

## Living up to Constitutional Standards

The United States employs a structure of governance that places great emphasis on the separation of powers. Under this model, each branch of authority is separate and distinct from the other, effectively establishing a system of checks and balances. While each of these entities operates in a wildly different fashion, they all share a sense of commonality in that they are bound to uphold the constitution set forth by our founding fathers. This document, which was written over 130 years ago, would ultimately define the true value and meaning of being of an American.

Perhaps the most unique facet of this governmental arrangement, however, is the ability of the lay citizen to influence change. If one disagrees with public policy, they can vote for new representation, or run for office themselves. Often, however, this process can be especially difficult to navigate without the proper resources. Fortunately, the American democratic system offers it's citizenry direct access to the courts. The courts have the ability to serve as an intermediary between the cumbersome legislative process and the public desire to bring about change. The judicial branch of the U.S. government has helped foster many of the greatest societal advancements our nation has even seen, including the desegregation of public schools (Brown v. Board of Education) and the granting of civil liberties to homosexuals. (Texas v. Lawrence) In order to truly understand the far reaching effects the courts have had on society, one can start by tracing the history of prisoners' rights in the U.S. Through examining the eighth amendment and its applicability to the judicial decision handed down in Estelle v. Gamble, the

ability of the courts to impact the political process to bring about social change becomes incredibly clear.

In 1798 a series of amendments were introduced to the U.S. Constitution in the 1<sup>st</sup> Congress by James Madison. Just 12 years after the Constitution itself had been drafted and ratified by the states, the framers realized that some major additions needed to be made. Only ten of the amendments introduced were ultimately ratified and became the Bill of Rights in 1791. These amendments limited the powers of the federal government, and protected the rights of all citizens and residents of America. A certainly powerful set of additions to say the least.

The Eighth Amendment would prove especially important in a criminal justice context as it prohibited excessive bail or fines, as well as cruel and unusual punishment. As with most constitutional language, however, the key terms (excessive, cruel, unusual) were extremely broad spawning differing opinions of their application. Relating the terms to prisoners served to only further complicate the issue. Did the framers intend cruel and unusual to mean anything outside of normal convention? Supreme Court Justice Brennan argued that the following four principles could be used to determine if a particular punishment was “cruel and unusual”:

(Furman v. Georgia)

- “ 1. The essential predicate is that a punishment must not by its severity be degrading to human dignity, especially torture.
2. A severe punishment that is obviously inflicted in wholly arbitrary fashion.
3. A severe punishment that is clearly and totally rejected throughout society.
4. A severe punishment that is patently unnecessary.”

Justice Brennan would go to argue that court decisions regarding the Eighth Amendment should involve a “cumulative analysis” of the implication of each of the above principles. While this perhaps helped to clarify some of the ambiguity in the original text of the amendment, it

certainly did not tie up all of the loose ends. Through examining healthcare in the prison system prior to *Estelle v. Gamble*, we can begin to get an idea of how the amendment was interpreted and applied by prison officials.

When considering what constitutes cruel and unusual punishment, one must go beyond the scope of the generic definition. While most everyone would probably agree that certain practices such as whipping and the deprivation of basic food and nutrition would be fundamentally cruel and unusual, what about the right to healthcare? Under Justice Brennan's principle test it seems to pass without much interference, especially considering over 18,000 Americans (in the free world) die prematurely each year because of their inability to afford health insurance. (Kaiser 1)

According to Jaye Anno, co-founder of the National Commission on Correctional Healthcare, prior to *Estelle v. Gamble* healthcare was considered a privilege, not a right, in a correctional setting. This meant that if you were a sick prisoner, you had to convince a correctional officer of your illness, and if he sympathized with you, he might consider taking you to the nearest hospital. On-site healthcare delivery systems were non-existent, and if you were lucky enough to be taken to a hospital, you'd often be seen by a doctor with significant restrictions on his license because of disciplinary actions pending against him. (Nathan 9) This practice would persist into the early 1970's until a litigant would petition the court questioning the constitutionality of its application, changing forever the relationship of the eighth amendment and the prison system.

On November 9, 1973, J.W. Gamble (an inmate at the Texas Department of Corrections) suffered a severe back injury while performing a mandatory prison work assignment consisting

of unloading cotton bales from a shipping truck. After complaining of immense pain, Gamble was sent to the hospital where he was given medication by an inmate nurse and examined by a doctor. The following day, Dr. Astone diagnosed the injury as a lower back strain and prescribed a pain reliever and muscle relaxant, placing him on “cell pass” exempting him from regular work assignments. Two weeks later Gamble returned to Dr. Astone stating that his condition had not improved. This prompted Dr. Astone to prescribe a new pain reliever while refusing to reinstate his cell pass privileges, forcing him back to work. The next day Gamble was informed by the prison work coordinator that if he did not return he would be placed in administrative segregation for insubordination. Physically unable to perform his work related duties, he refused to return and was consequently placed in segregated housing.

In the following three months Gamble would make 17 different trips to the doctors office while remaining in segregation throughout. On January 31<sup>st</sup> he was brought before the prison disciplinary committee to address his alleged insubordination. Even after a prison nurse testified on behalf of his condition, the committee decided to place Gamble in solitary confinement. This decision only served to worsen Gamble’s condition as he was not permitted to sleep on the special bunk the doctor had assigned, and his pain prescriptions were often lost by staff personnel causing him to needlessly suffer for days at a time.

The climax of this story, however, would occur on February 7<sup>th</sup>. Throughout the day Gamble was experiencing pain in his chest, arm, and back, while periodically blacking out for extended periods of time. Despite these clear signs of distress and Mr. Gamble’s history of medical issues, the guards ignored his plea for help on two consecutive days. Finally, on February 9<sup>th</sup>, he was granted the right to seek medical treatment, most likely because the guards

realized his life could only be sustained through their action. This absolutely appalling turn of events prompted Mr. Gamble to file a civil rights action under 42 U.S.C. § 1983 complaining of the treatment he received after the injury. Gamble named the Director of the Department of Corrections, the prison warden, and the medical director of the department in his handwritten complaint.

Like most petitioners, Gamble began his quest for justice in the district court. The complaint was quickly dismissed, however, for failure to state a claim upon which relief could be granted. Instead of throwing in the towel, Gamble decided to try his luck with the Court of Appeals. After review, the appellate court held that the alleged insufficiency of the medical treatment required reinstatement of the complaint. Upon reaffirmation of the claim, Gamble decided to petition the Supreme Court for certiorari, which surprisingly was granted. This meant that the case would be heard before the highest arbiter in all the land, with the possibility of influencing policy throughout the country. The decision of the Supreme Court to take up this case was significant for many reasons. The most outstanding, however, was that the implications of the holding could only be modified through future precedent or legislation, both of which could potentially take decades to develop. Mr. Gamble was seeking retribution for his personal suffering, but would soon discover that his voice would become the agent of change on a level of far greater proportions.

On November 30, 1976 the court came down with a 8-1 ruling in favor of Mr. Gamble. The ultimate victory had been scored, and while the immediate reward was certainly satisfying, the true power of the decision was yet to be felt. The majority opinion was delivered by Justice Thurgood Marshall, the first African American to ever serve on the bench. The opinion was

clear and to the point; providing healthcare for prisoners was not an issue of privilege, but rather a constitutional right. As Justice Thurgood Stated, “The Eighth Amendment embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency. Thus we have held repugnant any punishments which are incompatible with the evolving standards of decency that mark the progress of a maturing society.” In other words it was no longer ok to deny someone their right to health just because they were incarcerated. Even though the constitution was written during a time when socialized medicine wasn’t available to the elite much less the poor, it must be interpreted in context with the times. If the Justices simply took the words of the constitution at face value alone, our society would be incapable of progressing under such arcane legal doctrine.

While the entire opinion seemed to represent a forceful step in the right direction, one statement in particular appeared to be the spark that would influence the resulting change: “These elementary principles (evolving standards of decency) establish the government’s obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical torture or a lingering death.” These words would encapsulate exactly how the court felt about the issue, and seemed to speak directly to prison officials all around the country. Just shy of explicitly demanding for change within the system, it was made clear that the status-quo was not up to constitutional standards. Instead of viewing prisoners as social outcasts not worth protecting, the court seen them as Americans struggling to secure the rights they were owed.

In the concurrence of the opinion, Justice Blackman adds even more fuel to the fire by citing an additional piece of federal law, Title 42 U.S.C. § 1983. This statute provides that every person who subjects any U.S. citizen to the deprivation of any rights or privileges secured by the Constitution shall be liable to the party injured in an action at law. Just in case you happened to miss the point in the first ten pages of the opinion, this made it clear that anyone who decided not to comply with the requirements set forth was subject to personal prosecution. This included any prison supervisors, wardens, or other administrative staff responsible for ensuring this obligation was met. All of a sudden the burden became much more personal, and if by slight chance you were sleeping under a rock when this decision was rendered, ignorance is never a defense in the eyes of the law.

Even with such a strongly supported opinion, however, there was still one dissenter. While dissenting Justices often disagree with how the law was applied to the facts, this didn't appear to be the case in *Estelle v. Gamble*. Justice Stevens seemed to be primarily consumed by two overarching issues, neither of which applied to the eighth amendment or prisoners rights. His first point of contention was the court's decision to grant certiorari to the case. As he states "If the court thought that the case presented an important constitutional question about the State's duty to provide medical care to prisoners, the crude allegations of this complaint do not provide the kind of factual basis the Court normally requires as a predicate for the adjudication of a novel and serious constitutional issue." Justice Stevens seemed to be implying that even if the case was meritorious, this decision should have been made long before it reached the highest court in the country.

Accordingly, his second major concern would stem from the district court's immediate dismissal of the complaint. "If the decision of the Fifth Circuit reinstating the complaint had been allowed to stand and the case had run its normal course, the litigation probably would have come to an end without the need for review by this Court." Because the Supreme Court only rules on issue's of law, not fact, both parties of the suit were unable to file discovery motions allowing for access to medical records and other relevant case documents. Interestingly enough, however, Justice Stevens never really flat out disagrees with the actual decision that was rendered. Rather his dissent seemed to primarily serve as a message to the lower court's to take the claims of prisoners a bit more seriously. It is also apparent that he disagrees with the high court's practice of prematurely intervening in suits that could otherwise be more efficiently settled at the appellate level.

One things for sure, when the Supreme Court talks, society listens. The Gamble decision sparked a fury of change in the way healthcare is administered in prisons all around the country, effectively launching a multibillion-dollar industry. In conjunction with the American Medical Association, the American Bar Association established a commission to research healthcare services in the correctional setting. The first prison standards were issued in the same year the Gamble case was decided, with the juvenile system quick to follow suit in 1979. In order to provide an accreditation service for these stringent requirements, the National Commission on Correctional Health was formed to ensure all institutions lived up to the same expectations. Former medical director for the Georgia Department of Corrections and prison healthcare consultant Joseph Paris stated that the Gamble case shook up the national correction establishment. "It became quickly apparent that most systems operated well below standards set



by the Supreme Court. Litigation became a wave around the country, provoking a massive improvement in prison healthcare.” (Paris)

Around the early 90s correctional healthcare had successfully implemented a delivery system that rivaled and in some cases exceeded the coverage of insured Americans. According to Jaye Anno, “Physicians now operate under clinical protocols and guidelines comparable to those outside of prisons and are accredited by three national bodies: the National Commission, the American Correctional Association and the Joint Commission.” These oversight groups are crucial in ensuring the Gamble decision sustains a lasting legacy. As prisons began to comply with the judgment, a wave of fear was set off amongst all correctional executives around the country, none of which wanted to be the last man standing. This domino effect would ultimately become as important as the original ruling itself.

The Gamble decision also influenced hundreds of derivative claims by other prisoners and advocacy groups around the country. The American Civil Liberties Union sponsored many of these suits, forcing cities and states to spend large amounts of money on litigation, or else fix their healthcare systems. Most chose the latter, with an average annual cost of about \$4,000 per inmate. (Nathan 3) According to Jaye Anno, in 1998 California spent \$483 million on prison healthcare for its roughly 157,000 prisoners, totaling about 13% of its corrections budget.

While healthcare within the prison system has dramatically improved, there still exists many inadequacies in need of attention. One particular area of struggle is largely rooted in the domain of infectious diseases. Because inmates live in very confined and often congested quarters, the spread of germs becomes very difficult to manage. Couple this with the fact that many prisoners engage in homosexual activities, and you effectively create a breeding ground

capable of supporting the proliferation of many deadly diseases. With the threat of bird flu initiating a global pandemic, we must begin devoting more resources towards making these environments more hospitable.

Another area of concern lies in the treatment of hepatitis C, a potentially life threatening disease that flourishes in prison populations. The Center for Disease Control and Prevention found that over 18% of inmates are infected, compared with 1.6% of the overall population. Hepatitis C is generally spread by drug use, transfusions, and in rare cases through sex. The disease can cause fatigue, pain and vomiting, and gradually affects the liver often leading to cirrhosis and cancer. The problem in prisons is that no universal policy exists regarding when treatment should be administered. This leads to institutions taking wildly different measures in response to prisoners infected with the disease. Pennsylvania, for example, tested all 37,000 of their inmates in order to ensure treatment programs began immediately for all those who were infected. New Jersey on the other hand, refuses to test inmates until they exhibit symptoms of liver disease, which many inmate advocates and physicians argue is far too late. (Detroit News) Using the Gamble decision as reference one would tend to believe New Jersey is certainly walking a fine line, if not crossing it. Hopefully through future litigation a universal policy mandating immediate treatment by all facilities will be established.

Roughly 30 years ago, G.W. Gamble sat in his cell suffering because of the State's total disregard for inmate healthcare. As a prisoner with little financial support, his options were quite limited. Instead of simply accepting the system for what it was, however, he decided to invoke his constitutional right and challenge a practice he felt was explicitly barred by the eighth amendment. After drafting the handwritten complaint and filing suit accordingly, the district court slammed the door in his face. Instead of becoming discouraged and submitting to their

dismissal, he forged forward and petitioned the court of appeals. Gamble's decision to appeal the matter would represent the beginning of a long journey, ultimately ending with a reward far greater than he ever imagined. *Estelle v. Gamble* symbolizes the model by which an ordinary citizen can influence the political process to bring about social change. This decision opened the eyes of legislatures all around the country, spawning statutes further protecting the rights of the incarcerated American. Gamble will forever remain the sole reason prisoners enjoy access to healthcare, while serving to further remind every American that the courts represent a major catalyst of change, and must be exploited accordingly.

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