Supplementary Material

Chapter 10: The Reagan Era—Criminal Justice/Punishments/Prisons

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Hudson v. McMillian, 503 U.S. 1 (1992)

Keith Hudson was a state prisoner in Angola, Louisiana. On October 30, 1983, Hudson was beaten by Jack McMillian and other corrections officers. He suffered minor bruises and a cracked dental plate. Hudson sued the officers, claiming that the beating constituted cruel and unusual punishment under the Eighth and Fourteenth Amendments. A federal trial court awarded him $800, but that verdict was overturned by the Court of Appeals for the Fifth Circuit. Hudson appealed to the Supreme Court of the United States.

Hudson v. McMillian *produced the strange alliance of the Bush administration and several liberal public interest groups, all of which filed amicus briefs urging the Court to find that McMillian had violated the Eighth and Fourteenth Amendments. The brief for the United States declared,*

> *In considering whether actions taken by prison officials were unnecessary and wanton, courts should recognize the difficult task prison officials face in trying to maintain security within correctional institutions and should not second-guess the decisions of prison officials regarding the need to employ force to further legitimate disciplinary and security concerns. But in this case the factual findings show that there was no need for application of any significant amount of force because petitioner was handcuffed and in shackles and not resisting the guards when he was beaten. Thus, respondents acted in an unnecessary and wanton fashion.*

Five states submitted an amicus brief urging the justices to affirm the verdict of the Fifth Circuit that the Eighth and Fourteenth Amendments require prisoners to prove they have suffered a serious injury. That brief maintained,

> *The suggestion that the significant injury requirement would produce an "open season" upon inmates violates reality. The average prison guard does not know about any "significant injury" requirement. The average prison guard is unlikely to have a comprehensive knowledge of this or any court's development of Eighth Amendment standards. The average prison guard knows, like any of us, that if he unjustifiably hurts someone, he is likely to get in trouble. Additionally, many if not most of the states' prisons are subject to remedial decrees which control uses of force far more specifically than the eighth amendment ever can. The state prisons have their own written policies and procedures which also specify when and how force may be used. Correctional officers know that they may be fired or otherwise disciplined over an excessive use of force found to violate their internal regulations. This is all that can be realistically expected of them.*

The Supreme Court by a 7–2 vote ruled that McMillian violated Hudson's Eighth Amendment rights. Justice O'Connor's majority opinion held that the malicious and sadistic use of force always violated the Constitution, even if the injury was not serious. Why did she reach that conclusion? Why did Justice Thomas disagree? Who had the better of the argument? What explains the Bush Administration's decision to support the more liberal position in this case?

JUSTICE O'CONNOR delivered the opinion of the Court.

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. . . "[T]he unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment."

What is necessary to establish an "unnecessary and wanton infliction of pain," we said, varies according to the nature of the alleged constitutional violation. For example, the appropriate inquiry when an inmate alleges that prison officials failed to attend to serious medical needs is whether the officials exhibited "deliberate indifference." This standard is appropriate because the State's responsibility to provide inmates with medical care ordinarily does not conflict with competing administrative concerns.

By contrast, officials confronted with a prison disturbance must balance the threat unrest poses to inmates, prison workers, administrators, and visitors against the harm inmates may suffer if guards use force. Despite the weight of these competing concerns, corrections officials must make their decisions "in haste, under pressure, and frequently without the luxury of a second chance." [A]pplication of the deliberate indifference standard is inappropriate when authorities use force to put down a prison disturbance. Instead, "the question whether the measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on 'whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.'"

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The objective component of an Eighth Amendment claim is contextual and responsive to "contemporary standards of decency." For instance, extreme deprivations are required to make out a conditions-of-confinement claim. Because routine discomfort is "part of the penalty that criminal offenders pay for their offenses against society," "only those deprivations denying 'the minimal civilized measure of life's necessities' are sufficiently grave to form the basis of an Eighth Amendment violation." . . .

In the excessive force context, society's expectations are different. When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated. This is true whether or not significant injury is evident. Otherwise, the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury. Such a result would have been as unacceptable to the drafters of the Eighth Amendment as it is today.

That is not to say that every malevolent touch by a prison guard gives rise to a federal cause of action. The Eighth Amendment's prohibition of "cruel and unusual" punishments necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort "'repugnant to the conscience of mankind.'"

In this case, the Fifth Circuit found Hudson's claim untenable because his injuries were "minor." Yet the blows directed at Hudson, which caused bruises, swelling, loosened teeth, and a cracked dental plate, are not de minimis for Eighth Amendment purposes. The extent of Hudson's injuries thus provides no basis for dismissal of his § 1983 claim.

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JUSTICE STEVENS, concurring in part and concurring in the judgment.

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JUSTICE BLACKMUN, concurring in the judgment.

The Court today appropriately puts to rest a seriously misguided view that pain inflicted by an excessive use of force is actionable under the Eighth Amendment only when coupled with "significant injury," e.g., injury that requires medical attention or leaves permanent marks. Indeed, were we to hold to the contrary, we might place various kinds of state-sponsored torture and abuse—of the kind ingeniously designed to cause pain but without a telltale "significant injury"—entirely beyond the pale of the Constitution. In other words, the constitutional prohibition of "cruel and unusual punishments" then might not constrain prison officials from lashing prisoners with leather straps, whipping them with rubber hoses, beating them with naked fists, shocking them with electric currents, asphyxiating them

short of death, intentionally exposing them to undue heat or cold, or forcibly injecting them with psychosis-inducing drugs. These techniques, commonly thought to be practiced only outside this Nation's borders, are hardly unknown within this Nation's prisons.

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Citing rising caseloads, respondents, represented by the Attorney General of Louisiana, and joined by the States of Texas, Hawaii, Nevada, Wyoming, and Florida as amici curiae, suggest that a "significant injury" requirement is necessary to curb the number of court filings by prison inmates. We are informed that the "significant injury requirement has been very effective in the Fifth Circuit in helping to control its system-wide docket management problems."

This audacious approach to the Eighth Amendment assumes that the interpretation of an explicit constitutional protection is to be guided by pure policy preferences for the paring down of prisoner petitions. Perhaps judicial overload is an appropriate concern in determining whether statutory standing to sue should be conferred upon certain plaintiffs. . . .

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I do not read anything in the Court's opinion to limit injury cognizable under the Eighth Amendment to physical injury. It is not hard to imagine inflictions of psychological harm—without corresponding physical harm—that might prove to be cruel and unusual punishment. . . .

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JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

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In my view, a use of force that causes only insignificant harm to a prisoner may be immoral, it may be tortious, it may be criminal, and it may even be remediable under other provisions of the Federal Constitution, but it is not cruel and unusual punishment. In concluding to the contrary, the Court today goes far beyond our precedents.

Until recent years, the Cruel and Unusual Punishments Clause was not deemed to apply at all to deprivations that were not inflicted as part of the sentence for a crime. For generations, judges and commentators regarded the Eighth Amendment as applying only to torturous punishments meted out by statutes or sentencing judges, and not generally to any hardship that might befall a prisoner during incarceration. . . .

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When we cut the Eighth Amendment loose from its historical moorings and applied it to a broad range of prison deprivations, we found it appropriate to make explicit the [certain] limitations. "If the pain inflicted is not formally meted out as punishment by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify," —thus, the subjective component. Similarly, because deprivations of all sorts are the very essence of imprisonment, we made explicit the serious deprivation requirement to ensure that the Eighth Amendment did not transfer wholesale the regulation of prison life from executive officials to judges. . . . Under that analysis, a court's task in any given case was to determine whether the challenged deprivation was "sufficiently" serious. It was not, as the Court's interpretation today would have it, to determine whether a "serious" deprivation is required at all.

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Perhaps to compensate for its elimination of the objective component in excessive force cases, the Court simultaneously makes it harder for prisoners to establish the subjective component. "[D]eliberate indifference" is the baseline mental state required to establish an Eighth Amendment violation. Departure from this baseline is justified where prison officials act in response to an emergency; in such situations their conduct cannot be characterized as "wanton" unless it is taken "maliciously and sadistically for the very purpose of causing harm." The Court today extends the heightened mental state . . . to all excessive force cases, even where no competing institutional concerns are present. . . . I do not agree. Many excessive force cases do not arise from guards' attempts to "keep order." (In this very case, the basis for petitioner's Eighth Amendment claim is that the guards hit him when there was no need for them to use

any force at all.) The use of excessive physical force is by no means invariably (in fact, perhaps not even predominantly) accompanied by a "malicious and sadistic" state of mind. . . .

. . . In the Court's view, then, our society's standards of decency are not violated by anything short of uncivilized conditions of confinement (no matter how malicious the mental state of the officials involved), but are automatically violated by any malicious use of force, regardless of whether it even causes an injury. This is puzzling. I see no reason why our society's standards of decency should be more readily offended when officials, with a culpable state of mind, subject a prisoner to a deprivation on one discrete occasion than when they subject him to continuous deprivations over time. If anything, I would think that a deprivation inflicted continuously over a long period would be of greater concern to society than a deprivation inflicted on one particular occasion.

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The Court attempts to justify its departure from precedent by saying that if a showing of serious injury were required, "the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury." That statement, in my view, reveals a central flaw in the Court's reasoning. "[D]iabolic or inhuman" punishments by definition inflict serious injury. That is not to say that the injury must be, or always will be, physical. "Many things—beating with a rubber truncheon, water torture, electric shock, incessant noise, reruns of 'Space 1999'—may cause agony as they occur yet leave no enduring injury. The state is not free to inflict such pains without cause just so long as it is careful to leave no marks." Surely a prisoner who alleges that prison officials tortured him with a device like the notorious "Tucker Telephone" described by Justice BLACKMUN, has alleged a serious injury. But petitioner has not alleged a deprivation of this type; the injuries he has alleged are entirely physical and were found below to be "minor."

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Today's expansion of the Cruel and Unusual Punishments Clause beyond all bounds of history and precedent is, I suspect, yet another manifestation of the pervasive view that the Federal Constitution must address all ills in our society. Abusive behavior by prison guards is deplorable conduct that properly evokes outrage and contempt. But that does not mean that it is invariably unconstitutional. The Eighth Amendment is not, and should not be turned into, a National Code of Prison Regulation. To reject the notion that the infliction of concededly "minor" injuries can be considered either "cruel" or "unusual" punishment (much less cruel and unusual punishment) is not to say that it amounts to acceptable conduct. Rather, it is to recognize that primary responsibility for preventing and punishing such conduct rests not with the Federal Constitution but with the laws and regulations of the various States.

Petitioner apparently could have, but did not, seek redress for his injuries under state law. Respondents concede that if available state remedies were not constitutionally adequate, petitioner would have a claim under the Due Process Clause of the Fourteenth Amendment. I agree with respondents that this is the appropriate, and appropriately limited, federal constitutional inquiry in this case.

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