ments Clause, and broad remedial orders directed to improving prison conditions and ameliorating prison life were imposed in more than two dozen states.[256] But, although the Supreme Court expressed general agreement with the thrust of the lower court actions, it set aside two rather extensive decrees and cautioned the federal courts to proceed with deference to the decisions of state legislatures and prison administrators.[257] In both cases, the prisons involved were of fairly recent vintage and the conditions, while harsh, did not approach the conditions described in many of the lower court decisions that had been left undisturbed.[258] Thus, concerns of federalism and of judicial restraint apparently actuated the Court to begin to curb the lower federal courts from ordering remedial action for systems in which the prevailing circumstances, given the resources states choose to devote to them, "cannot be said to be cruel and unusual under contemporary standards."[259]

Congress initially encouraged litigation over prison conditions by enactment in 1980 of the Civil Rights of Institutionalized Persons Act,[260] but then in 1996 added restrictions through enactment of the Prison Litigation Reform Act.[261] The Court upheld the latter law's provision for an automatic stay of prospective relief upon the filing of a motion to modify or terminate that relief, ruling that separation of powers principles were not violated.[262]

Limitation of the Clause to Criminal Punishments

The Eighth Amendment deals only with criminal punishment, and has no application to civil processes. In holding the Amend-

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[256] Rhodes v. Chapman, 452 U.S. 337, 353–54 n.1 (1981) (Justice Brennan concurring) (collecting cases). *See* Note, *Complex Enforcement: Unconstitutional Prison Conditions*, 94 HARV. L. REV. 626 (1981).

[257] Bell v. Wolfish, 441 U.S. 520 (1979); Rhodes v. Chapman, 452 U.S. 337 (1981).

[258] *See*, *e.g.*, Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976) (describing conditions of "horrendous overcrowding," inadequate sanitation, infested food, and "rampant violence"); Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1981) (describing conditions "unfit for human habitation"). The primary issue in both *Wolfish* and *Chapman* was that of "double-celling," the confinement of two or more prisoners in a cell designed for one. In both cases, the Court found the record did not support orders ending the practice.

[259] Rhodes v. Chapman, 452 U.S. 337, 347 (1981). *See also* Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1991) (allowing modification, based on a significant change in law or facts, of a 1979 consent decree that had ordered construction of a new jail with single-occupancy cells; modification was to depend upon whether the upsurge in jail population was anticipated when the decree was entered, and whether the decree was premised on the mistaken belief that single-celling is constitutionally mandated).

[260] Pub. L. 96–247, 94 Stat. 349, 42 U.S.C. §§ 1997 *et seq.*

[261] Pub. L. 104–134, title VIII, 110 Stat. 1321–66—1321–77.

[262] Miller v. French, 530 U.S. 327 (2000). *See also* Porter v. Nussle, 534 U.S. 516 (2002) (applying the Act's requirement that prisoners exhaust administrative remedies).