Prison Overcrowding and the Eighth Amendments' Prohibition Against Cruel and Unusual Punishment

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The problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of the government. For all of these reasons, courts are ill-equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Procunier v. Martinez, *416 U.S. 396, 404-05 (1974)*

Prison overcrowding is perhaps the most pervasive and explosive of all prison problems, a condition that exacerbates all other deficiencies in the American penal system. The natural political vacuum surrounding prisons has resulted in an inevitable, if not somewhat reluctant, judicial response to overcrowding. That response has commonly occurred as an analysis of conditions of confinement and whether those conditions amount to cruel and unusual punishment.

The Eighth Amendment to the United States Constitution provides prisoners with limited rights of protection against cruel and unusual punishment during the course of confinement. These rights extend to the existence of humane living conditions, adequate medical care and protection from violence by other inmates, all of which may be jeopardized by an overcrowded prison.

Not every hardship in these areas will constitute cruel and unusual punishment. The United States Supreme Court has indicated that harsh conditions and rough disciplinary measures are part of the price that convicted individuals must pay for their offenses against society.

An Eighth Amendment analysis is usually difficult for courts. In Trop v. Dulles, 356 U.S 86 (1958) the Court reasoned that while the state has the power to punish, the Eighth Amendment stands to assure that this power be exercised within the limits of "civilized standards." Those "civilized standards" were to draw their meaning from the "evolving standards of decency that mark the progress of a maturing society." It becomes apparent that under this analysis, the courts must become interpreters of public opinion in determining evolving standards of decency. The tension becomes more apparent with the realization that altering conditions of confinement involves large outlays of

public money. When courts become active players in dollars and cents decision-making, they risk stepping beyond their legitimate institutional roles.

Prison overcrowding may rise to the level of cruel and unusual punishment. In Rhodes v. Chapman, 452 U.S. 337 (1981) the Supreme Court rejected any mechanical rule for determining whether overcrowding violates the Eighth Amendment but, instead, articulated the use of a "totality of conditions" standard. Under this standard, the Court found that double-celling (putting two prisoners in a cell built for one) alone does not make prison conditions cruel or unusual. The Eighth Circuit Court of Appeals has applied Rhodes in rejecting arguments that double-celling violates the Eighth Amendment. Glynn v. Auger 678 F.2d. 760 (8th Cir. 1982) (double-celling in 120 square foot cell not per se unconstitutional).

The judiciary's involvement with prison reform has reflected society's fluctuating involvement with societal reform. As might be expected, the period of the '60's witnessed a judiciary more willing to involve itself in reforming conditions of confinement in the nation's penal system. The first decision to utilize the 8th Amendment to declare the operation of an entire prison system unconstitutional was Holt v. Sarver. 309 F.2d. 362 (E.D. Ark. 1970) aff'd 442 F.2d. 304 (8th Cir. 1971). That decision concerned the operations of the Arkansas State Penitentiary system, which consisted primarily of a work farm. Conditions at the prison were extremely violent, unsanitary, unhealthy and overcrowded. Holt was followed by a rash of decisions declaring conditions in prisons and county jails unconstitutional and ordering massive structural relief.

As society became less reformist, so too did the judiciary in prison reform cases. The United States Supreme Court began the more conservative trend in Bell v. Wolfish, 441 U.S. 520 (1979), a case involving federal pretrial detainees. The Eighth Amendment does not apply to unconvicted persons, so the issues in Bell were analyzed under the due process clause of the 14th Amendment. The detainees challenged an array of

practices at a correctional center in New York, the most significant concerning the practice of double-celling.

The Supreme Court in Bell reversed the federal district court and federal appeals court rulings that putting two inmates in cells with a total floor space of 75 square feet constituted a fundamental denial of decency, privacy, personal security and civilized humanity. The Court announced that there is no 'one man one cell' principle lurking in the Due Process Clause of the Fifth Amendment, and stated:

> *"prison administrators should be accorded a wide ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. Operation of correctional facilities is peculiarly the province of the Legislative and Executive branches of government."*

Rhodes v. Chapman, 452 U.S. 337 (1981) is the first and only case in which the U.S. Supreme Court ruled on an Eighth Amendment challenge to prison overcrowding. The case involved a new state-of-the-art maximum security complex in Ohio. Because of a space crisis, Ohio began double-celling, leading to 38 percent more population than design capacity and a square footage of 65 feet for each two prisoners. The federal district court had concluded that double-celling violated the Eighth Amendment under a "totality of circumstances" approach.

The Supreme Court reversed, in an opinion endorsing the totality of conditions approach, stating that conditions at that facility taken as a whole did not amount to cruel and unusual punishment. Justice Powell attempted to articulate a line between bad penology that merely results in conditions of harsh discomfort, and conditions beyond the pale of minimal civilized incarceration in contemporary society and stated:

> *"The Constitution does not mandate comfortable prisons." . . . "To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society."*

The Court found that in light of the otherwise exceptionally good conditions of confinement at the institution, double-celling was not unconstitutional because it did not lead to deprivations of essential food, medical care or sanitation. Nor did it increase violence among inmates or create other conditions intolerable for prison confinement.

In addition to the totality of conditions test, certain factors emerge from cases post-Rhodes that significantly influence outcomes in prison overcrowding cases.

For example, the amount of time that prisoners must spend in an overcrowded cell is significant. A number of cases in which judges found double celling unconstitutional allowed prisoners less than two or three hours per 24 hours outside of their cells.

In Berks v. Teasdale, 603 F.2d.59 (8th Cir. 1979) the court concluded it could not hold categorically that putting two men in a cell with a floor space no larger than 65 square foot was or was not constitutionally permissible. "We think that a good deal may depend on the type of institution involved, the nature of the inmates and the nature of the confinement. But we think it must be recognized that putting two men in such a small cell and keeping them there for long periods of time can produce intolerable tensions and will almost inevitably cause trouble . . . "

In another 8th Circuit case, Tyler v. Black, 811 F.2d.424 (1987), the court found that double celling of inmates in small cells with sold "boxcar" type doors was cruel and unusual punishment in violation of the Eighth Amendment. Prisoners with a history of assaultive behavior were placed in closed cells for up to 23 hours a day for a period of several months. The court concluded that the length of confinement could not be ignored in deciding whether the confinement meets constitutional standards.

Another factor that will influence prison overcrowding cases is conditions injurious to the health of the prisoners. These conditions may include food insufficient for basic nourishment; severe plumbing problems; and ventilation and light inadequacies sufficient to create health deterioration. In Cody v. Hillard, 799 F.2d 447 (8th Cir. 1986) the court found double-celling to be unconstitutional where other serious

deficiencies in the conditions of confinement existed. However, on rehearing en banc, the court found that the practice of double-celling did not evince the "wanton and unnecessary infliction of pain" necessary to constitute a violation of the Eighth Amendment. See Whitley v. Albers, 106 S. Ct. 1078 (1986).

Violence in the prison is a factor that will influence prison overcrowding cases. Courts tend to treat violence as endemic to prison life and to take the position that increases in the size of the prison population will automatically increase prison violence. However, if the violence increases at a significantly higher rate than growth in the prison population, a basis may exist for finding overcrowding to be cruel and unusual.