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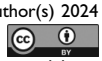
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‘Voluntary’ prison labour in the Netherlands

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Abstract
As of 2021, work in prisons in the Netherlands is voluntary, at least to some extent. In this article, I examine the protection of working prisoners’ labour rights after the shift to a voluntary work scheme for prisoners in the Netherlands. Work in Dutch prisons may be freely chosen to some extent, but the Dutch scheme for work in prison raises questions about offenders’ rehabilitation. Having work opportunities while in prison is said to contribute to the learning of skills, promote rehabilitation and societal reintegration and provide prisoners with income. However, prisoners in the Dutch prison perform their work for low pay and have limited meaningful options for the work they perform. This has a profound impact on their time in prison and on their reintegration into the labour market after having served their sentences. I argue that these issues demand an in-depth examination if prisoners’ rights are to be protected. I describe working prisoners’ labour rights in the Netherlands and address the normative question of the rights that working prisoners should have based on the principle that imprisonment itself is the punishment and that extensions of prison sentences in society are illegitimate. My proposal for considering the amendment of the approach to prison labour in the Netherlands aims to be useful for the analysis of prison labour in general.

Keywords
Rehabilitation, prison labour, prisoners’ rights, incarceration, labour and social security rights, minimum wage, exprisonment, right to work

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1. Introduction

In 2021, the Netherlands shifted to a voluntary work scheme for prisoners.[1] This change might be viewed as a better alternative to compulsory prison labour. Having work opportunities while in prison is said to promote rehabilitation and societal reintegration. However, there are serious concerns regarding incarcerated workers' rights. Those doing work in prison are in vulnerable and disadvantaged positions because they often perform their work hidden from the public, for low pay, in conditions of subordination and with limited freedom of movement, inability to change jobs and limited labour and social security rights.[2] In addition, those incarcerated have no privacy because they are under constant surveillance, including when they work.[3] Further problems with prison labour include the limited number of work opportunities and the quality of work available.[4]

Although work in Dutch prisons is voluntary to some extent, they work for low pay and have no right to work. Work options are granted only to those who do their best and show good behaviour in the Dutch prison system. The privilege to work for more hours or to have better work options depends on the evaluation of a prisoner's behaviour. This raises profound questions about their rehabilitation.[5] In this article, the normative question of the significance of rehabilitation is explored based on the principle that prisoners ought to retain their basic rights, except for the loss of liberty.[6] I argue that, as previously imprisoned people cannot participate in the labour market or experience major obstacles, prison sentences are extended outside the walls of the prison, in terms of the concept of 'exprisonment.'[7]

The argument proceeds as follows. In section 2, I address prison labour under the current scheme in Dutch prisons, including its compulsory aspects. In section 3, I address why rehabilitation is important based on the principle that imprisonment itself should be the punishment, and that additional harm from and extensions of the prison sentence are illegitimate. I compare this normative view with its instrumentalist counterpart, which holds that rehabilitation programmes reintegrate offenders into the community to reduce recidivism and increase public safety. The effects of rehabilitation programmes and work in prison have been widely addressed in empirical studies, but the normative question of the significance of rehabilitation remains largely unexplored.[8] In section 4, I explain that the harmful effects on released offenders should not be considered

1. See the Dutch Law on Punishment and Protection (Wet Straffen en Beschermen). The former scheme of work in prison has been addressed in Constantijn Kelk, 'The Netherlands: work in the Dutch prison' in Dirk Van Zyl Smit and Frieder Dünkel (eds), *Prison labour: salvation or slavery?* (Routledge 1999), 169.
2. See Virginia Mantouvalou, *Structural injustice and workers' rights* (OUP 2023), chap. 4; Richard Lippke, 'Prison labour: its control, facilitation, and terms' (1998) 17 Law and Philosophy 533. Mantouvalou also describes how similar effects have been observed in relation to the application of community sentences. On community sentences, see also Virginia Mantouvalou and Hadassa Noorda, 'Non-custodial sentences and human rights' (2024) European Human Rights Law Review 3.
3. Erin Hatton, *Coerced – work under threat of punishment* (University of California Press 2020), 104–105.
4. E.g. ibid, 112–114. See also Jenna Pandeli, Michael Marinetto and Jean Jenkins, 'Captive in cycles of invisibility? Prisoners' work for the private sector' (2019) 33 Work, Employment and Society 596.
5. For an analysis of prison labour on retributive grounds, see Lippke (n 2). For an empirical analysis of reward systems in prisons, see Jan Maarten Elbers and others, 'The effects of reward systems in prison: A systematic review' (2022) 71 International Journal of Law, Crime and Justice 100556.
6. For an analysis of this principle, see also van Dirk Zyl Smith, 'Degrees of freedom' (1994) 13 Criminal Justice Ethics 31.
7. Hadassa Noorda, 'Exprisonment: deprivation of liberty on the street and at home' (2023) 42 Criminal Justice Ethics 1.
8. For an exception, see Edgardo Rotman, *Beyond punishment: a new view on the rehabilitation of criminal offenders* (Greenwood Press 1990).

side effects but illegitimate extensions of a prison sentence, as the impact on their lives resembles the harms of actual imprisonment. Against this background, in section 5, I argue that working prisoners ought not to be excluded from the minimum wage requirement, and that they ought to have meaningful work options in prison. The framework I seek to provide for considering the amendment of the approach to prison labour with respect to wages and access to meaningful prison labour in the Netherlands aims to be useful for the analysis of prison labour in general.

2. 'Voluntary' prison labour in practice

Present-day labour in Dutch prisons is meant to be a means to stimulate prisoners' *desirable* behaviours.[9] Prisoners who do their best and show good behaviour according to a certain desired norm are allowed to work, or may work for additional hours. This means that there is neither a direct obligation nor a right to penitentiary labour in Dutch prisons. The privilege of work can be taken away when prisoners do not behave according to a certain norm, leaving prisoners in their cells for most of the day.[10] This regime is said to contribute to prisoners' motivation to reintegrate into society.[11]

Control of labour comes in degrees.[12] In the Netherlands, the state does not exercise direct control over offenders' labour; it does not use physical force or deny basic necessities, such as food and shelter, to compel prisoners to work. However, prisoners have less freedom to decide whether to work than labourers who are not in prison.[13] Although there is no direct obligation for prisoners to work, a positive evaluation of their labour is an important aspect in deciding whether they are allowed particular privileges, such as less repetitive and more challenging work options, more possibilities for visits from family and friends, and more time for education.[14] This means that prisoners work more or less voluntarily, but a decision not to work may have negative consequences for participation in a more lenient regime.[15]

At present, prisoners who work earn EUR 0.95 per hour. If prisoners are sick or otherwise incapacitated to perform work, they receive 80% of the minimum prison wage.[16] Retired

9. Wet Straffen en Beschermen and the Dutch Penitentiary Principle Act (Pentitentiaire Beginselenwet), art. 47.
10. Boone argues that within Dutch policy, privileges, such as possibilities for visits, have been increasingly linked to prisoners' perceived behaviours. See Miranda Boone, 'Selective rehabilitation', in Miranda Boone and Martin Moerings (eds), *Dutch prisons* (BJU Legal Publishers 2007). See also Gerard De Jonge, 'De koers van het Nederlandse gevangeniswezen sinds de Tweede Wereldoorlog' (2007) 5 Justitiële verkenningen 31; Jan Maarten Elbers and others, 'Straffen en belonen in detentie' (2021) 63 Tijdschrift voor Criminologie 263.
11. On the aims of punishment in the Netherlands, see a report by Deputy Division Governor of Prisons and Immigration Detention Toon Molleman [in Dutch]. Toon Molleman, *Toen en nu: heeft het gevangeniswezen de middelen om zijn doelen te bereiken?* (WODC Report 2021).
12. For the degrees of compulsory prison labour, see Lippke (n 2) 540.
13. On the duty to work without a wage outside prison, see Anja Eleveld, 'The duty to work without a wage: a legal comparison between the social assistance legislations in Germany, the Netherlands and the United Kingdom' (2014) 16 European Journal of Social Security 204.
14. See Commissie van Toezicht, 'Arbeid' (*Commissie van Toezicht*) <https://www.commissievantoezicht.nl/dossiers/arbeid/achtergrondartikel-arbeid/#_ftn5 > accessed 11 April 2024.
15. However, successful participation in an education programme can also be seen as norm-abiding behaviour. See the following case by the Dutch Council for the Administration of Criminal Justice and Protection of Juveniles (Raad voor de Strafrechtstoepassing en Jeugdbescherming) RSJ 21/24256/GA, 29 August 2022 (<https://puc.overheid.nl/rsj/doc/PUC_717532_21/1/>).
16. Dutch Regulation on Prison Labour (Regeling arbeid gedetineerden), art 5(d), 6.

prisoners also receive an 80% wage.[17] Prisoners are not required to work on generally recognised holidays.[18]

In general, prisoners work 20 hours a week. Employed by In-Made, a public production company from the Dutch Judicial Institutions Service that regulates all prison work in the Netherlands, prisoners work both for the state as well as for the private sector. They are engaged mainly in production work, such as packing and assembling, and cleaning and laundry jobs in the facility.[19] Subject to demonstratable good behaviour, they have the opportunity to do more specialist work, such as woodwork and painting, and to complete courses and obtain certificates.[20] During the final phase of their sentences, they may work outside the facility (if they demonstrate good behaviour), an opportunity organised through a scheme called Ex-Made. Through this scheme, workplaces that match a prisoner's skill set are sought.[21] Prisoners are, however, still excluded from minimum wage rights if they are employed outside the facility.

Efforts have been made to make working hours in prison resemble work outside prison, predominantly with an eye on resocialisation. One of the aims of the prison scheme is to contribute to the reduction of recidivism.[22] From this perspective, 20 hours a week is said to be the minimum for work as a resocialisation activity in prison.[23] Although it is claimed that the Dutch government strives for the normalisation of working hours, other aspects of work in prison, such as wages, are not part of the normalisation effort.[24] In the next sections, I will address the current Dutch work scheme from the perspective of rehabilitation.

3. The significance of rehabilitation

Prison labour is generally considered a route to offenders' rehabilitation and reintegration.[25] The original purpose of 16th century houses of correction was to transform offenders into hardworking citizens through labour.[26] In the Netherlands, the first house of correction was established in 1596 in Amsterdam. Men were assigned to the *Rasphuis*, where they would rasp wooden logs, while women were assigned to the *Spinhuis*, where they were required to spin.[27] Although these institutions were originally based on care for prisoners' well-being, they soon evolved into what have been described as municipal factories with a 'captive labour force' to whom curel punishments were meted out.[28] The focus in the original idea, however, was criminal rehabilitation, an early

17. ibid.
18. ibid art. 5.
19. Since 2013, prison labour in all prisons in the Netherlands has been organised by In-Made. Previously, it was organised by each prison separately. For more detailed information about this prison scheme, see Jos Kuppens, Juno van Esseveldt, and Anton van Wijk, *Working on work: an evaluation of prison labour* (full text available in Dutch) (Summary Bureau Beke 2021).
20. ibid.
21. ibid.
22. ibid.
23. In general, prisoners who perform specialist work are eligible to work more hours. See ibid.
24. Jill van de Rijt, Esther van Ginneken and Miranda Boone, 'Lost in translation: The principle of normalisation in prison policy in Norway and the Netherlands' (2022) 25(3) Punishment & Society 577.
25. These terms are generally overlapping.
26. Rotman (n 8) 32.
27. ibid.
28. J. Thorsten Sellin, *Slavery and the penal system* (Elsevier Scientific Publishing 1976), 69.

alternative to the punitive reaction that enforces conformity to the law on the basis of calculation or fear.

Nowadays, the criminal justice system has a number of objectives, such as punishing the perpetrators of crime, reducing the likelihood of (re)offending and rehabilitating.[29] I consider prison labour from a rehabilitative perspective. Criminal rehabilitation has been supported for various reasons.[30] Moral and therapeutic improvements have been put forward as the main reasons for supporting rehabilitation.[31] Whether through a moral or therapeutic lens, a common thread present in all these theories is that rehabilitation seeks to enhance an individual's ability to function normally in society. Prison labour is generally considered an important but contested aspect of this objective.[32] Through labour, prisoners are said to learn skills and competencies and improve their employability in order to facilitate their reintegration into society upon release.[33] Labour can also provide prisoners with income that they can use to buy basic consumer items in prison, which can in turn make their lives feel less monotonous while in prison. It could, in theory, also help them support their dependents, pay their debts and leave prison with enough money to get through the first month following release. For these reasons, schemes that provide prisoners with work in prison can be beneficial and serve the purpose of reintegration into society.[34]

Why is it important to facilitate the reintegration of offenders upon release? One way of addressing this question is in instrumentalist terms. The reintegration of offenders is said to reduce recidivism and increase public safety. As mentioned above, one of the aims of the Dutch prison scheme is to contribute to the reduction of recidivism, and another is to reduce the costs of prison labour.[35] As Richard Lippke puts it, 'Many who support prison labour do so precisely because they believe that it helps inmates avoid the destructive effects of prison idleness, and acquire the job skills, work experience, and work habits the absence of which contributed to their delinquency in the first place'.[36] Other aims that are pursued in rehabilitative programmes in relation to reducing recidivism include institutional adjustment, educational achievement, the prevention of drug and alcohol readdiction, the promotion of personality and attitude changes, and community adjustment.[37]

29. See Antony Duff, 'Punishment and rehabilitation—or rehabilitation as punishment' (2005) 60 Criminal Justice Matters 18. The ECHR has examined prison conditions in light of the rehabilitative ideal and has recognised that rehabilitation is a central purpose of imprisonment; see Sonja Meijer, 'Rehabilitation as a positive obligation' (2017) 25 European Journal of Crime, Criminal Law and Criminal Justice J 145.
30. See Lisa Forsberg and Thomas Douglas, 'What is criminal rehabilitation?' (2022) 16 Criminal Law and Philosophy 103.
31. Duff (n 29).
32. Kuppens, van Esseveldt, and van Wijk (n 19). More generally, see Paula Smith, Lindsey Mueller and Ryan Labrecque, 'Employment and vocation programs in prison' in John Wooldredge and Paula Smith (eds), *The Oxford handbook of prisons and imprisonment* (OUP 2017); Robert J. Sampson and John H. Laub, 'A life-course theory of cumulative disadvantage and the stability of delinquency' in Terence Thornberry (ed), *Developmental theories of crime and delinquency* (Transaction Publishers 1997).
33. On this, see Smith, Mueller and Labrecque (ibid), and Sampson and Laub (ibid).
34. Lippke (n 2); Howard League for Penal Reform, *Business behind bars: making real work in prison work* (2011).
35. Kuppens, van Esseveldt, and van Wijk (n 19). On rehabilitation and reintegration as principles of European prison law and policy, see Dirk Van Zyl Smit and Sonja Snacken, *Principles of European prison law and policy: penology and human rights* (OUP 2009).
36. Lippke (n 2).
37. These criteria have been used to measure the effectiveness of rehabilitative programmes. See, e.g. Douglas Lipton, Robert Martinson, and Judith Wilks, *The effectiveness of correctional treatment: a survey of treatment evaluation studies* (Praeger 1975), 12.

The question, then, is whether the conditions of prison work actually promote prisoner reintegration. Virginia Mantouvalou has argued that this is not the case under current conditions of prison labour in most jurisdictions.[38] Instead, she argues that although rules on prison labour 'may have an appearance of legitimacy, for work in prison is said to promote reintegration and to contribute to prison costs, this is very questionable because the rules increase the vulnerability of incarcerated people and are connected to structures of exploitation'.[39] Empirical studies show that prisoners often feel forced to do monotonous and pointless tasks and that they do not gain competencies and useful skills that would benefit their future employability and reintegration.[40]

An alternative and fruitful way of addressing the question of the significance of reintegration is based on the principle that prisoners ought to retain their basic rights, except for the loss of liberty.[41] This principle formed the basis for the critique of old forms of rehabilitation—those involving hard labour, extended periods of imprisonment and disproportionate and intrusive therapies. Critics of rehabilitation argue that rehabilitation can be used as a pretext for such practices.[42] They reject the idea of increasing people's suffering in prison and criticise hard prison labour and other additional harm on the ground that 'Offenders are sent to prison as punishment, not for punishment'.[43] This means that prison should not be other than in the loss of liberty.[44]

The insight that imprisonment itself is the punishment has been used not only to criticise old forms of rehabilitation practices but also, more recently, to support contemporary forms of rehabilitation. Imprisonment is a source of various harmful effects for inmates and their relatives. The idea is that these effects ought to be counteracted not only with an eye on reducing recidivism and increasing public safety, but also based on the principle that prisoners ought to retain their basic rights, except for the temporary loss of liberty, including the right to reintegrate into society after having served their sentences. As Edgardo Rotman puts it, 'If imprisonment itself is the punishment, the unchecked harmful effects of incarceration on the mental and social health of the inmate represent illegal additional punishment'.[45] Against this background, Rotman develops a humanist notion of rehabilitation that counteracts the harmful aspects of imprisonment or that seeks to find ways to avoid the use of prisons altogether.[46] On this account, rehabilitation functions as a counteractive force to imprisonment, creating duties on the part of the state to reduce the negative effects of imprisonment and to reintegrate offenders upon release.

This account captures a concern that runs deeper than simply the empirical data about recidivism—offenders ought to retain their basic rights. However, one should note that a majority of offenders have never played a meaningful part in the society into which a successful rehabilitation programme might reintegrate them.[47] For this reason, it would be better to address ways to 'habilitate' people rather than to focus on the *re*habilitation of ex-offenders. Before ending

38. Mantouvalou (n 2).
39. Ibid 26.
40. ibid 17; Pandeli, Marinetto, and Jenkins (n 4). In addition, Mantouvalou has argued that private businesses benefit from prisoners' labour, as prisoners' labour costs are much lower; thanks to their exclusion from protective laws, prisoners often perform jobs for which firms have difficulties recruiting employees outside the prison population (Mantouvalou, n 2).
41. For an analysis of this principle, see also van Zyl Smith (n 6).
42. Meijer (n 28) 146.
43. This well-known line is from early 20th-century prison commissioner Alexander Paterson. Quoted in van Zyl Smith (n 6).
44. Ibid 31–32.
45. Rotman (n 8) 12.
46. ibid 10.
47. See, e.g. Duff (n 28) 18; Lippke (n 2)536–537.

up in prison, many prisoners already lack social relationships, opportunities to acquire capacities and access to the job market that would help them play a meaningful role in society. As various studies show, many who are in prison have, for example, little sustained experience with paid labour because many come from social and educational backgrounds that deprive them of access to the labour market.[48] In cases such as these, imprisonment affects people who are already vulnerable.

4. Illegitimate extension of the prison sentence upon release

Thus far, I have argued that rehabilitation is important not only because of its positive effects on the reduction of recidivism, but also because prisoners ought to retain their basic rights. In this section, I propose that the impact of imprisonment on employment, among other aspects of life, excludes those who are released from prison from an important aspect of living a normal life and could be characterised as an extension of their prison sentence.

I believe that the difficulties and harm that offenders experience upon release should not be readily accepted as *side effects*. Instead, we could portray the negative effects of imprisonment as illegitimate extensions of a prison sentence. People in prison are deprived of many aspects of living a normal life, and these *imprisoning impacts* extend well beyond their terms in prison.[49] Living a normal life upon release can be difficult because of a lack of skills, education, social relationships and experience, while former inmates may also face difficulties in finding housing or restrictions in living in certain neighbourhoods, and, depending on the jurisdiction, restrictions on voting rights. Those who are released from prison facilities are excluded from many aspects of living a normal life in a manner similar to actual prisoners.

Elsewhere, I have introduced the concept of *exprisonment* to describe practices of restraint that do not subject individuals to prison or jail sentences but do deprive them of their liberty.[50] I seek to view the difficulties that released prisoners face when they reintegrate into society through this lens. First, I describe what exprisonment is, and, second, I apply the concept to individuals who are released from prison. Examples of exprisonment include, among other practices, asset freezes, travel bans and electronic monitoring. Many of the harmful aspects of imprisonment are shared by these exprisoning measures. The mandatory wearing of an electronic tagging device can, for example, strongly restrict a person's freedom to live their life and take part in society.[51] In most cases, such measures do not exclude individuals from living their lives altogether, but they can have impacts as severe as traditional imprisonment, especially when combined.[52] Exprisonment may also spill over into the lives of third parties, just as imprisonment can cause hardships to prisoners' family members.[53] For example, the family

48. Steven Donziger (ed), *The real war on crime* (Harper Collins), 27–30.
49. On the impacts of imprisonment, see Hadassa Noorda, 'Imprisonment' (2023) 17 Criminal Law and Philosophy 691.
50. Hadassa Noorda, 'Preventive deprivations of liberty: asset freezes and travel bans' (2015) 9 Criminal Law and Philosophy 521; on exprisonment, see also Noorda (n 7).
51. Mantouvalou and Noorda (n 2).
52. ibid; Noorda (n 7).
53. See William Bülow, 'Electronic monitoring' in Jesper Ryberg (ed), *Oxford handbook on punishment theory and philosophy* (OUP forthcoming); see also William Bülow, 'The harms beyond imprisonment: do we have special obligation towards the families and children of prisoners?' (2014) 17 Ethical Theory and Moral Practice 775; William Bülow, 'Who is morally responsible for remedying the harm caused to children of prisoners?' (forthcoming) Ethics and Social Welfare.

members of individuals monitored with electronic tags may be affected when they are monitored at home.[54]

The impact of imprisonment on previously imprisoned people after release can be such that they cannot live a normal life; in this sense, their sentences are, in fact, extended outside the walls of the actual prison. In this article, I am primarily interested in reintegration into the labour market, as its positive effect is one of the reasons given for promoting work in prison. However, the reality is grim. Imprisonment significantly affects the employability of those who have served a prison sentence. They are excluded from many work opportunities, particularly jobs that are not precarious, because of their criminal histories.[55] This exclusion is often due to prejudice rather than unsuitability. In addition, evidence shows that former prisoners face obstacles when attempting to find better work because of their criminal histories.[56] Not all jurisdictions require the disclosure of criminal records, but it has been observed that those who have been in prison 'come to expect – and sometimes embrace – low-wage precarious work outside prison'.[57] Studies show that work in prison, although beneficial at first sight, does not mitigate this negative effect on life after imprisonment.[58] In addition, the closed characteristic of a traditional prison has a depersonalising impact on inmates and causes stress.[59] This may impact their employability. As one inmate describes,

> You have to be able to get through a job interview after a more or less long prison sentence. It means to be able to forget the time spent inside in order to show self confidence in body language and speech. It means being able to speak on free and equal terms; it also means being able to 'sell' oneself after time spent being a nobody.[60]

This bleak picture of the future of former prisoners regarding their chances in the labour market has been confirmed by various empirical studies. Austrian and British studies, for example, show that 25% of prisoners, at best, will find a stable, full-time job in the first year following their release.[61] As many previously imprisoned people do not have access to paid labour upon release or have their employability affected by their prison sentences, they are, at least partially, exprisoned.

Returning to society as a productive member is important for most offenders. Work is, as Lippke puts it, 'a, if not the, primary source of identity, status, and access to other goods in most modern

54. Andrew von Hirsch addresses this aspect of electronic monitoring: 'Home visits, or an electronic telephone monitor ringing at all hours of the day, affects not only the defendant but any other persons residing at the apartment–and it is *their* as well as his or her own dwelling place'. Andrew Von Hirsch, 'The ethics of community based sanction' (1990) 36 Crime & Delinquency 162.
55. See, e.g. Dallas Augustine, 'Working around the law: navigating legal barriers to employment during reentry'(2019) 44 Law & Social Inquiry 726.
56. ibid.
57. Erin Hatton, 'Introduction' in Erin Hatton (ed), *Labor and punishment—work in and out of* prison (University of California Press 2021) 1, 6. For an analysis, see Mantouvalou (n 2) 15.
58. Hatton (n 56).
59. See Erving Goffman, *Asylums* (Anchor Books 1961); Ruthanne DeWolfe and Alan S. DeWolfe A, 'Impact of prison conditions on the mental health of inmates' (1979) 4 Southern Illinois University Law Journal 507. Within overcrowded prisons, these effects are exacerbated; see, e.g. Gerald Gaes, 'The effects of overcrowding in prison' (1985) 6 Crime and Justice 95.
60. French inmate quoted in Evelyn Shea, 'A comparative study of prison labour in France, Germany and England' (2015) 11 Penal Issues 136.
61. ibid, 134.

societies.'[62] Work gives people's lives structure and meaning. It situates them in society, as it is an important aspect in determining how people are perceived by others and by themselves. Work also provides them with income that they can use to support themselves and their dependents, and it influences the quality of their lives to an important extent. Because of the value and benefits of work, access to it is crucial to living a normal life. The saliency of this point is proven by the fact that contemporary declarations of rights include not only a right against forced labour but also a right to be provided access to paid labour.[63] Not having access to paid labour upon release or having their employability affected by their prison sentences may potentially result in exprisonment, as previously imprisoned people are deprived of important aspects of their liberty and cannot live a normal life.

5. The Right to Work in Prison

The recent shift to a voluntary work scheme for prisoners in the Netherlands is based on a desire to underline the retributive concerns of punishment.[64] As described in section 2, the freedoms that prisoners have in facilities, such as their freedom to work, serve reintegration purposes, which are pursued to increase public safety by reducing recidivism.[65] Penitentiary labour in Dutch prisons is not a right, but a privilege given to those who do their best and show good behaviour. Whether they indeed do so is determined by prison staff, who report on their behaviours and conduct risk analyses.[66] This regime is said to contribute to prisoners' motivation to reintegrate into society upon release.[67]

In this section, I analyse the Dutch prison scheme based on the principle that prisoners ought to retain their basic rights, except for a temporary loss of liberty. Earlier in this article, I described two ways to address the question of the significance of reintegration. First, it can be addressed in instrumentalist terms. In this view, reintegration is supported because it is said to reduce recidivism and increase public safety. The question, then, is whether the empirical claim that the Dutch scheme should reduce recidivism is accurate. Second, the question of the significance of reintegration can be addressed as part of the principle that prisoners ought to retain their basic rights, except for a temporary loss of liberty. My aim in this section is to analyse the Dutch prison scheme not by addressing the empirical question of the extent to which the scheme helps make society safer by reducing recidivism, but by analysing the extent to which it corresponds with this principle. The main idea of my critique is that imprisonment itself ought to be the punishment, and that the harmful effects of imprisonment on the lives of prisoners when released constitute illegitimate extensions of the prison sentence in terms of the concept of exprisonment.

One may argue that those convicted of crimes (assuming they are guilty) have forfeited all or some of their rights, including the right to reintegrate into society after having served their

62. Lippke (n 2) 533.
63. James Nickel, *Making sense of human rights* (University of California Press 1987), 156. For an analysis in the context of prison labour, see also Lippke (n 2).
64. Ger Homburg and others, *Wet Straffen en Beschermen en Visie 'Recht doen kansen bieden'* (WODC Report 2020). Similarly, it has been argued that there has been a turn towards punitive attitudes in the implementation of community sentences rather than a focus on offenders' rehabilitation. Gill McIvor and others, 'Community service in Belgium, the Netherlands, Scotland and Spain: a comparative perspective' (2010) 2 European Journal of Probation 82, 88.
65. Molleman (n 11).
66. ibid.
67. On the aims of punishment in the Netherlands, see ibid.

sentences.[68] The Dutch prison scheme seems to be based on this argument, as it portrays work in prison as a privilege rather than a right. However, this impedes the principle that imprisonment ought not to be extended beyond the prison term itself, and that prisoners retain their basic rights. Instead, I argue that the state ought to counteract the negative effects of prison sentences. For work in prison, this means that it ought to be rganized in such a way that it effectively contributes to offenders' rehabilitation, and that prisoners have a right to work. I will now address these suggestions on how work in prison should be organised to counteract the impacts of imprisonment.

First, with the recognition that having meaningful access to the labour market and living a normal life upon release can be difficult for prisoners because of a lack of skills, education and experience, the state ought to provide all prisoners with a right (not an obligation) to meaningful work opportunities. The right to work has been interpreted in various ways, and different views exist as to what obligations it imposes on authorities. The International Labour Organization (ILO), for example, uses the term 'decent work,' which concerns the availability of 'acceptable' employment.[69] As Mantouvalou has argued, the right to work should be understood not only as a right to fair access to the labour market, but as a right to non-exploitative work.[70] The focus is the abuse of a person's vulnerability in order to make profit.[71]

Conceptions such as these compare standards of work in prison with standards of work outside.[72] Instead, I argue for a right to meaningful work options in prison, although I recognise that this is a high standard that many jobs outside prison may not meet.[73] In my view, a right to meaningful work options is important because people in prison have an additional reason to work. That reason concerns achieving meaning for their post-imprisonment lives, which can be done through work. Through meaningful work, prisoners can gain the requirements needed to participate in the job market upon release.

Under the current scheme, prisoners do not have the right to work; instead, they are allowed to work when they comply with a certain desired norm of showing good behaviour. In addition, a positive evaluation of their labour is an important aspect in deciding whether they are allowed the privilege of less repetitive and more challenging work options, while it has been observed that challenging work positively affects the reduction of recidivism.[74] I suggest that all prisoners

68. For related arguments regarding the forfeiture of rights in prison, see, e.g. Christopher Morris, 'Punishment and loss of moral standing' (1991) 21 Can. J. Phil 53; Alan Goldman, 'The paradox of punishment' (1979) 9 Philosophy & Public Affairs 42.
69. On the promotion of decent work by The International Labour Organization (ILO), see ILO, 'Decent work', <https://www.ilo.org/global/topics/decent-work/lang–en/index.htm> accessed 11 April 2024. See also, Colm O'Cinneide, 'The Right to work in International Human Rights Law' in Virginia Mantouvalou (ed) *The right to work: legal and philosophical perspectives* (Hart Publishing 2015).
70. Virginia Mantouvalou, 'The Right to Non-Exploitative Work' in Virginia Mantouvalou (ed) *The right to work : legal and philosophical perspectives* (Hart Publishing 2015) cf. Hugh Collins, 'Is there a Human Right to Work?' in Virginia Mantouvalou (eds.) *The right to work: legal and philosophical perspectives* (Hart Publishing 2015).
71. Mantouvalou (ibid).
72. For analyses of the significance of the principle of 'normalisation' in standards on prison labour, see Virginia Mantouvalou, 'Work in Prison', in this special issue; Van de Rijt, Van Ginneken and Boone (n 25).
73. For theoretical accounts of meaningful work outside prison, see, however, Beate Roessler, 'Meaningful work: Arguments from autonomy' (2012) 20 The Journal of Political Philosophy 71; Andrea Veltman, *Meaningful work* (OUP 2016).
74. See in Dutch: Commissie van Toezicht (n 15); Geert Mesters, Victor van der Geest, and Catrien Bijleveld, 'Crime, employment and social welfare: an individual-level study on disadvantaged males' (2016) 32 Journal of Quantitative Criminology 159.

should be provided with challenging work options to counteract the negative impacts of imprisonment. This means that for every job in prison, a minimum of self-realisation and skill should be possible. The focus of work in prison should be on the quality and character of work rather than on external motivation, such as profit.

However, work is not the only activity that contributes to rehabilitation of ex-offenders. Other areas, such as relationships, education, art, and religion can also play a part in counteracting the negative effects of imprisonment. People in prison should not be forced to work because work may amount to rehabilitation. But if state policies take into account that imprisonment ought not to be extended beyond the prison term itself, then they cannot remain neutral regarding the content and character of work options in prison.

Second, prison labour should provide prisoners with adequate income to support their dependents, pay their debts and leave prison with enough money so that they can effectively reintegrate into society. Those who have left prison not only need skills, competencies and experiences to obtain a job and cover their living costs, but should also be provided by the state with enough income while working in prison. Under the current scheme, those in prison are excluded from minimum wage requirements and they engage in work for little pay. The low level of pay does little for prisoners' rehabilitation. At best, it provides them with the opportunity to buy basic consumer goods in prison, but they cannot support their dependents, pay their debts or save enough money to get through the first month after serving their sentences.[75] On top of that, as described above, exclusion from labour law protection has been connected with precarious work even after leaving prison.[76]

Some may argue that cleaning the floors of a detention centre for little or no pay is part of the sentence, but this is not in line with the principle that prison may not be punitive in ways other than the loss of liberty itself. The application of a minimum wage requirement for work in prison would contribute to prisoners' societal reintegration upon release and counter the negative effects of imprisonment, both during imprisonment and upon release. These suggestions have been recognised in the literature on the normalisation of prison labour.[77] I seek to show why rights to meaningful work options and a minimum wage for prisoners not only contribute to their reintegration, but are also required for countering the illegitimate extension of their prison sentences in society.

One might wonder whether facilitating meaningful work options that are not excluded from minimum wage requirements might be problematic for the state, as the costs of such are borne by other citizens. Lippke argues in favour of charging prisoners a fee for this service, much as private employment services charge fees to jobseekers for help in finding employment.[78] This might be a viable option, but one should keep in mind that, except for the loss of liberty, prisoners should not bear additional harm. In addition, the suggestions I propose in this article might also be supported for instrumentalist reasons, as they will likely save costs with respect to welfare services to released prisoners and their dependents.

75. See also Mantouvalou (n 2) 16. Mantouvalou argues that the state benefits from prisoners' exclusion from minimum wage requirements and makes profit from their underpaid work. This is also the case with unpaid work requirements and work in immigration detention.
76. See, primarily, Mantouvalou (ibid) 15. Further research on prison labour is needed to better understand the situation of ex-offenders in the Netherlands.
77. See, e.g. van de Rijt, van Ginneken, and Boone (n 25).
78. Lippke (n 2).

6. Conclusion

Previously imprisoned people experience difficulties participating in the labour market, while, for most offenders, returning to society as productive members is an important aspect of living a normal life. Building on the concept of exprisonment, I have sought to argue that, as previously imprisoned people cannot participate in the labour market or experience major obstacles, prison sentences are, in fact, extended outside the walls of the actual prison. Not having access to paid labour upon release or having their employability affected by their prison sentences may potentially result in exprisonment, as previpusly imprisoned people cannot live a normal life. Against this background, I have proposed an obligation for states to counter an extension of the prison sentence upon prisoners' release. States should do so through the facilitation of meaningful work options in prisons and by applying a minimum wage requirement for work in prison.

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