompted charges of cruel and unusual punishment against cruel and unusual punishment had been extended to deprivations not part of criminal sentence). But see State ex rel. Pingley v. Coiner, 186 S.E.2d 220 (W. Va. 1972) (finding merely unpleasant or harsh and restrictive conditions fail to establish unconstitutional punishment).

^{149} See Hudson, 530 U.S. at 7 (holding "serious" injury not required to establish cognizable claim of cruel and unusual punishment); Rhodes, 452 U.S. at 363-64 (Brennan, J., concurring) (finding aggregation of prison conditions affecting inmate's "physical, mental and emotional health and well-being" may be unconstitutional); Estelle v. Gamble, 429 U.S. 97, 102 (1976) (holding Eighth Amendment proscribes more than "physically barbarous punishments"); Furman v. Georgia, 408 U.S. 238, 273-74, 281 (1972) (Brennan, J., concurring) (noting punishment need not involve physical mistreatment or degrade human dignity and such degradation in punishment could conceivably violate the Eighth Amendment); Trop v. Dulles, 356 U.S. 86, 102 n.33 (1958) (discussing effect of expatriation as non-physical cruel and unusual punishment); Weems v. United States, 217 U.S. 349, 372 (1910) (acknowledging "exercises of cruelty by laws other than those which inflict bodily pain or mutilation"); Ramos v. Lamm, 639 F.2d 559, 565 (10th Cir. 1980) (quoting Battle v. Anderson, 564 F.2d 388, 393 (10th Cir. 1977)) (stating conditions inflicting needless physical or mental suffering violate Eighth Amendment).

^{150} See Estelle, 429 U.S. at 102 (recognizing Eighth Amendment proscribes more than just "physically barbarous punishment").

^{151} See Austin v. James, No. 95-T-637-N (M.D. Ala. filed Sept. 19, 1995) (Second Amended Complaint at 9) (asserting that chain gang violates Fourteenth Amendment).


^{153} See U.S. Const. amend XIII (prohibiting slavery or involuntary servitude except as punishment of convicted criminals). But see Dipiano, supra note 29, at 176-78, 187 (proposing privatization of prisons to reduce costs of punishment but conceding "convict leasing" evokes chain gang image). Some chain gang participants agree that the labor has the air of slavery. Id.; see also Bates, supra note 11, at 23. One convict on an Alabama chain gang says, "I know what my ancestors felt man." Id.; Dorman, supra note 11, at 7. "This is just another form of slavery" stated one chain gang member. Id.
ment. Historically, the chain gang itself was not constitutionally impermissible punishment. Neither restraint by chains nor mandatory labor has been held unconstitutional. Restraint of prisoners while performing mandatory work assignments is also permissible. Chains are considered incidental to prison confine-

See H.R. Rep. No. 2531, 1995 Fla. Laws (limiting chain gang to minimum-security prisoners and prisoners never convicted of escape); Austin v. James, No. 95-T-637-N (M.D. Ala. filed Sept. 19, 1995) (claiming chain gangs impose unconstitutional punishment). Nevertheless, given the Supreme Court’s declaration that punishment need not be physical alone, the issue of slavery in our nation’s history may support a cognizable claim that chains constitute psychological pain for African-Americans. 

See Austin v. James, No. 95-T-637-N (M.D. Ala., filed Sept. 19, 1995). The class action suit is brought by the Southern Poverty Law Center on behalf of Alabama chain gang inmates under 42 U.S.C. § 1983 (1994). The suit alleges that chain gangs are “barbaric and inhumane” and expose plaintiffs to a substantial risk of physical injury and death. It deprives the plaintiffs of one of the most basic human needs—reasonable safety. at Amended Complaint at 1.

There is no Thirteenth Amendment violation of the prohibition against involuntary servitude in the context of convicted prisoners. See Omasta v. Wainwright, 696 F.2d 1304, 1305 (11th Cir. 1983) (finding that prisoner convicted in court of competent jurisdiction could be sentenced to forced labor consistent with Thirteenth Amendment); Draper v. Rhay, 315 F.2d 193, 197 (9th Cir. 1963) (holding that sentencing legally convicted prisoner to forced labor did not implicate Thirteenth Amendment); Robbins, supra note 35, at 604 (discussing alternatives to government-run prison facilities).

The issue of slavery may, however, support a cognizable claim that chains constitute psychological pain for African-American citizens which approaches cruel and unusual punishment. See Hudson v. McMillian, 503 U.S. 1, 15 (1992) (Brennan, J., concurring) (stating psychological pain may be so severe as to violate Eighth Amendment); Furman v. Georgia, 408 U.S. 238, 271 (1972) (Brennan, J., concurring) (expressing view that “severe mental pain” may rise to level of cruel and unusual punishment). Justice Brennan went on to note degradation as punishment might conceivably violate Constitution. at 274. Expatriation, as was the punishment in Trop, was an example of degradation as punishment because it “necessarily involve[d] a denial by society of the individual’s existence as a member of the human community.” ; see also Ernest Morris, Some Phases of the Pardoning Power, 12 A.B.A. J. 183, 189 (1926) (noting that Arkansas governor Donaghey pardoned 396 prisoners in one day because he thought chain gangs “cruel”).


See generally supra note 21 (discussing individual elements of chain gang).


See Spain v. Procunier, 600 F.2d 189, 196-98 (9th Cir. 1979). The Ninth Circuit held that handcuffs plus waist chain, leg manacles, and neck chains were excessive restraints for all out-of-cell movement. Id. Modifying the judgment below, the Court expressly noted that the use of neck chains was not unconstitutional under all circumstances. Id. The use of other restraints was limited; mechanical restraints other than handcuffs were prohibited unless defendant was violent, threatened physical, or was an escape risk. Id. The Court concluded that prisoner movement outside the prison inherently presents such a threat. Id. In fact, only chains used in combination with other restraints and other unconstitutional conditions of imprisonment violate the Eighth Amendment and constitute cruel and unusual punishment. Id.
ment, serving the legitimate purpose of preventing escape. \footnote{See Bell v. Wolfish, 441 U.S. 520, 540 (1979) (stating restraints are reasonably related to state interest in security); see also Procunier v. Martinez, 416 U.S. 396, 405 (1974) (noting difficulty of prison discipline and security permitting restraints to serve legitimate purpose of preventing escape); Ruiz v. Estelle, 679 F.2d 1115, 1137 (5th Cir. 1982) (noting Eighth Amendment prohibits punishments “totally without penological justification”); Spain, 600 F.2d at 197 (discussing use of various restraints to prevent escape); 48 Hours, supra note 9 (noting difficulty of escape when attached to four other men subject to armed guards); CBS This Morning (May 26), supra note 75 (reporting Arizona Sheriff Arpaio cites moving inmates to streets for work necessitates chaining for security purposes).} Rather, it is deplorable conditions of confinement physical brutality, and humiliation that constituted unconstitutionally cruel and unusual punishment by violating “human dignity”—even of criminals.

A. Trop v. Dulles and International Considerations

\textit{Trop v. Dulles} \footnote{356 U.S. 86 (1958).} addressed the role of philosophy and history in interpreting the Eighth Amendment and expanded existing concepts of “human dignity.” \footnote{Id. at 100-04 (stating Eighth Amendment basic concept is “dignity of man,” its standards are not static, and are defined by “evolving standards of decency that mark the progress of a maturing society”); Weems v. United States, 217 U.S. 349, 389 (1910) (stating Eighth Amendment “seems to express a great deal of humanity”).} In Trop, an Army private was convicted of wartime desertion and sentenced to three years imprisonment at hard labor before being dishonorably discharged. \footnote{Trop, 356 U.S. at 87.} Eight years later, he was denied a passport on the ground that he had lost his citizenship pursuant to the Nationality Act of 1940, which authorized expatriation of convicted wartime deserters. \footnote{Id. at 88, 88 n.1 (citing Nationality Act of 1940 § 401(g), as amended 58 Stat. 4, 8 U.S.C. § 1481(a)(8)).}

\footnote{See Rhodes v. Chapman, 452 U.S. 337, 363 (1981) (Brennan, J., concurring) (stating unconstitutional conditions shock conscience of any reasonable citizen); see also Gates v. Collier, 501 F.2d 1291, 1303 (5th Cir. 1974) (stating present conditions of confinement in prison threaten prisoner health, hygiene, safety and violate Constitution); Bates, supra note 11 (criticizing conditions imposed upon chain gang inmates). See generally Morrison, supra note 65, at A22 (discussing confinement conditions associated with chain gangs); 48 Hours, supra note 9 (discussing confinement conditions associated with chain gangs); Dennis, supra note 29, at 2 (stating chain gangs result in “horrific conditions”). Gregg v. Georgia, 428 U.S. 227, 173 (1976).}
In *Trop*, the Supreme Court held that the Eighth Amendment prohibited the use of expatriation as punishment.\(^{166}\)

In determining the standard to be applied in assessing whether a punishment is unconstitutionally cruel and unusual, the *Trop* Court did not limit itself to American norms.\(^{167}\) The Court, in *Trop* explicitly considered international standards of punishment in its Eighth Amendment analysis.\(^{168}\) Distinguishing the constitutional and historic philosophy of the United States from the repressive nations which imposed expatriation as punishment,\(^{169}\) the Court concluded that such punishment violated the principles of the Eighth Amendment.\(^{170}\) By reinstituting the chain gangs, the United States now may join the minority of nations that employ capital punishment and chain gangs.\(^{171}\)

\(^{166}\) Id. at 103.


\(^{168}\) See *id.* (citing international standards and United Nations surveys and noting only two countries condoned denationalization as punishment in contrast to American constitutional prohibitions); see also *Williams v. Edwards*, 547 F.2d 1206, 1214 (5th Cir. 1977) (suggesting objective standards such as OSHA regulations may be considered to determine “evolving notions of decency” including compliance with fire and sanitation codes); *Adams v. Indiana*, 271 N.E.2d 425, 437 (Ind. 1971) (noting *Trop’s* reliance on international standards to support its holding that capital punishment violates Eighth Amendment). *But see* *Stanford v. Kentucky*, 492 U.S. 361, 372-78 (1989) (noting statutory analogies, expert opinions and polls are not applicable to determine societal decency standards); *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981) (finding generalized expert opinions not given as much weight as determining public attitude when determining contemporary standards of decency); *Gregg v. Georgia*, 428 U.S. 153, 171 (1976) (holding prohibition against “cruel and unusual” punishments is not “fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice”); *Weems v. United States*, 217 U.S. 349, 373 (1910) (noting “time works changes”); *Rose, supra* note 91 (suggesting chain gangs subject American prisoners to being “degraded in a public theatre of punishment”); *Wade, supra* note 75 (reporting Indiana University Law Professor Alex Tanford stated that “it’s a primitive vengeance notion. . . .”).

\(^{169}\) See *Trop*, 356 U.S. at 102-04.

\(^{170}\) Id. at 102-03.


*See HUMAN RIGHTS WATCH, supra* note 171, at 315 (citing Burma chain gang as violating international standards); Nick Rufford, *Burma: Chain Gangs on the Road To Mandalay*, *SUNDAY TIMES* (Rangoon), July 28, 1995. In Burma, prisoners working to reduce sentences are shackled with iron rods while repairing a road to be completed for expected tourists. Many consider the chain gangs a symptom of a “repressive state.” *Id.*
Although *Trop* contemplates the progression of society,\(^{172}\) it also seems to permit its regression by yielding to the vagaries of society.\(^{173}\) Applying a systematic analysis of cruel and unusual punishment\(^ {174}\) the Court also reveals a tension between the Eighth Amendment’s elusive notions of decency and human dignity.\(^ {175}\) Civil rights groups assert that chain gangs violate international law, which prohibits the degrading treatment of prisoners.\(^ {176}\) The United Nations Committee on Torture,\(^ {177}\) of which the United States is a signatory, has indicated that American chain gangs may violate international conventions.\(^ {178}\)

\(^{172}\) *Trop* v. Dulles, 356 U.S. 86, 101 (1958) (Eighth Amendment is defined by society’s “progress”).

\(^{173}\) Id. Although *Trop* expressly states that cruel and unusual punishment standards are governed by a progressing society, it simultaneously acknowledges that these standards may change. Id. at 100-01.


\(^{175}\) See sources cited supra notes 140-42, 152. Inmates have likened being chained to being reduced to animals or ancestral slavery. William Booth, *Link to the Past: The Return of Chain Gangs is Not About Hard Labor*, L.A. TIMES, Jan. 8, 1996, at E1 (reporting inmate comparison of chain gang to chaining of dogs); Dana Wilkie, *Punishment Bills Arise in Assembly 2 GOP Members Seek Revival of Chain Gangs, Flogging, Paddling*, SAN DIEGO UNION-TRIB., Jan. 18, 1996, at A1 (recounting American Civil Liberties Union charge that chain gangs are degrading, treat “men like animals”, and promote animal behavior on release).

\(^{176}\) See *Spain*, 600 F.2d at 198; *Bates*, supra note 11, at 23. Courts have acknowledged that chains may in fact be more degrading when convicts are amongst the civilian population. Id.; Telephone Interview with William Grey, *supra* note 74. However, counsel to Alabama Governor Fob James maintains that “the ACLU is out of step with reality in this case.” Id. Mr. Grey stated that chain gangs are designed to accomplish deterrence and that “corrections should correct.” Id.

\(^{177}\) See Status of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Protocols No. 1 and No. 2 as of September 1, 1994, 34 I.L.M. 349, 349 (1995) (listing signatory countries and noting United States is not party to this treaty).

\(^{178}\) See *Dorman*, supra note 11, at A7; *Evans*, supra note 127 (noting United Nations objection to American chain gang particularly in light of United States as signatory to
B. Trop Test Redefined

Although the spirit of Trop was invoked continually as a preface to Eighth Amendment analysis,\(^{179}\) a divided Supreme Court recently redefined the contours of evolving civilization and societal attitudes.\(^{180}\) In Stanford v. Kentucky,\(^{181}\) the Court rejected\(^ {182}\) the international considerations of the Eighth Amendment articulated in Trop and suggested that American standards alone define its contours.\(^ {183}\) Thus, the Supreme Court narrowed the flexibility and scope of the Eighth Amendment implicit in Trop.\(^ {184}\) Justice Scalia’s plurality opinion, which held that sentencing juveniles to death does not violate the Eighth Amendment,\(^ {185}\) outlined objective indicia for determining societal standards of decency.\(^ {186}\) The Court acknowledged Trop’s “flexible and dynamic” interpretation of the Eighth Amendment\(^ {187}\) but noted that subjective, judicial concepts of decency are not dispositive.\(^ {188}\)

The Court stated that the primary objective indicator in determining public sanction of a particular punishment is legislation enacted by elected representatives which manifest the voice of the electorate.\(^ {189}\) It expressly maintained that erratic application of such laws carries little significance and fails to establish disapproval of a particular punishment.\(^ {190}\) Finally, Justice Scalia ex-

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\(^{179}\) See Hudson v. McMillian, 503 U.S. 1, 8 (1992) (citing Trop’s notion that Eighth Amendment “draws its meaning from the evolving standards of decency that mark the progress of a maturing society”); Ingraham v. Wright, 430 U.S. 651, 668 n.36 (1977) (noting tradition of Supreme Court decisions interpreting Eighth Amendment refer to “evolving standards of decency” declared in Trop).


\(^{182}\) Id. at 369 n.1 (stating, “[w]e emphasize that it is American conceptions of decency that are dispositive, rejecting the contention . . . that the sentencing practices of other countries are relevant”).

\(^{183}\) Id.

\(^{184}\) Id.; see also Trop v. Dulles, 356 U.S. 84, 100-03 (1958) (discussing interpretative goal of Eighth Amendment).


\(^{186}\) Id. at 370-77.

\(^{187}\) Id. at 368, 379.

\(^{188}\) Id. at 379; see id. at 381 (O'Connor, J., concurring in part) (stating that statutory analogies are useful in proportionality analysis); id. at 383, 385-86, 388 (Brennan, J., dissenting) (suggesting statutory similarities, application of laws, and expert opinions are useful guides and should be considered).

\(^{189}\) Id. at 370.

plained that "other indicia, including public opinion polls, the views of interest groups, and the positions adopted by various professional associations" are not conclusive in determining public consensus. The Court concluded that its role is to determine actual standards of decency rather than the ideal. If the Eighth Amendment is defined by changing concepts of decency, which are manifested in fluctuating election results, then the Eighth Amendment no longer serves as a bulwark ensuring that previously-established standards of cruel and unusual punishment have meaning. Rather, the states would ultimately define the scope of the Eighth Amendment.

C. Tension Resolved By Changing The Rules?

To survive constitutional scrutiny under the Eighth Amendment, conditions of imprisonment must meet minimal stan-

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191 Id. at 373-80.
192 Id. at 379-80.
193 See Emily Calhoun, Voice in Government: The People, 8 NOTRE DAME J. L. ETHICS & PUB. POL’Y 427, 428-30, 439 (1994) (discussing representational government and tension between electorate and elected); Erwin Chemerinsky, The Vanishing Constitution, 103 HARRY R. REv. 43, 65, 70 (noting duty of elected officials to “follow their consciences, not slavishly obey public sentiment”); Steven P. Crole, The Majoritarian Difficulty: Elective Judicatures and the Rule of Law, 62 U. C. L. REv. 689, 787, 790 (1995) (suggesting majoritarian electorate fails to protect minority views); Mark Tushnet et al., Judicial Review and Congressional Tenure: An Observation, 66 Tex. L. Rev. 967, 968, 971-72 (1988) (discussing conflict between determining will of electorate and elected official voting personal conscience). See generally U.S. BUREAU OF THE CENSUS, U.S. DEP’T OF COM. STATISTICAL ABSTRACT OF THE UNITED STATES: 1994 271, 286-88 (114th ed. 1994). In 1992 the total United States population was 255,458,000. Id. at 27, t.26. In that same year, 189,044,000 Americans were of voting age. Id. at 288, t.449. 55% of the voting age population voted in the 1992 Presidential election. Id. at 271, t.427. 68% of those eligible to vote were registered; 61.3% of them actually voted. Id. at 287, t.448. As a result, President Clinton was elected by 43% of the total vote, representing less than a majority of Americans. Ruy A. TExEIRA, THE DISAPPEARING AMERICAN VOTER (Brookings Inst. 1992); Ruy A. TExEIRA, WHY AMERICANS DON’T VOTE: TURNOVER DECLINE IN THE UNITED STATES, 1960-1984 (Greenwood Press 1987); Gary C. Jacobson, Campaign Finance and Democratic Control: Comments on Gottlieb and Lowenstein’s Papers, 18 Hofstra L. Rev. 369, 369-71, 376-78 (1989) (noting conflicting allegiances posed by large financial contributors and dispersed majority voters).
195 See Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803) (declaring, “[i]t is emphatically the duty of the judicial department to say what the law is, . . . ”).
To assert a cognizable claim, an inmate must have been denied the "minimal civilized measure of life's necessities" or have been refused treatment for serious medical needs. Supreme Court nullification of a punishment requires both an objective and subjective determination that the conditions rise to the level of cruel and unusual punishment. Societal concepts of decency regarding prison inmates have narrowed. Ultimately, these changing concepts were manifested in the election of two conservative Presidents, who changed the composition of the

196 See Farmer v. Brennan, 114 S. Ct. 1970, 1977 (1994) (requiring showing that prison official's acts denied petitioner "the minimal civilized measures of life's necessities"); Hudson v. McMillian, 503 U.S. 1, 9 (1992) (holding mere denial of "minimal civilized measure of life's necessities" was insufficient and only "extreme deprivations" could sustain conditions-of-confinement claim); Rhodes v. Chapman, 452 U.S. 337, 347 (1981) (recognizing that deprivation of "minimal civilized measure of life's necessities" may be cruel and unusual punishment); French v. Owens, 777 F.2d 1250, 1252 (7th Cir. 1985) (finding lack of space, ventilation, supervision and medical care to be "deplorable," violating Eighth Amendment); Ruiz v. Estelle, 679 F.2d 1115, 1138 (5th Cir. 1982) (noting harsh conditions are commensurate with criminal penalty and not necessarily unconstitutional).

197 See McMillian, 503 U.S. at 25 (stating societal standards of decency are not violated by "anything short of uncivilized conditions of confinement"); Rhodes, 452 U.S. at 347 (stating that "conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional"); Spain v. Procunier, 600 F.2d 189, 192 (9th Cir. 1979) (finding medical, nutritional and sanitary conditions that satisfies constitutional requirement); Wolfish v. Levi, 573 F.2d 118, 125 (2d Cir. 1978) (stating provision of adequate food, clothing shelter, sanitation, medical care and personal safety provided immunity from constitutional challenge under Eighth Amendment).

198 See McMillian, 503 U.S. at 9 (declaring deliberate indifference to "serious" medical needs violated Eighth Amendment); Wilson v. Seiter, 501 U.S. 294, 297 (1991) (stating "deliberate indifference" to serious medical needs violated Eighth Amendment); Ruiz v. Estelle, 429 U.S. 97, 104 (1976) (holding "deliberate indifference to serious medical needs" of prisoners was proscribed by Eighth Amendment).

199 See Wilson, 501 U.S. at 298 (requiring objective and subjective components to sustain Eighth Amendment claim); The Supreme Court, 1991 Term—Leading Cases: Cruel and Unusual Punishments Clause—Treatment of Prisoners, 106 Harv. L. Rev. 220, 226 (1992) (reviewing requirements for conditions of confinement cases); Katherine L. Frazier, Comment, Constitutional Law—Helling v. McKinney: Future Risks of Harm Actionable Under the Eighth Amendment, 25 U. Mem. L. Rev. 1479, 1484-85 (1995) (stating Wilson Court required both subjective and objective elements to prove conditions of confinement violated Eighth Amendment); see also Rhodes, 452 U.S. at 347. In Rhodes, the Court suggested that conditions of confinement must "deprive inmates of the minimal civilized measure of life's necessities" to constitute cruel and unusual punishment. Id.; Ruiz, 429 U.S. at 104. In Ruiz, the Court held that deliberate indifference to a prisoner's "serious medical needs" constitutes cruel an unusual punishment. Id.; Hudson, 503 U.S. at 8, 24 (holding "extreme deprivations are required to make out conditions-of-confinement claim."); Adkins v. Rodriguez, 59 F.3d 1034, 1036 (10th Cir. 1995) (affirming lower court's holding "extreme deprivations" were required to sustain conditions-of-confinement claim under Eighth Amendment).

200 See, e.g., 48 Hours, supra note 9. During this broadcast, an Alabama juror admitted another Devil's Island should be created. Id.; see also Parish, supra note 5 (showing 75% percent of Arizonans like idea of chain gangs).
United States Supreme Court. An inherent dichotomy arises when one considers the role of the Eighth Amendment as a protection against cruel and unusual punishments and its link to changing American attitudes.

Under the objective test of Stanford, there can be little doubt as to society's view, since many of the politicians who have supported the reinstitution of chain gangs successfully campaigned on such a platform. Given modern prison administrative guidelines, the legitimacy of chains when used to prevent escape, the Thirteenth Amendment's provision that involuntary servitude may be used to punish, combined with the Stanford retreat from broad indicia of decency, it is unlikely that the Supreme Court will hold chain gangs unconstitutional. Nevertheless, it seems inconsistent to consider continually-shifting popular opinion when the Constitution was intended as a bulkhead of fundamental protections. To subject constitutional interpretation to societal vicissitudes is a disturbing posture and contrary to the purpose of the Eighth Amendment. Moreover, it is unclear whether a spate of elections can accurately reflect a permanent philosophical
consensus by which to interpret Constitutional protections. Rather, it may be likened to "reverse federalism," which would look to the individual states to determine the scope of constitutional interpretation.

An analysis of each element composing chain gangs as punishment suggests that they would pass constitutional muster as applied. Mandatory prison labor and restraints used to enforce discipline and prevent escape are reasonable incidents of incarceration. Conditions of imprisonment are subject to external regulation; prisoners have expanded remedies against constitutional infractions.

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"It should not be forgotten that a disposition in the State governments to encroach upon the rights of the Union is quite as probable as a disposition in the Union to encroach upon the rights of the State governments. . . . [I]t is evident that all conjectures of this kind must be extremely vague and fallible. . . . Everything beyond [constitutionally delineated powers] must be left to the prudence and firmness of the people; who, as they will hold the scales in their own hands, it is to be hoped will always take care to preserve the constitutional equilibrium between the general and the State governments."

Id.; The Federalist No. 10, at 78 (James Madison) (Clinton Rossiter ed., 1961). James Madison defined factionism as a "majority or minority . . . united by some [issue or] passion, . . . adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."


211 Stanford v. Kentucky, 492 U.S. 361, 370 (1989) (stating primary objective factor in determining public attitude are statutes passed by legislators they elect); see also supra note 193 (discussing disparate results of majoritarian elections and less than majority voter turnout).

212 See supra text accompanying notes 114-125 and 155-161 (discussing modifications to modern chain gang practices consistent with constitutional parameters).


214 See Bell v. Wolfish, 441 U.S. 520, 540 (1979) (stating that "Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment even if they are discomforting . . . ."); Spain v. Procunier, 600 F.2d 189, 196-99 (9th Cir. 1979) (neck chains and other mechanical restraints are not unconstitutional in all circumstances but may be used to prevent escape).

215 See Rhodes v. Chapman, 452 U.S. 337, 347 (1981) (declaring harsh conditions are part of criminal sentence since "Constitution does not mandate comfortable prisons").

IV. Conclusion

Chain gangs were used to punish criminals and replace emancipated slave labor. Inadequate prisons and untrained supervision transformed the chain gangs into an unconstitutionally inhumane and abominable punishment synonymous with racial persecution. Although chain gangs were never declared unconstitutional, they are subject to constitutional and statutory mandates for each aspect as well as in the aggregate to prevent historic deterioration of this punishment. This penalty, however, may produce consequences it is designed to prevent, since chain gangs may be dangerously dehumanizing to prisoners and may foster resentment, hostility and, ultimately, violence.

Expanded rights and privileges of convicts once thought to reduce crime through rehabilitation, are yielding to the reclaimed right of society to prevent crime through harsher punishments. The resurrection of the chain gang thus seems to be an expression of societal frustration and a regression contrary to the philosophical tradition of the Eighth Amendment. The Supreme Court's rejection of international standards in defining human decency in the context of Eighth Amendment jurisprudence is a departure from the traditional American role as moral arbiter of human rights and civil liberties. By forsaking traditional international concepts of human rights, delegating constitutional interpretation to the states, and permitting statistics to override foundational analysis, the United States Constitution yields to the vagaries of an intolerant society rather than a bulwark of human freedoms.

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