

## **Prison Pandemic**

By Steven

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The prison contains 11 cellblocks. Each block contains 128 cells. Each cell contains a bunk for two people, making each block able to house 256 people. The prison is therefore able to house 2,816 people at a given time. However, since some of these people have single cells, a rough estimate of the prison population is 2,500 people.

The cellblocks are about half the size of a moderately sized grocery store. Almost all the cells are identical. They are 8 feet by 12 feet and equipped with a toilet and sink, located about two feet from the bunk bed. Each cell abuts the next. Four cells share the same ventilation system, plumbing, and electricity. This is one of more than 25 prisons in a state that incarcerates roughly 45,000 inmates. As a result of their incarceration, these 45,000 men and women cannot provide for themselves and thus depend on the state for food, water, clothing, bedding, medical treatment, and an assortment of other human necessities. These needs are constitutionally mandated.<sup>1</sup>

The world is currently in the midst of the coronavirus pandemic. Experts approximate that one million Americans might contract the virus and conservatively estimate that between 100,000 and 200,000 Americans might die. The hardest hit areas of our country are metropolitan, given their congested nature. Experts have also suggested that the current virus ripping through the world may only be the beginning of a trend of super-viruses; in fact, this virus is likely to reappear in the fall.

The government has told us that in order to live, we must socially distance ourselves from one another. Prisons are essentially stationary cruise ships. The current state of incarceration is no longer a practical option as a primary form of punishment. Many people in prison are aging and sickly, and some prisons have entire blocks that house people suffering from cancer. Prisons simply do not have the personnel or medical equipment to care for people if they become infected with the virus. They will most likely die horrific deaths in their cells.

The Eighth Amendment to the United States Constitution holds that “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” The “cruel and unusual” punishment clause of the Eighth Amendment has been applied to the conditions of confinement. The United States Supreme Court has held that “[a]s a consequence of their own actions prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all persons. A prison that deprives prisoners of basic sustenance including adequate medical care is incompatible with the concept of human dignity and has no place in civilized society.”<sup>2</sup>

The United States Supreme Court has also held that what constitutes cruel and unusual punishment is measured by “the evolving standards of decency that mark the process of a maturing society.”<sup>3</sup> In other words, “the Eighth Amendment changes as our society progresses.”<sup>4</sup> The Eighth Amendment is most clearly violated where an inmate is deprived of “the minimal civilized measure of life's necessities.”<sup>5</sup>

Under the Eighth Amendment, Courts have an obligation to protect inmates from

treatment that adds additional punishment to that already levied at their sentencing. For example, an inmate cannot be forced to live in a cell with no clothing, bedding, or personal hygiene products. Inmates cannot be forced to live in a rodent- or feces-infested housing unit. Inmates may not be subjected to unnecessary physical violence. Inmates may not be subjected to sexual abuse, and if an inmate has a physical or mental disability, his or her needs must be reasonably met. Inmates additionally have a right to have their general medical needs met. For example, if an inmate falls and breaks a leg, the prison must see that he or she is medically attended to.

While federal Courts lack the ability to force prisons to cure the conditions of confinement, they do have the absolute power to order the release of persons held under conditions that deprive them of the rights guaranteed by the United States Constitution.<sup>6</sup> “Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.”<sup>7</sup>

In the new world of super-viruses, the current state of America's incarceration system is simply unrealistic and incompatible with the Eighth Amendment. Prisons are a hazard to the people that live in them, the men and women that work in them, and the communities where they are located. Society must have a discussion about the manner in which it wants to punish. Alternatives to incarceration need to be meted out and implemented. Sadly, this will be no easy task, as America has grown fond of incarceration. Currently, we incarcerate more of our population than any other nation on earth.

Any expert worth his or her salt has explained that to beat a virus such as the coronavirus, all of society must practice social distancing. Experts direct that we stay at least six feet from each other. Given the constructional scaffolding of the American prison system, this is impossible for prisoners to do. Prisoners, in the best of situations, live elbow to elbow with each other. In order to enforce social distancing, prisons around the United States have enacted quarantine lockdowns, thus forcing prisoners to spend at least 23 hours a day in tight quarters with their cellmates. This type of isolation leads to extreme mental and physical deterioration.

Common side-effects of solitary confinement include anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors.<sup>8</sup> This nationwide quarantine could continue for several months. Moreover, given the dimensions of the cells, confinement with a cellmate makes it impossible to practice social distancing.

It is high time we end the binary perspective that incarceration is the most effective form of punishment, let alone a societal good, in respect to rehabilitation. Data has shown it is not. Recidivism rates have always been high and more often than not leave victims unsatisfied. Communities are likewise left sour when recently released inmates reenter society without the means to care for themselves, resulting in the overuse of public assistance.

Old habits are hard to break, so I do not suggest that changing hundreds of years' worth thinking will be easy. But it starts with a discussion. One hundred years and fifty years ago, Dostoyevsky began this discussion by writing that “[t]he degree of civilization in a society can be judged by entering its prisons.”<sup>9</sup> In the aftermath of this pandemic, many American cells will second as tombs, and our degree of civilization will truly be measured.

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<sup>1</sup> *Estelle v. Gamble*, 429 U.S. 97, 107 (U.S. 1976).

<sup>2</sup> *Brown v. Plata* 563 U.S. 493 (U.S. 2011).

<sup>3</sup> *Rhodes v. Chapman*, 452 U.S. 337, 346 (U.S. 1981).

<sup>4</sup> *Tillery v. Owens*, 907 F.2d 418, 426 (3d. Cir. 1990).

<sup>5</sup> *Cody v. Hilliard*, 830 F.2d 912 (8<sup>th</sup> Cir. 1987).

<sup>6</sup> *Clay v. Miller*, 626 F.2d 345 (4<sup>th</sup> Cir. 1980).

<sup>7</sup> *Brown v. Plata* 563 U.S. 493 (U.S. 2011).

<sup>8</sup> Grassion, Stuart. "Psychiatric Effects of Solitary Confinement." *Washington University Journal of Law & Policy*, vol. 22, 2006.

<sup>9</sup> Shapiro, Fred, editor. *The Yale Book of Quotations*. Yale University Press, 2006, p. 210.