Constitutional Law - Cruel and Unusual Punishments under the Eighth Amendment - Prisoner-Driven Confinement Condition Claims

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CONSTITUTIONAL LAW—CRUEL AND UNUSUAL PUNITIONS UNDER THE EIGHTH AMENDMENT—PRISONER-DRIVEN CONFINEMENT CONDITION CLAIMS—The United States Supreme Court has held that in order for a confinement condition claim to violate the Eighth Amendment, the prisoner must demonstrate that the complained of condition was a violation of the Eighth Amendment and that prison officials were deliberately indifferent to the unnecessary and wanton infliction of such violative conditions.


On August 28, 1986, Pearly L. Wilson, an Ohio inmate, filed suit under Section 1983 of the Civil Rights Act against Richard P. Seiter and Carl Humphreys (hereinafter “prison officials”), alleging that certain confinement conditions existing within the Hocking Correctional Facility (hereinafter “HCF”) violated the Eighth Amendment. Wilson was incarcerated at the Hocking Correctional Facility, a medium security facility located in Nelsonville, Ohio. Wilson, 111 S Ct at 2322.


2. Id. The suit was filed under 42 USC § 1983, which provides:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

3. Wilson, 111 S Ct at 2321, 2322. The suit named both Richard P. Seiter, Director of the Ohio Department of Rehabilitation and Correction, and Carl Humphreys, Warden of Hocking Correctional Facility, as co-defendants. Id at 2322.

4. Id. See note 6 and accompanying text.
and Fourteenth Amendments of the United States Constitution.\(^5\) The complaint averred that confinement conditions such as inadequate heating and cooling, overcrowding, and being housed with mentally and physically ill inmates violated Wilson’s Eighth Amendment rights.\(^6\) Wilson’s complaint sought declaratory and injunctive relief as well as $900,000 in compensatory and punitive damages.\(^7\)

Both parties filed cross-motions for summary judgment\(^8\) and included supporting affidavits with their motions.\(^9\) Wilson argued two primary assertions: (1) that the confinement conditions were violations of the Eighth Amendment, and (2) that after Wilson notified prison officials of the violative conditions, the prison officials failed to take remedial actions.\(^10\) The affidavit filed on behalf of the prison officials refuted the existence of several of Wilson’s enumerated conditions and outlined efforts taken by prison officials within HCF to improve physical and medical conditions of confinement.\(^11\)

The district court granted summary judgment in favor of the prison officials, initially finding that it was incumbent upon the

\(^5\) Wilson, 111 S Ct at 2322. The Eighth Amendment provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” US Const, Amend VIII.

\(^6\) Wilson, 111 S Ct at 2322. Wilson also enumerated other confinement conditions—excessive noise, inadequate storage areas, and unsanitary restroom and dining facilities—as being violative of his Eighth Amendment rights. Id.

\(^7\) Id.

\(^8\) Id. The Court may enter summary judgment in a movant’s favor upon a showing that there is “no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” FRCP 56(c).

\(^9\) Wilson, 111 S Ct at 2322.

\(^10\) Id.

\(^11\) Wilson v Seiter, 893 F2d 866 (6th Cir 1990). The factual record showed that remedial actions taken by prison officials included specific measures to reduce noise levels, heaters were serviced, prison officials provided prisoners with extra blankets during cold months, installed exhaust fans for better ventilation, required daily cleaning of restrooms and dining facilities, and hired an exterminator to combat vermin on a twice-monthly basis. Wilson, 893 F2d at 866.
states to furnish inmates with "reasonably adequate" necessities such as food, clothing, shelter, sanitation, medical care, and personal safety from violent offenders. The district court applied the substantive law gleaned from Whitley v Albers, which held that in order to successfully set forth an Eighth Amendment claim, a prisoner must demonstrate that the prison officials unnecessarily and wantonly inflicted pain by acting "maliciously and sadistically for the very purpose of causing harm."

The district court dismissed Wilson's specific allegations concerning confinement with physically ill prisoners, the general sanitary conditions, noise levels, and inadequate heating and cooling as not violative of his Eighth Amendment rights. The district court concluded that Wilson failed to demonstrate that the prison officials "sadistically or maliciously" inflicted the remaining conditions on him "with the very purpose of causing harm" as required by Whitley.

Wilson appealed to the United States Court of Appeals for the Sixth Circuit. In affirming the district court's decision, the court of appeals agreed with the district court's use of the Whitley intent standard, but found that the district court erred in its finding that certain confinement conditions did not violate the Eighth Amendment. The court of appeals examined the confinement

12. Id at 861, 863. The suit was first heard in the United States District Court for the Southern District of Ohio, Judge James L. Graham presiding. Id at 861.

13. 475 US 312 (1986). In Whitley, a prisoner shot by a prison guard during an attempt to put down a prison insurrection alleged that he had been subjected to cruel and unusual punishment. Whitley, 475 US at 312-15. The Court held that a prisoner must demonstrate that prison officials unnecessarily and wantonly inflicted pain or punishment by acting "maliciously and sadistically with the very purpose of causing harm." Id at 320. The Court ruled that this standard of intent on the part of prison officials was required to constitute cruel and unusual punishment under the Eighth Amendment. Id at 319, 320.

14. Id at 320.

15. Wilson, 893 F2d at 863. The district court dismissed confinement conditions of being housed with physically ill prisoners, general sanitation, noise levels, heating and cooling, and ventilation as meritless in the face of the prison officials' affidavit in support of their motion for summary judgment. Id. The Court based this conclusion on the prison officials' attempts to ameliorate the complained-of conditions. See note 11.

16. Wilson, 893 F2d at 863.

17. Id at 862. The case was heard before Circuit Judges Krupansky and Wellford, and District Judge Harvey, United States Senior District Judge for the Eastern District of Michigan, sitting by designation. Id.

18. Id at 864. The court of appeals found that the district court erred when it adopted the findings outlined in the prison officials' affidavit. Id. The court of appeals determined that the district court erroneously weighed and decided the truthfulness of the allegations contained in the submitted affidavits instead of following the more correct procedure of identifying whether or not the conditions were genuine issues of material fact. Id.
conditions enumerated by Wilson to determine whether such conditions were genuine issues of material fact. The court of appeals looked to the reasoning in *Rhodes v Chapman* and found that some of the confinement conditions were of the type “suggestive” of Eighth Amendment violations, but stated that Wilson’s specific claims regarding inadequate cooling, overcrowding, and being housed with mentally ill prisoners did not reach the level as to seriously deprive him of his Eighth Amendment rights.

The court of appeals concluded that the district court correctly applied the *Whitley* standard and agreed with the district court that Wilson failed to demonstrate that the prison officials unnecessarily or wantonly inflicted the remaining conditions. This holding was based upon the court of appeals’ conclusion that Wilson

The court of appeals stated that the “judge’s function is not himself to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial.”

19. Id. The court of appeals determined that, in order to decide whether or not the confinement conditions amounted to genuine issues of material fact, an examination of the substantive law regarding Eighth Amendment confinement conditions claims was required.

20. 452 US 337 (1981). The prisoners in *Rhodes* contended that the housing of two prisoners in a cell designed for one prisoner constituted cruel and unusual punishment. *Rhodes*, 452 US at 337-42. The Supreme Court rejected the claim, holding that Eighth Amendment violations are measured by “evolving standards of decency” and that confinement conditions must not involve the wanton and unnecessary infliction of pain. Id at 346, 347.

21. *Wilson*, 893 F2d at 864. The court of appeals stated that after the *Rhodes* decision, courts were now required to examine the conditions in their “totality” and not merely on an isolated basis. *Rhodes*, 452 US at 347. Judge Harvey was careful to point out that, although in extreme circumstances the totality may amount to an Eighth Amendment violation, there must still exist a specific condition on which to base the Eighth Amendment claim. *Wilson*, 893 F2d at 864, citing *Walker v Mintzes*, 771 F2d 920, 925 (6th Cir 1985).

Specific conditions found to have violated prisoners’ Eighth Amendment rights include: denial of access to shower facilities, *Preston v Thompson*, 589 F2d 300 (7th Cir 1978); denial of medical treatment, *Estelle v Gamble*, 429 US 97 (1976); overcrowding, *Cody v Hilliard*, 799 F2d 447 (8th Cir 1986); threats to safety, *French v Owens*, 777 F2d 1250 (7th Cir 1985); vermin infestation, *Hoptowit v Spellman*, 753 F2d 779 (9th Cir 1985); inadequate ventilation, id; and unsanitary eating conditions, *Ramos v Lamm*, 639 F2d 559 (10th Cir 1980).

22. *Wilson*, 893 F2d at 865. The court of appeals based this conclusion on its findings that: (1) there was no precedent holding that a prisoner subjected to high summer temperatures was constitutionally violative, (2) there was no objective risk to prisoners being housed with mentally ill prisoners, since there were no reported incidents of violence or danger, and (3) although double-bunked with less than fifty square feet of personal space, the prisoners were not overcrowded because they had available to them a television room, gymnasium, yard, weight room, billiards table, and library. Id at 861, 865.

23. Id at 866. The court cautiously stated that, although state-of-mind was not usually a proper issue for resolution on summary judgment, they must at least perform a cursory inquiry to establish whether or not Wilson’s affidavit, at a minimum, implied that the prison officials acted with the requisite intent. Id.
failed to assert or even imply in his complaint or subsequent pleadings that the prison officials acted "maliciously or sadistically for the very purpose of causing harm." 24

The United States Supreme Court granted certiorari, vacated the Sixth Circuit's decision, and remanded the case to the lower court to apply the correct standard of intent. 25 Justice Scalia formulated the issues before the Court as whether a prisoner, when alleging that conditions of confinement constitute cruel and unusual punishment, must show a culpable state of mind on the part of prison officials and, if so, what state of mind is required. 26 The Court fixated on the intent issue and expressed no opinion as to the Sixth Circuit's finding that some, but not all, of the confinement conditions were "suggestive" of Eighth Amendment violations. 27 The Court determined that confinement conditions claims could not be defined as punishment formally meted out by statute or judicial resolve; 28 therefore, the Court concluded that the validity of such an Eighth Amendment claim necessarily depended upon a showing that the prison officials intended to unnecessarily

24. Id.
26. Wilson, 111 S Ct at 2321. Justice Scalia delivered the opinion of the Court, in which Chief Justice Rehnquist, and Justices O'Connor, Kennedy, and Souter joined. Id at 2322.
27. Id at 2327. Although the Court did not express an opinion as to the Sixth Circuit's determination on the constitutionality of the complained-of conditions, the Court explained that for a totality of conditions to reach the Eighth Amendment threshold, the conditions must be mutually reinforcing (such as no heat combined with no extra blankets). Id.

Justice Scalia defined the confinement conditions examination by the courts as an objective inquiry of the claim to be governed by the holding in Rhodes. Id. The objective inquiry is a preliminary matter that must be addressed prior to the Court's reaching the subjective inquiry (standard of intent). Id.

The Court described the objective test by relying on its earlier opinion in Rhodes, which held: "Only deprivations denying the minimal civilized measures of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation." Id, citing Rhodes, 452 US at 346.

28. Wilson, 111 S Ct at 2323-26. The Court rationalized that intent was implicit in the term punishment. Id at 2326. The Court determined that if punishment inflicted was not formally meted out, either as required by statute or sentence, some mental intent must be attributable to it. Id at 2325.

Wilson argued that confinement condition cases such as his were distinguishable from "one-time" infliction cases such as Whitley. Id at 2322. Wilson conceded that the "one-time" infliction of punishment cases required the prisoner to demonstrate intent on the part of the prison officials. Id. However, Wilson argued, confinement conditions, which resulted from "systematic" conditions that inflict punishment on all the prisoners and which are endemic to the prison system as a whole, required no showing of intent if the conditions themselves violate a prisoner's Eighth Amendment rights. Id at 2322-26.
or wantonly inflict the violative conditions on the prisoner.\textsuperscript{29}

Although the Court agreed with the court of appeals that a showing of intent was paramount for a confinement conditions case, it held that the Sixth Circuit erred when it applied the standard of "malicious and sadistic with the very purpose of causing harm," and not the standard of "deliberate indifference" set forth in \textit{Estelle v Gamble}.\textsuperscript{30} The Court reasoned that the standard applied by the Sixth Circuit was overly harsh for confinement conditions cases, and that the "deliberate indifference" standard promulgated by \textit{Estelle} was the correct standard for courts to apply.\textsuperscript{31}

The Court stated that the court of appeals' error could possibly have been harmless, basing such a determination on the Sixth Circuit's finding that Wilson's claim established, at best, that the prison officials acted with negligence.\textsuperscript{32} However, the Court concluded that the Sixth Circuit could have conceivably reached a different conclusion under the correct standard and thus remanded the case for reconsideration under the proper standard.\textsuperscript{33}

Justice White, joined by Justices Marshall, Blackmun and Stevens, concurred in the judgment but expressed concern with the majority's reasoning.\textsuperscript{34} The concurring Justices disagreed with the

\begin{itemize}
  \item \textsuperscript{29} Id at 2325, 2326.
  \item \textsuperscript{30} Id at 2328, citing \textit{Estelle v Gamble}, 429 US 97 (1976). The Court narrowly distinguished the different prisoner-driven Eighth Amendment claims to explain the different intent levels. \textit{Wilson}, 111 S Ct at 2327. The Sixth Circuit relied on the intent standard set forth in \textit{Whitley} (unnecessarily and wantonly inflicting pain by acting maliciously and sadistically for the very purpose of causing harm). \textit{Whitley}, 475 US at 320. The Court found this to be the wrong standard because \textit{Whitley} involved prison officials acting "in haste" in their attempt to quell a prison riot and \textit{Wilson} involved a claim of inhumane conditions which was more analogous to the inadequate medical care claim set forth in \textit{Estelle}. Wilson, 111 S Ct at 2326-27.
  \item \textsuperscript{31} The Court countered that the proper standard is found in \textit{Estelle}. The Court in \textit{Estelle} held that the lack of adequate medical care could be a violation of the prisoner's Eighth Amendment rights. \textit{Estelle}, 429 US at 104. The Court defined such a challenge as a confinement conditions case and concluded that a prisoner must demonstrate that the prison officials unnecessarily and wantonly inflicted pain or punishment through their "deliberate indifference." Wilson, 111 S Ct at 2326, 2327. The Court reasoned that \textit{Estelle} was materially synonymous to Wilson's claim in that both alleged that confinement conditions constituted Eighth Amendment violations, thus the standard of "deliberate indifference" was synonymous to both claims. Id at 2327, 2328, citing \textit{Estelle}, 429 US at 104. See note 77 for the facts of \textit{Estelle}.
  \item \textsuperscript{32} Wilson, 111 S Ct at 2327, 2328. See also note 30 and accompanying text.
  \item \textsuperscript{33} Id. The Court reasoned that if the Sixth Circuit had realized the significance of the proper standard to be applied, they may have weighted Wilson's arguments more critically and come to a different resolution. Id.
  \item \textsuperscript{34} Id (White concurring).
\end{itemize}
holding that confinement conditions claims must demonstrate that prison officials inflicted violative conditions with "deliberate indifference." Moreover, they stated that any intent requirement was a departure from the Court's earlier decisions. Justice White hypothesized that an intent standard would prove impossible to apply since most confinement conditions claims are cumulative in nature, and prisoners would be required to show intent on the part of officials that have since moved out of the prison system. Furthermore, the concurring Justices expressed concern that the majority's holding now created a "fiscal defense" which, if asserted by the prison officials, could negate the required intent by simply showing the violative conditions were the result of inadequate funding rather than deliberate indifference on the part of prison officials. The concurring Justices found that the proper standard for confinement conditions cases should be the requirement that states abide by a "contemporary standard of decency" and not force prisoners to undergo serious deprivations of life's necessities in the futile search for deliberate indifference.

35. Id.
36. Id. The concurring Justices relied upon the opinions cited in Estelle and Rhodes which, Justice White maintained, did not require a showing of intent on the part of prison officials in confinement conditions cases. Id at 2329, citing Estelle, 429 US at 104, and Rhodes, 452 US at 347.

37. Wilson, 111 S Ct at 2330. Justice White's concern was predicated on the theory that many different officials, both inside and outside the prison system, may be responsible for the confinement conditions, yet it may be impossible for the prisoner to pinpoint which prison officials were primarily responsible. Id. Justice White also offered the argument that a prisoner was challenging an institution, and the ability to demonstrate intent on the part of a specific prison official was dubious at best. Id.

38. Id at 2330, 2331.
39. Id at 2331. The concurring Justices relied on earlier opinions cited in DeShaney v Winnebago County Dept. of Social Servs., 489 US 189 (1989), and Rhodes, 452 US at 347. In DeShaney, the Court, when confronted with a confinement conditions challenge, stated: "When a State has chosen imprisonment as a form of punishment, a State must ensure that the conditions in its prison comport with the 'contemporary standards of decency' required by the Eighth Amendment." DeShaney, 489 US at 198-200.

The concurrence further bolstered its concern with the majority's conclusion that intent on the part of prison officials was necessary for a confinement conditions claim by citing Rhodes: "No static test can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment 'must draw its meaning from the evolving standards of decency' that mark the progress of a maturing society." Wilson, 111 S Ct at 2330, citing Rhodes, 452 US as 346.

The majority stated that the concurring Justices erred by relying upon Rhodes, and explained that Rhodes was decided strictly upon "whether the conditions were a sufficiently serious enough deprivation to violate the constitutional standard" and that Rhodes never reached the subjective inquiry. Wilson, 111 S Ct at 2325 n 2.
Societal concerns for limiting cruel and unusual punishments were first expressed in the Old Testament. The biblical laws passed down to Moses included "lex talionis," which means "an eye for an eye, a tooth for a tooth." Early penal codes reflected the biblical concern for equating the punishment rendered with the offense committed by attempting to prohibit severe punishments for trivial offenses. The Magna Carta expanded this principle greatly, as Chapter 14 specifically set forth rudimentary restrictions prohibiting disproportionate punishments.

This history set the stage for the drafting of the Bill of Rights in 1689 by the English Parliament at the accession of William and Mary. The English statute was primarily directed against punishments meted out that were either unauthorized by law and beyond the power of the sitting court, or punishments that were disproportionate to the offense committed. Most legal scholars agree that our Founding Fathers undoubtedly borrowed the language from the English Bill of Rights and included it in the Eighth Amendment of the United States Constitution.

42. Granucci, 57 Cal L Rev at 844 (cited in note 41), citing Leviticus 24:19-20. Professor Granucci wrote that early penal codes promulgated by the Saxons of Pre-Norman England, the Germanic Tribes, and the Norse Vikings all reflected an adoption of the biblical principle of equating punishment rendered with the offense committed. Granucci, 57 Cal L Rev at 844-48 (cited in note 41). Professor Granucci found that the penal laws of the Germanic peoples in the Middle Ages were enforced through a system of fixed penalties. Id at 844.


43. James C. Holt, Magna Carta 323 (Cambridge, 1965). The basic premise was that trivial offenses were not to be met with excessive punishment. Id.
44. 1 Wm & Mary 2d Sess, c 2 (1689). The language read in pertinent part: "Excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Id.

The English Bill of Rights was passed partly in response to prior laws allowing imprisonment and torture for trivial offenses. Granucci, 57 Cal L Rev at 844-48 (cited in note 41).

45. See note 44.
46. Granucci, 57 Cal L Rev at 840 (cited in note 41). There has been great debate as to whether the cruel an unusual punishment language in the English Bill of Rights was a response to excessive or illegal punishments, as a reaction to barbaric and objectionable modes of punishment, or to both. Id at 840-44. Early congressional intent seemed to suggest that the cruel and unusual punishment clause was directed at prohibiting certain methods of punishment. 1 Annals of Cong 782-83 (1789).
The United States Supreme Court was not faced with a direct interpretation of the cruel and unusual punishments clause until 1879 in the case of Wilkerson v Utah. In Wilkerson, the Court unanimously upheld a sentence of public execution imposed pursuant to a conviction for premeditated murder. Justice Clifford, writing for the Court, concluded that it was difficult to determine with exactness the scope of the constitutional provision prohibiting cruel and unusual punishments. However, he affirmed that punishments of torture or others of the same sort were prohibited by the Eighth Amendment. The Court based its affirmance of the execution on historically traditional punishments accepted within the Utah territories, and also the then-current writings on capital punishment.

In 1890, the Court again faced a challenge brought under the Eighth Amendment in the case of In Re Kemmler. The Court held in Kemmler that electrocution was a permissible mode of punishment. The condemned prisoner sought to void the execution warrant through his claim that death inflicted by electricity was cruel and unusual. The Court reasoned that because the state legislature had determined that execution by electricity did not inflict cruel and unusual punishment, the punishment, albeit

Professor Granucci contended that the American colonists misinterpreted the English Bill of Rights. Granucci, 57 Cal L Rev at 847 (cited in note 41). He asserted that the American drafters omitted a prohibition on excessive punishments and adopted instead the prohibition of cruel methods of punishment. Id. English Law, at that time, never prohibited cruel methods of punishment. Id. To the contrary, the English law permitted one to be beheaded or quartered until it was statutorily repealed in 1870. 33 & 34 Vic, c 23, § 31 (1870). The burning of female offenders continued until repealed in 1790. 30 Geo 3, c 48 (1790).

47. 99 US 130 (1879). The defendant was convicted of premeditated murder and sought to invalidate his sentence of public execution on the grounds that it was cruel and unusual. Wilkerson, 99 US at 132-34.

48. Id.

49. Id.

50. Id at 135-36. The Court held that unnecessary cruelty was no more permissible than was torture. Id. The Court stated that torture inflicted on a prisoner was inherently prohibited by the Constitution. Id. Moreover, the Court reasoned that unnecessary cruelty in the imposition of punishment was analogous to torture; therefore, unnecessary cruelty was also prohibited. Id.

51. Id. The Court was cautious of deciding the case purely on traditional practice, hence their examination of various writings regarding capital punishment. Id. Justice Clifford relied upon many writings which included: Thomas F. Simmons, Remarks on the Constitution and Practice of Courts-Martials § 645 at 86 (J. Murray, 5th ed 1863); Cooley, Constitutional Limitations 408 (Little, Brown and Co., 4th ed 1874); and Francis Wharton, Criminal Law, § 3405 (Lawyer's Co-op, 7th ed).

52. 136 US 436 (1890).


54. Id at 439-41.
unusual, was constitutional. Two years later in the case of *O'Neil v Vermont*, the Court upheld the imposition of a fifty-four-year confinement at hard labor sentence on a person found guilty of a multitude of "liquor violations." The defendant could not pay the statutory fines of $6,140. Justice Field, joined by Justices Harlan and Brewer, dissented. The dissent contended that not only did the Eighth Amendment apply to the states, but Vermont also violated O'Neil's Eighth Amendment rights by imposing a punishment greatly disproportionate to the offenses charged.

The dissenting approach advocated in *O'Neil* became the majority opinion eighteen years later in the landmark case of *Weems v United States*. Weems, a government official, was convicted of falsifying a public document and sentenced to fifteen years at hard

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55. Id at 449. The Court deferred to the state legislature a presumption that the state had a say in the manner of execution, that it was possessed of the facts when it decided upon this, and that the desired result was that death was to be inflicted by electrocution because it was instantaneous and was more humane. Id at 446, 447.

The Court relied heavily upon its earlier decision in *Wilkerson* and added to the earlier opinion that a "punishment is not necessarily unconstitutional simply because it is unusual, so long as the legislature had a humane purpose (desire to execute with minimum pain) in selecting it." Id at 443-48. The prisoner asserted that under the Fourteenth Amendment provision, which forbids a state to make or enforce any law "which shall abridge the rights and privileges of any citizen," cruel and unusual punishment was prohibited. Id at 446. The Court held that the Eighth Amendment was not applicable to the states. Moreover, the Court rejected the prisoner's assertion and concluded that the execution warrant was not an abridgement of the prisoner's rights under the Fourteenth Amendment, nor was it a deprivation of due process. Id at 446-49.

56. 144 US 323 (1892). The defendant was found guilty of 307 liquor violations. *O'Neil*, 144 US at 323. Each offense carried a fine of $20.00 which, when totalled, amounted to $6,140. Id. O'Neil was also taxed for court costs of $497.96 Id. The defendant could not pay the fines and was sentenced to fifty-four years at hard labor. Id. The Court upheld the sentence primarily on the reasoning that it would "scarcely be competent for a person to assail the constitutionality of a statute prescribing punishment for burglary, on the grounds that he had committed so many burglaries that if punishment for each were inflicted on him, he might be kept for life." Id at 331. Only if the penalty for a single offense was unreasonably severe could there be a violation. Id.

At oral argument before the Supreme Court, counsel for O'Neil raised for the first time a claim of cruel and unusual punishment because of the disparity between the offense and the punishment. Id at 331-32. Justice Blatchford refused to consider the claim because it had not been assigned as error at the proper time and because it had not been discussed in the briefs. Id. The majority went on to add that, even if the contention had been properly raised, the Eighth Amendment only restricted the federal government and did not apply to the state of Vermont. Id.

57. Id at 323-26.

58. Id at 336. See note 56.


60. Id at 337-66.

labor. The Court struck down the penalty imposed on Weems, holding that the punishment was excessive. The Court concluded that excessive punishments were as violative of the Eighth Amendment as were those found to be inherently cruel. In 1947, the court in *Louisiana v Resweber* upheld a state's reissuance of an execution warrant after the first attempted electrocution failed to kill the prisoner because of a mechanical malfunction. The prisoner contended that a second attempt would violate his Eighth Amendment rights forbidding cruel and unusual punishment. The Court found that electrocution as a mode of punishment was promulgated by the state legislature as a more humane means of punishment. Furthermore, by relying on language from *Kemmler*, the Court found no constitutional violation. More importantly, however, the Court suggested for the first time that a standard of intent must be evident to have an Eighth Amendment claim.

After *Resweber*, the Court was required to further explain and define cruel and unusual punishment in *Trop v Dulles* and

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62. *Weems*, 217 US at 362-65. Weems was convicted by a Philippine Court of Law under the Philippine Bill of Rights; however, the Court determined that it was borrowed from the Eighth Amendment to the United States Constitution and had the same meaning. Id at 367.

The statute also imposed the perpetual attachment of a ball and chain to Weems' ankles, and imposed severely on personal rights including loss of marital and parental rights, the inability to pass property inter vivos, and being subjected to surveillance for life. Id at 349-50.

63. Id at 381.

64. Id at 380-82. The Court held the punishment to be excessive and stated that the "precept of justice, was that punishment for crime should be graduated and proportioned to the offense." Id at 353.


66. *Resweber*, 329 US at 459. Officials found that current passed through Francis' body, but not in an amount sufficient to cause his death. Id at 461.

67. Id.

68. Id at 460-65. The Court concluded the second attempt was not constitutionally invalid and reasoned that the "fact that an unforeseeable accident prevented consummation of the sentence cannot add an element of cruelty to the subsequent sentence." Id at 464.

69. Id at 463. The Court relied on language in *Kemmler*, which stated that punishment legislatively decided upon will not be found to be unconstitutional if it was enacted with a desire for humaneness. Id, citing *Kemmler*, 136 US at 446. By revisiting *Kemmler*, the Court impliedly reaffirmed the role of historical traditions in examining cruel and unusual punishment cases. *Resweber*, 329 US at 463.

70. *Resweber*, 329 US at 463. Justice Reed wrote: "Prohibition against the wanton infliction of pain has come into our law from the Bills of Rights of 1688 [sic]." Id. Justice Reed, when analyzing the prisoner's claim under the scope of the Eighth Amendment, concluded that there was no element of cruelty because there was "no purpose to inflict unnecessary pain . . . ." Id at 464.

71. 356 US 86 (1958). In *Trop*, the sentence imposed on the defendant resulted in the
Robinson v California. Both cases, for the first time, stated that specific non-death penalty punishments could be found to violate the Eighth Amendment. Particularly noteworthy in both cases was the Court's expansion of not only the definition of cruel and unusual punishment, but also the conditions in which violations will be found to have occurred. Furthermore, the Court in Robinson definitively held that the Eighth Amendment does apply to the states through the Fourteenth Amendment. The expansive holdings of Trop and Robinson reflected the Court's departure from reliance upon historical and traditional punishments and illustrated the Court's new-found reasoning that "what was once permissible at one time in our nation's history, [is] not necessarily permissible today."

In Estelle v Gamble, the Court first acknowledged that the Eighth Amendment provision prohibiting cruel and unusual punishment could be applied to some deprivations that were not spe-
cifically part of the sentence, but were suffered during imprison-
ment. Gamble, a prisoner, brought a complaint alleging that
subsequent to an injury he received while working, the prison
failed to provide him with adequate medical care, thus violating
his Eighth Amendment rights. The Court reaffirmed the states'
obligation to provide prisoners with adequate medical care.
However, the Court rejected Gamble's constitutional challenge by hold-
ing that in order to state a valid constitutional claim, a "prisoner
must allege acts or omissions sufficiently harmful to evidence de-
liberate indifference . . . ." The Court concluded that only a
showing of deliberate indifference on the part of the prison officials
could "offend the evolving standards of decency in violation of the
Eighth Amendment."

This conclusion firmly established the
Court's belief that an inquiry into the state-of-mind of prison of-
cials was necessary for a successful Eighth Amendment challenge.
The Court defined this inquiry as whether pain or punishment was
unnecessarily or wantonly inflicted through deliberate indifference
on the part of prison officials.

The Court next confronted an Eighth Amendment challenge to a
prison condition in Rhodes v Chapman. Two prisoners at an
Ohio correctional facility contended that the housing of two pris-
oners in a cell designed for one prisoner constituted cruel and un-
usual punishment. The Court rejected the prisoners' constitu-
tional claim, holding that double-ceiling did not reach the level of

78. Id at 98.
79. Id. Gamble brought the action pursuant to 42 USC § 1983. Id. For the text of
Section 1983, see note 2.
80. Estelle, 429 US at 98.
81. Id at 106.
82. Id. Justice Marshall reasoned that "deliberate indifference to serious medical
needs of a prisoner constitutes the unnecessary and wanton infliction of pain." Id at 104.
Justice Marshall was careful to point out that all citizens are subjected to the risk of med-
cal malpractice, and not all medical malpractice claims brought by prisoners will be Eighth
Amendment violations. Id at 104-06. Only malpractice which constituted an unnecessary
and wanton infliction of pain will be determined to have violated the Eighth Amendment.
Id.
83. Id at 105, 106. It is noteworthy that disagreement among the Court was already
developing at this time in the Court's use and requirement of intent. Id at 116.
Justice Stevens developed a contrary opinion in his dissent that the "Court improperly
attaches significance to the subjective motivation of the Defendant as a criterion for deter-
mining whether cruel and unusual punishment has been inflicted." Id. The dissent relied
upon Justice Burton's dissenting opinion in Resweber: "The intent of the executioner cannot
lessen the torture or excuse the result." Resweber, 329 US at 477.
84. Estelle, 429 US at 104-06.
86. Rhodes, 452 US at 337.
deprivation sufficiently serious enough to form the basis of an Eighth Amendment violation.\textsuperscript{87} The holding in \textit{Rhodes} was ultimately decided on an objective inquiry, which was defined by the Court as whether the deprivations or conditions complained-of reached a sufficiently serious level to implicate the Eighth Amendment.\textsuperscript{88} The Court concluded that double-celling never reached the "constitutional minima" to satisfy the objective inquiry, thus a subjective inquiry as to the state-of-mind of the prison officials was not required.\textsuperscript{89}

After establishing a subjective inquiry in \textit{Estelle} and an objective inquiry in \textit{Rhodes}, the Court expanded the subjective inquiry with its decision in \textit{Whitley}.\textsuperscript{90} In \textit{Whitley}, a prisoner was shot by a prison guard in the course of attempting to quell a prison riot.\textsuperscript{91} The Court reaffirmed that in order to make out an Eighth Amendment violation, the prisoner must show more than a lack of due care. Rather, the prisoner must show that pain was wantonly and unnecessarily inflicted through some level of culpable intent on the part of prison officials.\textsuperscript{92} Justice O'Connor, writing for the majority, predicated the infliction of unnecessary and wanton pain as ultimately turning on whether "force was applied in a good faith effort to maintain or restore discipline, or whether it was meted out maliciously and sadistically for the very purpose of causing harm."\textsuperscript{93} In

\textsuperscript{87} Id at 348.
\textsuperscript{88} Id at 347, 349.
\textsuperscript{89} Id at 348. In his opinion, Justice Powell rejected the use of the expert opinion in determining whether prison conditions "suffice to establish contemporary standards of decency." Id. To the contrary, Justice Powell would rather define contemporary standards of decency by "the public attitudes toward a given sanction." Id at 348, 349.

It is extremely important to understand the potential impact the \textit{Rhodes} decision had upon state correctional facilities. Almost all the states were faced with overcrowded conditions, and the interest in whether or not overcrowding would be deemed unconstitutional was evidenced by thirty-six states and the United States Virgin Islands submitting amici curiae briefs urging the Court to find overcrowding constitutional. Id at 338, 339.

The Court never reached a subjective inquiry since the claim failed at the objective inquiry level of whether the confinement conditions reached a level serious enough to implicate the Eighth Amendment. Id at 346-49.

\textsuperscript{90} See note 13 for the facts of \textit{Whitley}.
\textsuperscript{91} \textit{Whitley}, 475 US at 312. The inmate brought the action pursuant to 42 USC § 1983. Id. For the text of Section 1983, see note 2.
\textsuperscript{92} \textit{Whitley}, 475 US at 320.
\textsuperscript{93} Id at 320-21. Justice O'Connor distinguished the \textit{Estelle} intent standard of "deliberate indifference" from the \textit{Whitley} standard of "maliciously or sadistically for the very purpose of causing harm." Id. She reasoned that a deliberate indifference standard was appropriate in medical or physical claims since the Court is not usually balancing the competing interests of the state in its concerns for prison safety. Id at 320. However, when confronted with a realistic threat of unrest and prison integrity, the deliberate indifference
rejecting the prisoner's claim, the Court concluded that the pain inflicted on the prisoner was a result of a "good faith effort" on the part of prison officials to restore order, and was not inflicted "maliciously or sadistically for the very purpose of causing harm."94 The Wilson decision is not a departure from precedent, but is an effort by the Court to marshal the pertinent and precedent case law in an attempt to mandate a more judicious and efficient process in which to decide confinement conditions claims.

After Rhodes, the objective inquiry of whether the deprivations complained-of reached a sufficient level to implicate the Eighth Amendment became firmly entrenched in case law.95 The second inquiry, an examination into the state-of-mind on the part of the prison officials, led courts to a myriad of decisions in their attempts to pin down the proper intent standard.96 Most courts that applied a subjective test agreed that conduct must involve more

standard does not appropriately comprehend the importance of competing interests, and by applying such a standard the Court is placed in a position as Monday-morning quarterback. Id.

94. Id at 326. Justice Marshall, with whom Justices Brennan, Blackmun, and Stevens joined, dissenting from the majority opinion. Id at 328. The dissent opined that the majority improperly placed the onerous burden of proving intent on the prisoner. Id. The dissenting Justices concluded that precedent has never imposed an expressed intent requirement; rather, the prisoner must only show that the pain was unnecessarily or wantonly inflicted. Id. The dissent cited Trop and Robinson in its argument that the Eighth Amendment was not measured by intent on the part of the prison officials, but by "evolving standards of decency." Id.

95. Wilson, 111 S Ct 2321 (1991). Justice Scalia found that the objective inquiry was a preliminary one and was distinctly different from the state-of-mind (subjective) inquiry. Id.

Justice White would hold that Rhodes was the only case needed to decide this case since Rhodes detailed an objective inquiry, and the concurrence believed this to be the only inquiry required. Id at 2329-30.

96. Id at 2328. The majority was concerned that the appellate court applied the Whitley standard (obduracy and wantonness requires behavior marked by persistent malicious cruelty) when it should have applied the Estelle standard (wanton and unnecessary infliction of pain marked by deliberate indifference on the part of the prison official). Id.

It is clear that the appellate court was not aware of the importance of the state-of-mind inquiry. The Sixth Circuit relied upon Birrell v Brown, 867 F2d 956 (6th Cir 1989), in applying the intent test. Wilson, 893 F2d at 865. The appellate court, after analyzing Birrell, held that the recklessness standard articulated in Birrell was similar to the obduracy and wantonness standard articulated in Whitley, since both could be reconciled as merely semantic problems. Id. This error led the Sixth Circuit to mistakenly apply the Whitley standard to the instant case. Wilson, 111 S Ct at 2328.

Justice White emphatically pointed out that many lower courts failed to make the subjective inquiry and based their decision solely upon the objective component. Id at 2330. See, for example, Tillery v Owens, 907 F2d 418, 426-28 (3d Cir 1990); Foulds v Corley, 833 F2d 52, 54-55 (5th Cir 1987); French v Owens, 777 F2d 1250, 1252-54 (7th Cir 1985); Hoptowit v Spellman, 753 F2d 779, 784 (9th Cir 1985).
than an ordinary lack of due care to implicate the Eighth Amendment. However, these courts were unsure of which standard to use and whether differing circumstances called for different standards.\textsuperscript{97} \footnote{See note 96 and accompanying text.} It was under this backdrop that Justice Scalia formulated the issues in \textit{Wilson} as “whether a prisoner claiming that conditions of confinement constitute cruel and unusual punishment must show a culpable state of mind on the part of prison officials and, if so, what state of mind is required.”\textsuperscript{98} In the present case, Justice Scalia predicated the majority opinion on two crucial determinations. The first was the majority’s seminal finding that confinement conditions do not constitute punishment formally meted out by statute or judicial resolve, thus some mental element must be attributable to the offending official before the Eighth Amendment could be implicated.\textsuperscript{99} Congruent with this finding, the Court concluded that confinement conditions were materially synonymous with deprivations of inadequate medical care, and applied the standard of intent articulated in \textit{Estelle}.\textsuperscript{100} This conclusion proves significant in that it serves to derail much of the conflict between \textit{Estelle}, \textit{Rhodes}, and \textit{Whitley}.\textsuperscript{101}

\textsuperscript{97} See note 96 and accompanying text.
\textsuperscript{98} \textit{Wilson}, 111 S Ct at 2322.
\textsuperscript{99} Id at 2325. Justice Scalia relied upon the historical connotation of the word punishment. “The infliction of punishment is a deliberate act . . . . This is what the word means today; it is what the word meant in the eighteenth century.” Id. Justice Scalia further reasoned that, “If a guard accidentally stepped on a prisoner’s toe and broke it, this would not be punishment in anything like the accepted meaning of the word, whether we consult the usage of 1791, or 1868, or 1985.” Id, citing \textit{Duckworth v Franzer}, 780 F2d 645, 652 (7th Cir 1985).

Judge Friendly also wrote: “The thread common to all Eighth Amendment cases is that ‘punishment’ has been deliberately administered for a penal or disciplinary purpose.” \textit{Johnson v Glick}, 481 F2d 1028, 1032 (2d Cir 1973).

Justice Scalia opined that since the confinement conditions are not part of the formal punishment, some element of intent to cause pain on the part of the prison officials must be present in order to further an Eighth Amendment claim. \textit{Wilson}, 111 S Ct at 2325.

\textsuperscript{100} \textit{Wilson}, 111 S Ct at 2326-27. The Court stated: “Whether one characterizes the treatment received by the prisoner as inhumane conditions of confinement, a failure to attend to his medical needs, or a combination of both, it is appropriate to apply the deliberate indifference standard articulated in \textit{Estelle}.” Id at 2327.

The Court also relied on precedent where lower courts applied the \textit{Estelle} standard to confinement conditions cases. See, for example, \textit{Lopez v Robinson}, 914 F2d 486, 492 (4th Cir 1990) (deliberate indifference standard applied to confinement conditions case); \textit{Givens v Jones}, 900 F2d 1229, 1234 (8th Cir 1990) (deliberate indifference standard applied); and \textit{Cortes-Quinones v Jimenez-Nettleship}, 842 F2d 556, 558 (1st Cir 1988) (deliberate indifference standard applied to claim brought by prisoner’s family when murdered by another prisoner).

\textsuperscript{101} \textit{Wilson}, 111 S Ct at 2324-26. By aligning confinement conditions cases with inadequate medical care cases, the Court neatly applied the deliberate indifference standard.
The second crucial finding was that wantonness is a transmutable term, the definition of which can vary as differing circumstances or constraints are placed upon the prison officials. The Court stated that the wanton infliction of pain could be violative of the Eighth Amendment by applying differing standards of intent based upon the circumstances and constraints faced by prison officials. The Court described the differing degrees of intent as being determined by the kind of conduct against which an Eighth Amendment claim was founded. The Court explained that the "maliciously and sadistically for the very purpose of causing harm" standard articulated in Whitley was the proper standard when prison officials were acting in response to a prison disturbance which required quick and decisive action in order to safeguard the integrity of the prison.

The prison official's actions, wrote Justice O'Connor in Whitley, are "necessarily taken in haste, under pressure, and require balancing competing institutional concerns with the safety of the prison staff or other inmates." On the other hand, the state's responsibility to provide adequate confinement conditions does not generally clash with "equally important governmental responsibilities." Consequently, deliberate indifference to a prisoner's inhumane conditions of confinement can typically be established or disproved without the necessity of balancing competing institutional concerns for the safety of the prison staff or other inmates.

This prevents the courts from later confusing the Estelle standard from the Whitley standard (as did the Sixth Circuit) and leaves both cases mutually amicable. Id. Once the Court placed confinement conditions cases under Estelle, it negated the concurrence's criticism that the majority was not following precedent. The concurrence opined that confinement conditions are part of formally meted out punishment, thus requiring only an objective determination pursuant to Rhodes. Id at 2329-30. However, because the majority decided that confinement conditions cases are not part of the punishment, and that some mental element must be attributable, the courts must look beyond Rhodes to apply the appropriate subjective test. Id at 2324-25.

102. Id at 2326. This determination is almost a direct affirmation of Justice O'Connor's opinion in Whitley, in which she distinguished the deliberate indifference standard from the sadistically or maliciously inflicted standard. See note 93 and accompanying text.

The majority agreed with Justice O'Connor in that varying constraints placed upon the prison officials will cause the standard of intent to fluctuate with the circumstances. Wilson, 111 S Ct at 2326.

103. Wilson, 111 S Ct at 2326. See also note 93 and accompanying text.
104. Wilson, 111 S Ct at 2326, citing Whitley, 475 US at 320.
105. Wilson, 111 S Ct at 2326.
106. Whitley, 475 US at 320. See also note 93 and accompanying text.
In summary, the Court will apply the deliberate indifference standard when faced with a confinement conditions claim because the state’s responsibility to provide adequate conditions is paramount to any other competing interests.\textsuperscript{108} When faced with an Eighth Amendment claim originating from a use-of-force action taken by prison officials to restore order, the Court will apply the persistent malicious cruelty standard because the officials are acting under extreme circumstances and must balance the gravity of the actions taken against the need for prison integrity and safeguarding the other prisoners.\textsuperscript{109}

The Court has in effect established a two-prong inquiry for Eighth Amendment confinement conditions cases. The first prong consists of a judicial examination into the objective component of the Eighth Amendment claim.\textsuperscript{110} The inquiry will focus on whether the confinement conditions reach a sufficiently serious enough level to implicate the Eighth Amendment.\textsuperscript{111} The result is that if a court concludes that the confinement conditions satisfy the Eighth Amendment, the subjective inquiry is never reached.\textsuperscript{112} By contrast, if a court determines that the confinement conditions are violative of the Eighth Amendment, the court must then apply the appropriate subjective test articulated in \textit{Estelle} and \textit{Whitley} to determine if the prisoner can demonstrate that the prison officials were deliberately indifferent to the violative conditions.\textsuperscript{113} At a minimum, the \textit{Wilson} Court concluded that a prisoner must demonstrate that prison officials acted with deliberate indifference.\textsuperscript{114}

The creation of the two-prong inquiry gives the courts an efficient tool which, when properly wielded, will simplify the judicial process when faced with a confinement conditions claim and will ensure more symmetrical results. A subjective inquiry prevents the
courts from relying solely on objective standards, which in Eighth Amendment claims are often subject to the sitting court’s predilections and ideology.

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