From Health to Humanity: Re-Reading Estelle v. Gamble after Brown v. Plata

I. Introduction
Formal recognition that the Eighth Amendment required prisons to provide adequate medical care to prisoners is generally traced to the Supreme Court’s 1976 Estelle v. Gamble decision. There, the Court squarely held that failure to provide medical care to an incarcerated person violated the Eighth Amendment. Justice Marshall explained that the denial of needed medical care might, in the most unfortunate cases, cause grave suffering akin to torture, and the infliction of such “unnecessary suffering is inconsistent with contemporary standards of decency.” Moreover, the Court held that where prison officials are “deliberately indifferent” to serious medical needs, they cause the kind of “wanton infliction of pain” that gives rise to liability under federal civil rights statutes when done “under color of law.”

These points have been favorably cited by the Supreme Court repeatedly since 1976, and were never in dispute when the State of California appealed the injunction reducing prison population handed down by the special three-judge court in Coleman/Plata v. Schwarzenegger (now, Brown). As a legal matter, the Supreme Court’s 2011 Brown v. Plata decision seems to have added little to that precedent, making law instead on the interpretation of the statutory Prison Litigation Reform Act of 1995 (PLRA).

This essay argues that nonetheless Brown takes the principles articulated in Estelle and reads them through the prism of the modern carceral context, a context described by criminologists and now even the New York Times as one of “mass incarceration.” While the Supreme Court’s restatement of its central Eighth Amendment prison health care principles in Brown v. Plata did not necessarily change the doctrinal parameters of those principles, the Court signaled its willingness to support district courts in enforcing them in a more direct and consequential way. In doing so, the Court appeared to strengthen the principles of Estelle, linking them more closely to concepts of human dignity.

II. Estelle v. Gamble: The Prison and the Sick Prisoner
Estelle has been repeatedly cited by the Supreme Court itself as one of the few core examples of an affirmative state duty to protect a private subject arising from the Due Process clause and to which states may be held accountable under federal civil rights statutes. Justice Marshall’s opinion powerfully summarized the reasoning that makes the sick (or potentially sick) prisoner such a strong subject of positive state action duties.

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,” In re Kemmler […], the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose.

Certain features of Estelle v. Gamble now stand out as noteworthy. One is the extremely limited nature of the record before the Court. Texas prisoner J.W. Gamble, whose handwritten pro se complaint formed the entirety of the record in the case, suffered from two kinds of medical problems. The first was a back injury Gamble received while working in the prison’s heavy labor-oriented farm system, unloading a bale of cotton from a truck in early November 1973. He was periodically seen by a doctor or nurse, and also by staff. He received some treatment in the form of muscle relaxants and pain suppressors, as well as temporary relief from work. By early December, Gamble was ordered to return to work or face disciplinary segregation. He was eventually placed in segregation for refusing labor.

It was in segregation that a second medical problem presented; Gamble suggested his inability to work was a combination of back pain and high blood pressure. A prison officer, one Captain Blunt, apparently in charge at the hearing, declared Gamble fit and, without further medical evaluation, had him returned to segregation. Several days later, he experienced the first of several black outs and episodes of chest pain, both associated with blood pressure and irregular cardiac rhythm, for which he was eventually hospitalized. On February 7, having received a test and some treatment for these conditions, Gamble again experienced chest pain and asked to see the doctor. When that was refused he filed his pro se complaint.

Both of Gamble’s medical problems—soft-tissue (and possible nerve) damage in the lower back, and high-blood pressure and cardiac problems—can be characterized as chronic conditions aggravated by the conditions of the...
prison. But rather than remanding for a fuller fact-finding on the health care conditions in the prison that may have contributed to Gamble’s problems, the Court decided it was limited to Gamble’s pro se petition. The petition, moreover, was itself narrow in scope. Gamble focused on his back injury, which presumably in his mind was the main reason he could not resume the heavy agricultural labor that was the Texas prison’s stock and trade. He disclaimed any objection to the treatment provided for his blood pressure and heart complaints. This was likely fatal for Gamble’s claim.

Back pain in the 1970s, and sadly still today, remains one of the conditions that is most difficult to diagnose, treat, or document. The hypertension and cardiac issues may have opened up a far more promising line of investigation. In either case, the claims would have succeeded only if the Court permitted a fuller record to be developed. Stripped of a meaningful record about the health needs of typical prisoners or the adequacy of Texas prison health care infrastructure, the majority in Estelle v. Gamble was left to focus on diffuse allegations by a single inmate. Drawing upon metaphors of abuse and torture offer little help where an offender suffers from difficult to treat conditions and elusive, possibly phantom back pain that might be malingered. Kemmler, a case approving electrocution in the 1890s, is left to be the stand-in for the harm that the Eighth Amendment is guarding against. Of course the link to the torture of barbarous execution is a powerful one, connecting the right to prison medical care in the Eighth Amendment to the Amendment’s most ancient and core values, the renunciation of torture. However, less severe medical suffering, because it lacks a penological justification, violates the Eighth Amendment by transgressing the emerging, if less well-established, doctrine of “evolving standards of decency.”

Although Estelle v. Gamble establishes a clear right to adequate medical care in prison, its dismissal of J.W. Gamble’s claim without remanding reflected little recognition or even curiosity about the context in which prisoners received health care or the nature of the health care problems to which prisons were required to respond. It is little wonder that Estelle has been so appropriately by conservative Supreme Court majorities in the process of denying a constitutional right to affirmative state protections; such as in the 1989 case of DeShaney v. Winnebago County Dept. of Social Services.

III. Brown v. Plata: Mass Incarceration and the Chronically Ill Prison Population

Although they would appear to differ little, if at all, in terms of their articulation of the Eighth Amendment right to adequate prison health care, Brown v. Plata is in other respects the anti–Estelle v. Gamble. The peculiar procedural posture of Estelle v. Gamble assured that the Court would opine on the obligations of prisons to sick prisoners without reflecting in any serious way on the nature of illness in prisons or the state of health care in the system. Brown v. Plata, in contrast, incorporated a record accumulated over more than two decades of class action litigation over mental health and medical care, generally, within California’s mammoth prison population.

The record in Brown v. Plata begins with the 1995 Coleman v. Wilson decision, a class action claiming that California’s prisons lacked even the most basic infrastructure for screening prisoners for mental illness, diagnosing and treating mental illness, or identifying and preventing suicides. The federal district court estimated the number of prisoners with serious mental illnesses already identified and in need of treatment at 13,000 to 18,000, with another 4,000 likely to be in the population and yet to be identified (this out of a total prison population at the time of around 57,000). The court had no problem finding that the violation of the Eighth Amendment met Estelle v. Gamble’s deliberate indifference test.

The second strand of the Brown v. Plata record stemmed from another class action on behalf of California prisoners challenging the state over the inadequacy of health care infrastructure and personnel. The suit was initially resolved in a negotiated stipulation for injunctive relief approved by the court in June 2002, in which California acknowledged the system-wide violation of the Eighth Amendment and committed itself to a three-year program of construction and hiring sufficient to remedy it. In 2005, however, the federal trial court placed the entire California prison health care system into receivership. In a lengthy opinion finding, among other things, that on average a prisoner a week was dying of medical mismanagement, Judge Henderson described California’s prison management as far more than grossly negligent.

Judge Henderson’s receivership order also looked beyond health care to the policies of incarceration growth that had driven the creation of prisons without also providing sufficient health care systems.

To a significant extent, this case presents a textbook example of how majoritarian political institutions sometimes fail to muster the will to protect a disenfranchised, stigmatized, and unpopular subgroup of the population. The failure of political will, combined with a massive escalation in the rate of incarceration over the past few decades, has led to a serious and chronic abnegation of the State responsibility for the basic medical needs of prisoners. This is a case where “the failure of the political bodies is so egregious and the demands for protection of constitutional rights [is] so important that there is no practical alternative to federal court intervention.”

Judge Henderson recognized that the problem was not one of prison management so much as of penal policies that prioritized the incapacitation of an unprecedented portion of the population over any measures respecting the dignity of individual offenders.

Over the past 25 years, the California correctional system has undergone a vast expansion in size and
complexity. Since 1980, the inmate population has grown well over 500 percent and the number of institutions has nearly tripled from 12 to 33. Currently, the CDCR has approximately 164,000 inmates, 114,000 parolees, and 45,200 employees. Defendants concede that this rapid growth of the correctional system was not accompanied by organizational restructuring to meet the increasing demands and that it requires fundamental reform in a variety of areas, including management structure, information technology and health care services in order to function effectively and in compliance with basic constitutional standards.23

In 2009, Coleman and Plata were joined in a petition to compel California to cap its population at a level that would allow the remedial plans in Coleman and Plata, respectively, to be implemented. The background for this third phase of litigation was the continuation of a chronic level of extraordinary overcrowding.

Despite its massive prison building program in the 1980s and 1990s, the State’s prison population continued to grow through that decade and into the twenty-first century. During that time, the system operated at more than 200 percent of the designed capacity of its prisons. Institutions that served as reception centers operated at more than 300 percent. The main issue during the fourteen-day trial was whether the State could implement alternative sanctions for felony convicts who otherwise would have gone to prison. Any remedy would need to achieve a significant reduction in overcrowding without a substantial adverse impact on public safety, a key requirement that a three-judge court must consider before ordering a population cap or reduction.

The record before the Supreme Court in Brown v. Plata was as different as can be imagined from that in Estelle v. Gamble. A handwritten pro se petition covering less than six months of medical management of a single Texas prisoner on the one hand, and on the other, a vast assemblage of expert testimonies, regular reports from the court monitor in the Coleman litigation and the receiver in the Plata litigation, and profiles of scores of individual inmates, as well as population-wide data on crowding. This record came through repeatedly in Justice Kennedy’s opinion, and perhaps even more strikingly in the three photographs of prison conditions. Although the legal issues in Brown v. Plata turned primarily on the Court’s interpretation of the PLRA, it may be its reaffirmation of the priority of health care—even in a context of public safety and prison security—that proves important for federal trial courts considering the qualitative dimensions of mass incarceration prisons.

The PLRA offered the Supreme Court multiple ways to halt the three-judge court’s injunctive relief without questioning the underlying Eighth Amendment status of health care. The statute requires that a court considering a population cap first make sure that other remedies have been futile and that the prison system has had time to attempt a remedy. The statute also requires the court to give weight to the potential threat to public safety caused by a population cap. The dissenters would have ruled for the state on both grounds, and Justice Kennedy could have, as well, without retracting doctrinally from Estelle v. Gamble. The fact that the majority chose not to, and with such clarity and force, is what makes it important.

Estelle created a right to health care for prisoners who could clearly demonstrate they had been harmed by a significant medical failure that prison officials were aware of and could have addressed. It did so largely based on evidence that contemporary standards of decency, reflected in state administrative and penal codes, now associated imprisonment with decent healthcare. As Malcolm Feeley and Edward Rubin argued in their important study of federal courts as prison reform institutions in the last decades of the twentieth century, the reform was led by federal trial court judges moved by their moral sensibilities, encouraged by the availability of determinative correctional norms from the then dominant rehabilitative penology, and, significantly, not discouraged by the U.S. Supreme Court. From this perspective, Estelle v. Gamble did not have to do much. For Feeley and Rubin, it was a “sotto voce signal to the lower courts that they should continue on their course.”

In an important sense, Brown v. Plata is a signal to the lower courts to change course, to relax the extraordinary deference they have been showing mass incarceration prisons at least since the Supreme Court’s last most significant course correcting signal Farmer v. Brennan.24 Although it was a closely divided vote, the Brown opinion was not sotto voce. In affirming just about every aspect of a population cap to remedy systemic health care failings, the Brown Court affirmed that the right extends to all prisoners exposed to the risks of a flawed system.

Even prisoners with no present physical or mental illness may become afflicted, and all prisoners in California are at risk so long as the State continues to provide inadequate care. Prisoners in the general population will become sick, and will become members of the plaintiff classes, with routine frequency; and overcrowding may prevent the timely diagnosis and care necessary to provide effective treatment and to prevent further spread of disease. Relief targeted only at present members of the plaintiff classes may therefore fail to adequately protect future class members who will develop serious physical or mental illness. Prisoners who are not sick or mentally ill do not yet have a claim that they have been subjected to care that violates the Eighth Amendment, but in no sense are they remote bystanders in California’s medical care system. They are that system’s next potential victims.25

Moreover, it did so fully cognizant that California in particular had largely abandoned traditional penological goals like deterrence, retribution, and rehabilitation in favor of an almost exclusive focus on incapacitation. In affirming
the authority of district courts to make their own evidence-based judgments about public safety, the Court deviated from years of affirming state authority over penological choice.

Nothing in Brown v. Plata turns directly on the nature of chronic illness, but the prevalence of disease threats of that type in contemporary prisons changes the nature of the right that Brown reaffirms, and transforms it from a relatively minor deviation from our dominant penal strategies to a major challenge. Ironically, Gamble himself presented with the very kinds of chronic injury and disease problems that now typify state prison populations. It has been estimated that 40 percent of state prisoners suffer from chronic illnesses, including importantly mental illness. But, although inmates like Gamble existed in prisons in the 1970s, the relatively short nature of sentences made chronic problems a relatively minor issue for prisons, which could concentrate on providing emergency medical services designed to deal with injuries and acute illnesses.

Mass incarceration policies have changed that, by targeting more “lifestyle” offenders whose patterns of drug use and histories of personal instability are highly correlated with chronic illnesses. The extension of prison sentences from an era where only crimes like murder led to a sentence of more than ten years, to the present when many felonies are punished with multiple-decade sentences, means that many of these chronically ill prisoners will spend a good deal of their health-declining years incarcerated. For both reasons, contemporary prisons are implicated in health care to a much greater degree than ever imagined.

IV. Conclusion
Since California did not contest the underlying Eighth Amendment violations supporting the three-judge courts, but only the remedy mandated by the PLRA, the Court majority had no necessary reason to restate previously established Eighth Amendment doctrine on health care in prison. But the majority did restate it, and tied the principle that Estelle v. Gamble had balanced between the ban on torture and respect for evolving standards of decency more firmly to the concept of human dignity. Whereas Estelle clearly imagined individual prisoners raising health care claims against specific prison actors, whose conduct fell significantly below the common standard of medical care, Brown recognized that the entire California prison population (and indeed, implicitly all of those not yet in prison who face a risk of being sent there) is the subject of the Eighth Amendment violation regardless of whether they have personally been exposed to torture or pain and suffering that would violate contemporary standards of decency.27

Notes
2 Estelle, 429 U.S. at 103–4.
3 Estelle, 429 U.S. at 104–5.
8 Estelle, 429 U.S. at 103.
9 Back pain in adults is a chronic condition in that it is rarely resolved through one-off surgical treatments. Instead, it is likely to recur periodically unless the patient engages careful training to cope with likely back strain at work and at home, and commits to significant efforts at general fitness. Hypertension is perhaps the modal chronic illness of our time, affecting some 68 million people in the United States, nearly 1 in 3 of the adult population. Centers for Disease Control, High Blood Pressure Facts (Mar. 20, 2013), available at http://www.cdc.gov/blood pressure/facts.htm. There is no singular cure for hypertension. To avoid progressive worsening leading to circulatory damage, kidney and heart damage, and eventual premature death, patients must undertake a daily regime of medication, as well as restrictions on diet. National Institutes of Health, Treatment of High Blood Pressure, available at http://www.nhlbi.nih.gov/ hbp/treat/treat.htm.
10 The kind of options offered to Gamble in 1976, pain medicine and muscle relaxant, remain typical of treatment for what is not extreme back pain. Whether better treatment was warranted was an admittedly murky issue that the majority must have found easy to relegate to the realm of, at best, malpractice (“not wanton cruelty”). More outrageous was the Court’s failure to reckon with Texas’ brutal labor system. Gamble’s treatment for back pain may have been adequate as far as it went, but compelling him to do hard physical labor despite that pain, or remain in administrative segregation, was surely a core Eighth Amendment violation being delivered under color of state law.
11 These conditions, unlike soft tissue damage related to back pain, can be readily documented, and would certainly have provided a less impeachable basis for Gamble to be relieved of work. Unlike the back injuries, which must have been plentiful given the regimen of labor on Texas’ plantation prisons, hypertension and cardiac disease would have been rare enough, given the overall youth and relatively short terms of 1970s era prisoners, not to pose much of a risk to the prison system.
12 Which, ironically, was the subject of detailed federal court treatment in Ruiz v. Estelle, 503 F.Supp. 1265 (S.D. Texas 1980), which would reach the Supreme Court in the 1980s.
13 In re Kemmler, 136 U.S. 436 (1890).
14 Estelle, 429 U.S. 97 at 103–4.
15 The Court derived its position largely from the legal nature of incarceration as coercive custody. The same formalism applied to the mental state of “deliberate indifference” before prison authorities could be held accountable for an Eighth Amendment violation. Justice Stevens’ strong dissent in Estelle v. Gamble underscores the Court’s crabbed reading of the right. Justice Stevens objected to the Court’s grant of certiorari, noting that access to adequate health care had been recognized across the circuits without significant departure. The substantive gloss provided by the majority added nothing to this existing understanding and, through its subjective requirement of a culpable intention by state defendants, narrowed it.
If a State elects to impose imprisonment as a punishment for crime, I believe it has an obligation to provide the persons in its custody with a health care system that meets minimal standards of adequacy. As a part of that basic obligation, the State and its agents have an affirmative duty to provide reasonable access to medical care, to provide competent, diligent medical personnel, and to ensure that prescribed care is in fact delivered, for denial of medical care is surely not part of the punishment that civilized nations may impose for crime.


_DeShaney v. Winnebago County Dept. of Social Services_, 489 U.S. 189 (1989). There the Court rejected federal civil rights liability where a social service department had placed a juvenile back at home with his father despite knowing there was a risk to him of violence. It rejected the claim that the State’s “knowledge of [DeShaney’s] danger and expressions of willingness to protect him against that danger established a ‘special relationship’ giving rise to an affirmative constitutional duty to protect.” Citing _Estelle_, it noted that only certain “special relationships” created or assumed by the State give rise to an affirmative duty, enforceable through the Due Process Clause. _DeShaney_, 489 U.S. 189 at 198.


_Coleman_, 912 F.Supp. 1282 at 1299.

_Coleman_, 912 F.Supp. 1282 at 1319.

_Farmer v. Brennan_, 511 U.S. 825 (1994) (holding that “deliberate indifference” requires evidence that the state defendants were aware of the conditions constituting violation of the Eighth Amendment).

_Brown_ 131 S.Ct. 1910 at 1940.

This led Justice Scalia to issue the following response that perhaps unintentionally acknowledges just how broad the harm in California was: “The plaintiffs do not appear to claim—and it would absurd to suggest—that every single one of those prisoners has personally experienced ‘torture or a lingering death,’ ante, at 1928 [internal quotation marks omitted], as a consequence of that bad medical system. Indeed, it is inconceivable that anything more than a small proportion of prisoners in the plaintiff classes have personally received sufficiently atrocious treatment that their Eighth Amendment right was violated.” _Brown_, 131 S.Ct. 1910 at 1957, Scalia, J. dissenting.