holding of far-reaching importance.[219] In *Powell v. Texas*,[220] a majority of the Justices took the latter view of *Robinson*, but the result, because of one Justice's view of the facts, was a refusal to invalidate a conviction of an alcoholic for public drunkenness. Whether either the Eighth Amendment or the Due Process Clauses will govern the requirement of the recognition of capacity defenses to criminal charges remains to be decided.

The Court has gone back and forth in its acceptance of proportionality analysis in non-capital cases. It appeared that such analysis had been closely cabined in *Rummel v. Estelle*,[221] upholding a mandatory life sentence under a recidivist statute following a third felony conviction, even though the defendant's three nonviolent felonies had netted him a total of less than $230. The Court reasoned that the unique quality of the death penalty rendered capital cases of limited value, and distinguished *Weems* on the ground that the length of the sentence was of considerably less concern to the Court than were the brutal prison conditions and the post-release denial of significant rights imposed under the peculiar Philippine penal code. Thus, in order to avoid improper judicial interference with state penal systems, Eighth Amendment judgments must be informed by objective factors to the maximum extent possible. But when the chal-

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[219] Fully applied, the principle would raise to constitutional status the concept of *mens rea*, and it would thereby constitutionalize some form of insanity defense as well as other capacity defenses. For a somewhat different approach, *see* Lambert v. California, 355 U.S. 225 (1957) (due process denial for city to apply felon registration requirement to someone present in city but lacking knowledge of requirement). More recently, this controversy has become a due process matter, with the holding that the Due Process Clause requires the prosecution to prove beyond a reasonable doubt the facts necessary to constitute the crime charged, Mullaney v. Wilbur, 421 U.S. 684 (1975), raising the issue of the insanity defense and other such questions. *See* Rivera v. Delaware, 429 U.S. 877 (1976); Patterson v. New York, 432 U.S. 197, 202–05 (1977). In Solem v. Helm, 463 U.S. 277, 297 n.22 (1983), an Eighth Amendment proportionality case, the Court suggested in dictum that life imprisonment without possibility of parole of a recidivist who was an alcoholic, and all of whose crimes had been influenced by his alcohol use, was "unlikely to advance the goals of our criminal justice system in any substantial way."

[220] 392 U.S. 514 (1968). The plurality opinion by Justice Marshall, joined by Justices Black and Harlan and Chief Justice Warren, interpreted *Robinson* as proscribing only punishment of "status," and not punishment for "acts," and expressed a fear that a contrary holding would impel the Court into constitutional definitions of such matters as *actus reus*, *mens rea*, insanity, mistake, justification, and duress. Id. at 532–37. Justice White concurred, but only because the record did not show that the defendant was unable to stay out of public; like the dissent, Justice White was willing to hold that if addiction as a status may not be punished neither can the yielding to the compulsion of that addiction, whether to narcotics or to alcohol. Id. at 548. Dissenting Justices Fortas, Douglas, Brennan, and Stewart wished to adopt a rule that "[c]riminal penalties may not be inflicted upon a person for being in a condition he is powerless to change." That is, one under an irresistible compulsion to drink or to take narcotics may not be punished for those acts. Id. at 554, 567.

[221] 445 U.S. 263 (1980).