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The Eighth Amendment of the United States' Constitution forbids the infliction of cruel and unusual punishment.1 The purpose behind the Eighth Amendment is to limit the power of those responsible for criminal enforcement2 and to protect persons convicted of crimes.3 Historically, claims protected by the Eighth Amendment involved physical punishment and the infliction of pain.4 Courts have recently

1. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII.

Only conduct classified as punishment is actionable under the Eighth Amendment; therefore, the definition of punishment is important to Eighth Amendment analysis. Wilson v. Seiter, 111 S. Ct. 2321, 2325 (1991). The definition of punishment is "[a]ny fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him." BLACK'S LAW DICTIONARY 1234 (6th ed. 1990).


3. Ingraham v. Wright, 430 U.S. 651, 664 (1977). The Supreme Court determined that the framers of the Constitution designed the Eighth Amendment to protect only those convicted of crimes. Id. See, e.g., Rhodes v. Chapman, 452 U.S. 337, 344-45 (1981) (finding that the conditions of a criminal's confinement in a prison are subject to Eighth Amendment scrutiny); Estelle v. Gamble, 429 U.S. 97, 104 (1976) (declaring that substandard medical care for imprisoned criminals is subject to Eighth Amendment scrutiny). "Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions." Ingraham, 430 U.S. at 671 n.40. See also Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979) (holding that due process mandates that a pretrial detaine is free from punishment; therefore, the Eighth Amendment is not the proper vehicle to seek redress before sentencing).

4. See, e.g., Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 464 (1947) (finding that the second attempt to execute a prisoner, after the first attempt failed because of mechanical problems, did not amount to cruel and unusual punishment); Weems v. United States, 217 U.S. 349, 381-82 (1910) (holding that hard and painful labor performed in chains amounted to cruel and unusual punishment).
expanded the application of the Eighth Amendment beyond its traditional bounds.\textsuperscript{5} Prisoners have utilized the modern expansion of the Eighth Amendment to challenge the conditions of their confinement.\textsuperscript{6} As a result, prisoners bringing a successful Eighth Amendment claim can obtain healthier and safer conditions during the course of their incarceration.\textsuperscript{7} In \textit{Wilson v. Seiter},\textsuperscript{8} the Supreme Court articulated the standard under which a prisoner may bring a successful Eighth Amendment claim, holding that prisoners arguing that the conditions of their confinement constitute cruel and unusual punishment have the burden of showing that prison officials were "deliberately indifferent."

\textsuperscript{5} Stephen J. Durkin, Comment, Rhodes v. Chapman: Prison Overcrowding — Evolving Standards Evading an Increasing Problem, 8 \textit{NEW ENG. J. ON PRISON L.} 249, 252-57 (1982) (outlining the development of the cruel and unusual punishment clause to demonstrate its expansion from a protection only against physical punishment to a protection against a wider array of subtle punishments).


In Rhodes v. Chapman, 452 U.S. 337 (1981), the Supreme Court first addressed the limitation that the Eighth Amendment imposes upon the conditions under which a state may imprison those convicted of crimes. \textit{Id.} at 344-45. The \textit{Rhodes} Court considered the combined impact of the conditions of confinement to determine whether those conditions were cruel and unusual punishment within the meaning of the Eighth Amendment. \textit{Id.} at 346. The Court concluded that conditions of confinement amount to cruel and unusual punishment only if the conditions inflicted unnecessary and wanton pain or were grossly disproportionate to the severity of the crimes warranting imprisonment. \textit{Id.}

\textsuperscript{7} Lawson, \textit{supra} note 6, at 231.

\textsuperscript{8} \textit{Id.} at 2321 (1991).

\textsuperscript{9} \textit{Id.} at 2327. The Court stated that the Eighth Amendment contains an intent requirement. \textit{Id.} at 2325. "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" as an Eighth Amendment violation. \textit{Id.}

The United States, in its \textit{amicus curiae} brief in support of the petitioner, opposed the intent requirement. \textit{Id.} at 2526. The government contended that prison officials will claim that, despite their efforts to provide humane conditions, budgetary constraints render the achievement of ideal conditions impossible. \textit{Id.} However, the Court concluded that budgetary constraints do not affect the finding of cruel and unusual conditions, reasoning that whether or not the conditions are unconstitutional is a separate issue from whether the prison systems can afford to rectify them. \textit{Id.} A detailed discussion of the components of the "deliberate indifference" standard is beyond the scope of this Comment; however, see \textit{infra} notes 17, 43, 44, and 70 for a brief description of
to those conditions.\textsuperscript{10}

In \textit{Wilson}, petitioner alleged that the conditions of his incarceration amounted to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.\textsuperscript{11} He filed suit pursuant to 42 U.S.C. § 1983 against the respondents, the Director of the Ohio Department of Rehabilitation and Correction and the warden of the prison in which Wilson was incarcerated.\textsuperscript{12} The United States District Court for the Southern District of Ohio granted summary judgment for the respondents.\textsuperscript{13} The Court of Appeals for the Sixth Circuit affirmed on the ground that the prisoners failed to raise a reasonable inference of the prison officials' "obduracy and wantonness,"\textsuperscript{14} the state of mind necessary to prove an Eighth Amendment violation.\textsuperscript{15} The United States

\textsuperscript{10} 111 S. Ct. at 2326. The Court, as well as all parties involved, agreed that the high standard employed in \textit{Whitley v. Albers} was inapplicable to prison condition cases. \textit{Id.} In \textit{Whitley v. Albers}, 475 U.S. 312 (1986), (the Court held that guards reacting to a prison disturbance must act "maliciously and sadistically for the very purpose of causing harm" to violate the cruel and unusual punishment clause. \textit{Id.} at 320-21. Instead of applying the \textit{Whitley} standard the \textit{Wilson} Court first determined whether the challenged conduct was sufficiently harmful to satisfy the objective component of an Eighth Amendment claim. 111 S. Ct. at 2326. Second, the Court focused on the constraints facing the prison official in considering whether the conduct was wanton. \textit{Id.} at 2326.

\textsuperscript{11} 111 S. Ct. at 2322-23. "The complaint alleged overcrowding, excessive noise, insufficient locker storage space, inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms, insanitary dining facilities and food preparation, and housing with mentally and physically ill inmates." \textit{Id.} at 2323.

\textsuperscript{12} \textit{Id.} Section 1983 provides in pertinent part:

\begin{quote}
Every person who, under the color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen of the United States . . . 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 . . . for redress.
\end{quote}

For a more detailed discussion of the procedure involved in filing a § 1983 claim to challenge confinement conditions, see Lawson, \textit{supra} note 6, at 234-35.

\textsuperscript{13} Wilson v. Seiter, 893 F.2d 861, 863 (6th Cir. 1990). The petitioner alleged that the prison officials took no remedial action after notification of the challenged conditions. \textit{Id.} at 862.

The district court applied the "obduracy and wantonness" standard. \textit{Id.} at 863 (relying on \textit{Whitley v. Albers}, 475 U.S. 312, 319 (1986)). Viewing the affidavits in light of that standard, the district court concluded that the petitioners' failure to demonstrate wantonness indicated the absence of any issue of material fact. 893 F.2d at 863.

\textsuperscript{14} \textit{Id.} at 867.

\textsuperscript{15} \textit{Id.} The Court of Appeals affirmed the lower court's dismissal of a number of
Supreme Court vacated the judgment and remanded the case for reconsideration under the appropriate standard.  

The Supreme Court agreed with the lower court that a petitioner challenging the conditions of confinement must show a culpable state of mind on the part of prison officials to prevail on an Eighth Amendment claim. The Court articulated a more lenient standard, however, and required that the prisoner show that the prison officials acted with "deliberate indifference" toward the challenged conditions.

Theoretically, the term "cruel and unusual punishment" prohibited the infliction of excessive or disproportionate punishment or pain on criminals. More recently, courts have expanded Eighth Amend-
ment protection to encompass infliction of pain that is not specifically part of the sentence, but rather is a consequence of confinement.  

*Louisiana ex rel. Francis v. Resweber* 22 was an early case which required that prisoners claiming a violation of their Eighth Amendment rights establish a certain level of intent on the part of prison officials who administered the punishment. 23 In *Resweber*, prison officials sought to electrocute a convicted prisoner a second time, after the first attempt failed because of a mechanical error. 24 The prisoner applied to the Louisiana Supreme Court for writs of certiorari, mandamus, prohibition, and habeas corpus, claiming a violation of his Fourteenth Amendment rights. 25 The Louisiana Supreme Court denied relief. 26 The United States Supreme Court granted certiorari 27 and concluded that the language of the Eighth Amendment specifically prohibits the wanton infliction of pain. 28 However, the Court required that the prison officials possess a culpable mental state to support a claim of cruel and unusual punishment, regardless of the actual suffering inflicted. 29 The Supreme Court reasoned that because the failure of the

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Rights of 1688 to assure that the power to punish be exercised within civilized boundaries).  

21. See, e.g., Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (stating that the denial of medical care was a condition of confinement subject to Eighth Amendment scrutiny); Hoptowit v. Spellman, 753 F.2d 779, 783-84 (9th Cir. 1985) (holding that vermin infestation, poor plumbing, unclean air, inadequate lighting, and safety hazards which were conditions of confinement constituted cruel and unusual punishment); Kirby v. Blackledge, 530 F.2d 583, 587 (4th Cir. 1976) (holding that a cell which contained no light, bedding, or toilet facilities cumulatively resulted in constitutional deprivation under the Eighth Amendment and Due Process Clause); Battle v. Anderson, 447 F. Supp. 516, 525 (E.D. Okla. 1977) (stating that overcrowding in prison may amount to an unconstitutional deprivation of health, safety, and security), aff'd, 564 F.2d 388 (10th Cir. 1977).


23. *Id.* at 464.

24. *Id.* at 460-61.

25. *Id.* at 461. The prisoner alleged that the second attempt to execute him amounted to both double jeopardy violative of the Fifth Amendment, and cruel and unusual punishment, violative of the Eighth Amendment. *Id.* at 461.

26. 329 U.S. at 461. The state court concluded that no law had been violated in attempting to execute the prisoner a second time because no punishment sufficient to cause death had been inflicted upon the prisoner. *Id.*

27. 328 U.S. 833 (1946).

28. 329 U.S. at 463. Petitioner asserted that the mental anguish resulting from the preparation for more than one electrocution subjected him to lingering cruel and unusual punishment. *Id.* at 464.

29. *Id.* The Court found that the second electrocution was not motivated by the
The first attempt was not the fault of the prison officials,\textsuperscript{30} the officials lacked the culpable mental state necessary to constitute a cruel method of punishment.\textsuperscript{31} Therefore, the Court held that the punishment inflicted upon the prisoner did not warrant Eighth Amendment protection.\textsuperscript{32}

\textit{Gregg v. Georgia}\textsuperscript{33} is the precedential case prescribing the "unnecessary and wanton infliction of pain" standard.\textsuperscript{34} In \textit{Gregg}, the Court held that the imposition of the death penalty did not violate the Eighth Amendment under all circumstances.\textsuperscript{35} The Court promulgated a two-prong inquiry to establish "excessiveness" constituting "cruel and unusual punishment": 1) whether prison officials inflicted "unnecessary and wanton" pain for the purpose of punishment,\textsuperscript{37} and 2) whether the punishment inflicted is proportional to the crime committed.\textsuperscript{38} Apply-

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\item desire of state prison officials to cause unnecessary pain. \textit{Id.} Rather, the Court viewed the prisoner to be the "unfortunate victim of this accident." \textit{Id.} The prisoner suffered the same mental anguish and physical pain that he might have suffered had a fire occurred in his cell block. \textit{Id.} Absent a clear intent to inflict unnecessary pain upon the prisoner, the Court found no violation of the prisoner's due process rights based on cruel and unusual punishment. \textit{Id.}
\end{itemize}
ing this standard, the Court held that the death penalty is not cruel and unusual\textsuperscript{39} and that the punishment of death is not disproportionate to the crime of murder.\textsuperscript{40}

In \textit{Estelle v. Gamble},\textsuperscript{41} the Supreme Court relied upon the \textit{Resweber} and \textit{Gregg} decisions in holding that the failure to provide proper medical care to inmates which caused unnecessary pain or suffering violated the Eighth Amendment.\textsuperscript{42} In \textit{Estelle}, doctors at the prison hospital treated an inmate several times for complaints of serious back pain, high blood pressure, and heart irregularities.\textsuperscript{43} Despite using drug therapy, the doctors elected not to X-ray the prisoner.\textsuperscript{44} The Court found that the inadvertent failure to X-ray the prisoner did not rise to the level of "deliberate indifference" to the prisoner's medical needs.\textsuperscript{45} Therefore, the prisoner's claim failed to meet the constitutional requi-

\textsuperscript{39} See, e.g., \textit{Lewis v. Wallenstein}, 769 F.2d 1173, 1186 (7th Cir. 1985) (holding prison officials liable for deficient sick call procedures and inadequate staff); \textit{Todaro v. Ward}, 565 F.2d 48, 52 (2d Cir. 1977) (finding that the cumulative effect of poor medical care by prison officials may amount to deliberate indifference).
site of cruel and unusual punishment.\textsuperscript{46}

The \textit{Estelle} Court required that the conduct of the prison officials reach a level so "repugnant to the conscience of mankind" or constitute the unnecessary and wanton infliction of pain in order to violate the Eighth Amendment.\textsuperscript{47} In addition, the Court required that the prisoner allege acts or omissions sufficiently harmful to offend "evolving standards of decency" as evidence of deliberate indifference.\textsuperscript{48} The Court implied that prison officials need not intend indifference toward a prisoner's serious injury in order to violate a prisoner's Eighth Amendment rights.\textsuperscript{49} The \textit{Estelle} Court concluded, however, that the inadvertent failure to supply ample medical attention does not constitute unnecessary and wanton infliction of pain.\textsuperscript{50}

In 1981, the Court applied and further developed the \textit{Gregg} standard in \textit{Rhodes v. Chapman},\textsuperscript{51} holding that prison conditions were subject to scrutiny under the Eighth Amendment.\textsuperscript{52} The \textit{Rhodes} Court rejected several prisoners' contentions that housing two inmates in one cell

\textsuperscript{46} 429 U.S. at 107. At most, the doctor's failure to X-ray the prisoner's back amounted to medical malpractice. \textit{Id}. However, the Court reasoned that medical malpractice does not sanction a constitutional violation simply because the victim is an inmate. \textit{Id}. at 106.

\textsuperscript{47} \textit{Id}. at 105-06.

\textsuperscript{48} \textit{Id}. at 106. The Courts of Appeals essentially agree that mere allegations of medical malpractice do not state a claim consistent with the deliberate indifference standard. \textit{Id}. at 106 n.14. However, the Courts of Appeals use varied terminology when describing the conduct sufficient to state a claim. \textit{Id}. \textit{See}, e.g., Williams v. Vincent, 508 F.2d 541 (2d Cir. 1974) (using "deliberate indifference" to describe a physician's conduct which amounted to cruel and unusual punishment).

\textsuperscript{49} 429 U.S. at 104-05. The Court presented several alternative methods for determining if prison officials were deliberately indifferent toward the prisoner's medical needs: (1) the prison medical staff's responsiveness to prisoner health needs; (2) the accessibility of the medical staff to the prisoners; and (3) the failure to provide prisoners with the treatment prescribed by the medical staff. \textit{Id}. 429 U.S. at 104-05. The Court held that allegations of medical malpractice stemming from the doctor's negligence did not state a valid Eighth Amendment claim. \textit{Id}. at 107. \textit{See} Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985) (stating that the negligent failure to provide medical care, evidenced by inattention or inadvertence, did not state an Eighth Amendment claim); Hendrix v. Faulkner, 525 F. Supp. 435, 454 (N.D. Ind. 1981) (finding that a prisoner must demonstrate that the defendant showed a callous indifference to medical needs, that those needs were serious, and that the lack of treatment resulted in injury), aff'd in part, vacated in part sub nom. Wellman v. Faulkner, 715 F.2d 269 (7th Cir. 1983).

\textsuperscript{50} \textit{Id}. at 105. The Court held that allegations of medical malpractice stemming from the doctor's negligence did not state a valid Eighth Amendment claim. \textit{Id}. at 107. \textit{See} Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985) (stating that the negligent failure to provide medical care, evidenced by inattention or inadvertence, did not state an Eighth Amendment claim); Hendrix v. Faulkner, 525 F. Supp. 435, 454 (N.D. Ind. 1981) (finding that a prisoner must demonstrate that the defendant showed a callous indifference to medical needs, that those needs were serious, and that the lack of treatment resulted in injury), aff'd in part, vacated in part sub nom. Wellman v. Faulkner, 715 F.2d 269 (7th Cir. 1983).

\textsuperscript{51} 452 U.S. 337 (1981).

\textsuperscript{52} \textit{Id}. at 344-46. The Supreme Court first considered the Eighth Amendment requirements for prison conditions in \textit{Rhodes}. \textit{Id}. at 344-45. "Today the Eighth Amendment prohibits punishments which, although not physically barbarous, 'involve the

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comprised a condition of confinement evidencing cruel and unusual punishment.\textsuperscript{53} The Court stated that "double ceiling" may constitute an infliction of pain, but reasoned that, in this instance, the pain was neither inflicted in an unnecessary or wanton fashion nor grossly disproportionate to the severity of the crime.\textsuperscript{54} The Court relied on the fact that the Constitution does not mandate comfortable prisons.\textsuperscript{55} Furthermore, overcrowding did not result in deprivations of necessities of life such as food or medical care.\textsuperscript{56} The Court based its opinion on objective criteria regarding the seriousness of the prisoners' deprivation and concluded that double celling was not sufficiently harmful to violate the Eighth Amendment.\textsuperscript{57}

In Whitley v. Albers,\textsuperscript{58} the Supreme Court reaffirmed that a subjective standard still applies when adjudicating prisoners' Eighth Amendment challenges.


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\item \textsuperscript{53} 452 U.S. at 348-49.
\item \textsuperscript{54} Id. at 348. The Court found "double ceiling" a necessary response to the large number of inmates at the facility. Id. In light of alleged overcrowding, prisoners were not deprived of essential necessities, prison violence did not increase as a result of double celling, and prison life did not become intolerable. Id. "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." Id. at 347.
\item \textsuperscript{55} Id. at 349. See also supra note 6 discussing the standards and scope of discretion that courts have in determining the constitutionally-required level of comfort that prisons must provide.
\item \textsuperscript{56} 452 U.S. at 348.
\item \textsuperscript{57} Id. at 346-47. The Rhodes Court looked to the objective findings of the district court to determine whether prison officials violated the prisoners' Eighth Amendment rights. Id. at 346-48. The objective question is whether the conditions of confinement rise to the level of a "serious deprivation," while the subjective question is whether the deprivation results from the conduct of prison officials. Martin A. Schwartz, The Decision on Prison Conditions, N.Y.L.J., July 16, 1991, at 3. Because the prisoners' claims did not meet the objective standard of sufficiently serious deprivation, the Rhodes Court did not address the subjective issue. See Wilson v. Seiter, 111 S. Ct. 2321, 2324 (1991).
\item \textsuperscript{58} 475 U.S. 312 (1986).
\end{itemize}
ment claims.\textsuperscript{59} In \textit{Whitley}, prison guards shot a prison inmate while attempting to quell a disturbance.\textsuperscript{60} The prisoner alleged that such treatment deprived the prisoner of his Eighth Amendment rights.\textsuperscript{61} The Supreme Court emphasized that only the unnecessary and wanton infliction of physical pain constituted cruel and unusual punishment.\textsuperscript{62} Further, the Court required that the conduct involve more than ordinary lack of due care in order to qualify as cruel and unusual punishment.\textsuperscript{63} The court reasoned that a higher standard applies when prison officials take security measures to insure the safety of themselves and the inmates.\textsuperscript{64} The Court articulated the standard in such instances as "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."\textsuperscript{65} In light of this standard, the \textit{Whitley} Court held that the shooting was a good faith attempt to restore security and therefore did not violate the prisoner's Eighth Amendment rights.\textsuperscript{66}

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\item \textsuperscript{59} Id. at 319-21. See Wilson v. Seiter, 111 S. Ct. 2321, 2324 (1991) (stating that \textit{Whitley} clarified that \textit{Rhodes} did not eliminate a subjective component).
\item \textsuperscript{60} 475 U.S. at 316. The disturbance began when an inmate assaulted one guard and took a second guard hostage. Id. at 314-15. While guards executed a plan to free the hostage, another prisoner, respondent Albers, interfered. Id. at 316. Despite a warning shot, Albers continued to interfere and the guard shot Albers in the knee. Id.
\item \textsuperscript{61} Id. at 317. The prisoner sued under 42 U.S.C. § 1983. See supra note 12 for the relevant language in 42 U.S.C. § 1983.
\item \textsuperscript{62} 475 U.S. at 319. See Lawson, supra note 6, at 241 (noting that the \textit{Whitley} Court delegated wide deference to prison officials and reaffirmed the "unnecessary and wanton" standard).
\item \textsuperscript{63} 475 U.S. at 319. The Court reasoned that Eighth Amendment scrutiny does not apply to all governmental actions affecting a prisoner's well-being. Id. Relying on \textit{Estelle}, the Court found that the infliction of pain through mere negligence did not amount to a constitutional violation. Id. See \textit{Estelle} v. Gamble, 429 U.S. 97, 105-06 (1976) (holding that physician's alleged malpractice did not amount to cruel and unusual punishment).
\item \textsuperscript{64} 475 U.S. at 320. The court specifically found that the deliberate indifference standard set forth in \textit{Estelle} did not "adequately capture the importance of such competing obligations, or convey the appropriate hesitancy to critique in hind-sight decisions necessarily made in haste." Id.
\item \textsuperscript{65} Id. at 320-21 (quoting Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir.), cert. denied sub nom., John v. Johnson, 414 U.S. 1033 (1973). The Supreme Court found relevant factors such as the need of force, the nexus between the need and the amount of force used, the extent of the injury, and the potential safety threats to prison staff and inmates. 475 U.S. at 321.
\item \textsuperscript{66} Id. at 326.
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Wilson v. Seiter \(^{67}\) presented the United States Supreme Court with an opportunity to review the minimum culpable mental state which constitutes cruel and unusual punishment. \(^{68}\) Justice Scalia, writing for the majority, stated that the cruel and unusual punishment prohibited by the Eighth Amendment encompasses both deprivations resulting specifically from the sentence and those suffered as a condition of confinement. \(^{69}\) The Court defined punishment as a deliberate effort to chastise or deter \(^{70}\) and upheld the settled principal that the Eighth Amendment applies specifically to cases of unnecessary and wanton infliction of punishment. \(^{71}\) The Court reasoned the well-founded principle that formal punishment \(^{72}\) is subject to Eighth Amendment scrutiny irrespective of intent. \(^{73}\) However, the court reasoned that pain inflicted which does not result from formal punishment is subject to inquiry into the prison official's mental state. \(^{74}\)

The majority acknowledged that the offending conduct must be wan-
However, once the prisoner proves that the conduct is harmful enough to satisfy the objective component of an Eighth Amendment claim, the court reasoned that the "wantonness" of the conduct depends on the constraints facing the prison officials. Justice Scalia distinguished challenges lodged against prison officials' specific acts under pressure from challenges to the general conditions of confinement. The Court stated that prisoners challenging conditions of confinement must prove deliberate indifference on behalf of the prison officials to meet the requisite "wantoness."

After establishing the applicability of the deliberate indifference standard, Justice Scalia concluded that the lower courts erred in applying the higher malicious and sadistic standard prescribed by *Whitley*. In order to confirm that the lower courts would reach the same decision based upon the Court's deliberate indifference standard, the Court vacated the prior judgment and remanded the case.

75. 111 S. Ct. at 2326.
76. *Id.* Rhodes v. Chapman, 452 U.S. 337 (1981) is the case setting forth objective criteria in Eighth Amendment cases. *See supra* notes 51-57 for a discussion of *Rhodes*. Once the objective standard is met, the prisoner must then prove the requisite subjective component when challenging conditions of confinement. 111 S. Ct. at 2326.
77. *Id.* Classifying conduct as cruel and unusual depends upon the totality of the circumstances. *See West, supra* note 2, at 215 n.44 (citing *Rhodes v. Chapman*, 452 U.S. 337, 346-47 (1981)). Conduct classified as cruel and unusual punishment under normal conditions may not be cruel and unusual under conditions of a prison riot. *Id.* at 220-21.
78. The "deliberate indifference" standard was first established in *Estelle v. Gamble*, 429 U.S. 97 (1976). *See supra* notes 41-50 and accompanying text for a discussion of *Estelle*. The standard established in *Estelle* for adjudicating claims of insufficient medical care is equally applicable to claims challenging prison conditions. 111 S. Ct. at 2326-27. The Court reasoned that medical treatment is as much a "condition of confinement" as the quality of food an inmate is fed, the clothes he is given, the temperature of his cell, and the protection against harm from other inmates. *Id.*
79. 111 S. Ct. at 2326. In "emergency" situations, the Court stated that "wantonness consisted of acting 'maliciously and sadistically for the very purpose of causing harm.'" *Id.* (citing *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986)). In *Wilson*, both parties agreed that the higher standard established in *Whitley* was not applicable to a claim challenging confinement conditions. 111 S. Ct. at 2326-27. The Court expressed no opinion on the relative merits of the various individual claims. *Id.* at 2327. However, the Court did reject the petitioner's contention that a challenge may not be dismissed while other disputed challenges remain unresolved. *Id.* "Nothing so amorphous as 'overall conditions' can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists." *Id.*
80. *Id.* at 2327-28. The Court determined that the misapplication of the stan-
81. *Id.* at 2328. Referring to the lower court's finding that petitioner's claims were "'at best . . . negligence,'" the Court determined that the misapplication of the stan-
Justice White, concurring in judgment only, rejected the majority's position that prisoners must show deliberate indifference on the part of the responsible officials to prevail on an Eighth Amendment claim challenging the conditions of confinement. Justice White agreed with the majority's view that any pain inflicted pursuant to a specific court order or statute was subject to Eighth Amendment scrutiny regardless of intent. However, the concurrence disagreed with the majority's assertion that pain inflicted by virtue of prison conditions violated the Eighth Amendment only upon a showing of intent. The concurrence reasoned that prior decisions of the Court have held that prison conditions are encompassed within the punishment imposed by a judge or through a statute. Justice White concluded that an intent require-

Id. (quoting Wilson v. Seiter, 893 F.2d 861, 867 (6th Cir. 1990)). However, the Court reasoned that if the lower court had applied the correct deliberate indifference standard, it may have reconsidered its finding of mere negligence because the determination was essential to the judgment. 111 S. Ct. at 2328.

Justice White was joined by Justices Marshall, Blackmun and Stevens, concurring in judgment only. Id.

Id. (White, J., concurring).

Id.

111 S. Ct. at 2330. Justice White argued that intent would be difficult to prove in situations involving an institution. Id. White expressed concern that the intent requirement could be avoided by prison officials simply by alleging inadequate funding. Id. However, the majority observed that there was no indication that prison officials sought to use a "[cost] defense to avoid the holding of Estelle v. Gamble, 429 U.S. 97 (1976)." 111 S. Ct. at 2326. See supra note 8 explaining the distinction between issues of funding and those of prison conditions. See also McCord v. Maggio, 927 F.2d 844 (5th Cir. 1991) (prison administrators asserting that insufficient funding was sufficient justification for forcing prisoner to live in backed up sewage). Further, White suggested that states, having chosen imprisonment as a punishment should comply with the "'contemporary standard of decency' required by the Eighth Amendment." Id. at 2330-31.

111 S. Ct. at 2330. The concurrence referred specifically to Rhodes v. Chapman, 452 U.S. 337 (1981) and Hutto v. Finney, 437 U.S. 678 (1978), reh'g denied, 439 U.S. 1122 (1979) in suggesting that prior case law clearly indicated that the punishment inflicted upon the prisoner encompassed all of the conditions of confinement. Id. at 2328-30.

In Hutto, the Court only considered whether "punitive isolation" amounted to cruel and unusual punishment. 437 U.S. at 685. The Wilson concurrence interpreted Hutto as a clear cut rule defining conditions of confinement as punishment. 111 S. Ct. at 2328. However, the majority stated that Hutto did not address whether the conditions of confinement remedied by the lower court constituted cruel and unusual punishment. Id. at 2325 n.2.

In Rhodes, the Court addressed whether the alleged conditions of confinement were serious enough to reach constitutional deprivation. 452 U.S. at 346-47. According to the Wilson concurrence, Rhodes clearly articulated that conditions of confinement are
ment was unnecessary to sustain an Eighth Amendment challenge to conditions of confinement.\textsuperscript{87} Moreover, the concurring justices believed that the intent requirement was unwise and impossible to apply.\textsuperscript{88}

The majority's holding that the petitioner must show that prison officials were deliberately indifferent to the conditions of his incarceration was correct for three reasons. First, the Eighth Amendment, which expressly protects prisoners from cruel and unusual punishment, mandates an intent requirement.\textsuperscript{89} By definition, punishment is a deliberate act inflicted for some penalogical purpose, such as chastising or deterring a prisoner.\textsuperscript{90} A prison official's acts constitute cruel and unusual

to be treated like formal punishment for purposes of Eighth Amendment challenges. \textit{Wilson}, 111 S. Ct. at 2329-30. Conversely, the \textit{Wilson} majority found no support for the concurring view. \textit{Id.} at 2325 n.2.

The \textit{Wilson} concurrence found it important that the lower courts, consistent with the concurring opinion, often examined only the objective conditions and not the subjective intent of prison officials when assessing Eighth Amendment challenges. \textit{Id.} at 2330 n.1 (citing Tillery v. Owens, 907 F.2d 418, 426 (3d Cir. 1990) (looking at the totality of the conditions to determine cruel and unusual punishment); Foulds v. Corley, 833 F.2d 52, 54-55 (5th Cir. 1987) (stating that the treatment of a prisoner while in confinement embodies punishment and is subject to Eighth Amendment scrutiny); French v. Owens, 777 F.2d 1250, 1252 (7th Cir. 1985) (examining the totality of conditions of confinement), cert. denied, 479 U.S. 817 (1986); Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985) (stating that prisoners have a constitutional right to safe conditions of confinement and, if dangerous, those conditions create cruel and unusual punishment)).

\textsuperscript{87} 111 S. Ct. at 2330. The concurrence criticized the majority's reliance on \textit{Resweber, Estelle,} and \textit{Whitley}, stating that they were not cases challenging the conditions of confinement but rather challenges to specific acts aimed at individual prisoners. \textit{Id.}

The majority discounted this criticism and found "no basis whatever for saying that [deprivation inflicted upon all prisoners] is a 'condition of confinement' and [deprivation inflicted upon a specific prisoner] is not - much less that the one constitutes 'punishment' and the other does not." \textit{Wilson}, 111 S. Ct. at 2324 n.1. For example, in \textit{Estelle}, if an individual was deprived of adequate medical care, that deprivation was a condition of his confinement. \textit{Estelle} v. \textit{Gamble}, 429 U.S. 97, 104 (1976).

\textsuperscript{88} 111 S. Ct. at 2330. The concurrence found that the majority opinion departed from case law and created a requirement impossible to administer. \textit{Id.} The concurrence reasoned that most constitutional deprivations result from the culmination of various acts over an extended period of time. \textit{Id.} Furthermore, because these cumulative actions were committed by numerous people, the concurrence argued that it would be difficult to determine whose intent to measure. \textit{Id.}

\textsuperscript{89} \textit{Id.} at 2325. "If the pain inflicted is not formally meted out as punishment by the statute or sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify [as an Eighth Amendment violation]." \textit{Id.} See supra note 1 for the text of the Eighth Amendment.

\textsuperscript{90} See \textit{BLACK'S LAW DICTIONARY} 1234 (6th ed. 1990); \textit{See also} \textit{Wilson} v. \textit{Seiter},
punishment only when the prison official intended the acts as punishment for a penal or disciplinary purpose. Therefore, a mental element must attach to conditions of confinement in order for the treatment to constitute punishment.

Second, the "deliberate indifference" standard is both a practical and logical extension of the standard established in *Estelle*. The extension is practical because it requires a lesser degree of culpability than cases of physical infliction of pain. An inmate satisfies the Eighth Amendment's intent requirement merely by showing a series of events which, viewed in their totality, amount to a pattern of deliberate indifference which deprives the inmate of a single human need. Furthermore, the extension of the deliberate indifference standard from the cases of inadequate medical care to cases challenging confinement conditions presents a logical progression. For example, the medical care a prisoner receives is as much a condition of his confinement as is the food he is fed and the protection he receives against other inmates.

Third, the circumstances facing prison officials vary and their conduct in maintaining the safety and security of their facilities varies in response. The competing institutional concerns at issue when officials allegedly inflict cruel and unusual punishment determine the wantonness of that conduct. The inefficacy of applying the same standard to a claim arising from actions taken to quell a riot and to a claim arising from poor medical care mandates the application of a

111 S. Ct. 2321, 2325 (1991) (defining punishment as "a deliberate act intended to chastise or deter").

91. 111 S. Ct. at 2325. *See* Duckworth v. Franzen, 780 F.2d 645, 652 (7th Cir. 1985) ("[I]f the guard accidentally stepped on the prisoner's toe and broke it, this would not be punishment in anything remotely like the accepted meaning of the word. . .") , *cert. denied*, 479 U.S. 816 (1986).

92. *See supra* notes 41-50 and accompanying text for a discussion of *Estelle*.

93. 111 S. Ct. at 2326 (finding that the higher state of mind required in prison riot cases does not apply to prison condition cases).

94. *Id.* at 2327 (finding that a long duration of cruel prison conditions may make it easier to establish the requisite intent). *See* Todaro v. Ward, 565 F.2d 48, 52 (2d Cir. 1977) (stating that the cumulative effect of poor medical care amounted to deliberate indifference); *accord* Fisher v. Koehler, 692 F. Supp. 1519, 1561-62 (S.D.N.Y. 1988) (holding that the totality of the incidents of violence against a prisoner amounted to deliberate indifference), *aff'd*, 902 F.2d 2 (2d Cir. 1990).

95. 111 S. Ct. at 2326.


97. *Id.* *See also* Wilson, 111 S. Ct. at 2326.
varying standard of culpability. As competing institutional concerns dissipate, the standard for wantonness drops from "malicious and sadistic" to the level of "deliberate indifference." 

Wilson correctly recognizes the importance of establishing a variable standard of culpability. However, the Court fails to provide lower courts with the necessary guidelines to use in balancing the competing concerns against the conduct of prison officials. The Court makes no attempt to articulate the requirements for per se "deliberate indifference." Although the deliberate indifference standard is more lenient than the malicious and sadistic standard and affords greater protection from unconstitutional conditions, the Supreme Court failed to provide the lower courts with criteria for determining the appropriate level of culpability in a given set of circumstances. As a result, courts lack the tools necessary to control the number of prisoner rights claims and to render consistent results.

The Wilson court takes an additional step toward broadening Eighth Amendment application. Establishment of an intention to chastise or deter is a necessary predicate to a finding that the actions of a prison

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98. 111 S. Ct. at 2326.
99. See Lawson, supra note 6, at 243 (agreeing that prison officials must possess the freedom to quickly respond to riots in order to effectively control prisoners and prevent further mishaps). See also, Estelle v. Gamble, 429 U.S. 97, 104-05 (discussing various situations that would constitute deliberate indifference).
100. See Wilson, 111 S. Ct. at 2330 (White, J., concurring) (stating that the majority's intent requirement will prove impossible to apply).
101. Schwartz, supra note 57, at 3.
102. 111 S. Ct. at 2326. But see Schwartz, supra note 57, at 3 (it may be unclear whose intent must be shown, and thus it will be more difficult for a prisoner to make his claim).
103. See Wilson, 111 S. Ct. at 2326-27. A prisoner does not have to show a physical injury to prove deliberate indifference; therefore, it is easier to demonstrate an Eighth Amendment claim. Id.
104. Id. at 2331. Some commentators argue that Justice Scalia, writing for the majority, omitted a definition of "deliberate indifference" in order to secure a majority decision. See Schwartz, supra note 57, at 3.
105. See West, supra note 2, at 209-12 (stating that the phrase "cruel and unusual punishment" found within the Eighth Amendment defies precise definition). "A principle to be vital must be capable of wider application than the mischief which gave it birth." Id. (citing Weems v. United States, 217 U.S. 349 (1910). See also Durkin, supra note 5, at 251 (stating that the "Eighth Amendment has evolved to an extent where it may accommodate more subtle notions of what constitutes cruel and unusual punishment").
official constitute cruel and unusual punishment.\textsuperscript{106} By allowing relief to a prisoner who shows that prison officials were deliberately indifferent to the conditions of his confinement, the Supreme Court properly gives prisoners additional means to protect themselves from unconstitutional deprivations arising outside of formal punishment. However, despite the Court's good intentions, the \textit{Wilson} standard is vague and offers no guidelines for lower courts to follow, thus adding to the confusion and accumulation of Eighth Amendment claims.

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\textsuperscript{106} \textit{Wilson}, 111 S. Ct. at 2325. The requirement of intent is based on the language of the Eighth Amendment and on the definition of the word "punishment."

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RECENT DEVELOPMENTS