Women’s Medical Resources in Prison and the Eighth Amendment

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As stated in the Supreme Court Case *Trop v. Dulles* (1958), “the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society”. Former President Barack Obama, in speaking of the Affordable Care Act, stated that, “healthcare should be a right of every American” (Commission Presidential Debates). This statement recognizes that the right to health care has evolved into a new “standard of decency”, as the term is used in *Trop v. Dulles.* Health care services provided to women in American prisons violate that “standard of decency”, and as such violate the Eighth Amendment.

Within the American prison system, incarcerated women’s health care needs are not properly met. The correction system lacks adequate resources for reproductive health and gynecological services. Women are being imprisoned at much higher percentages for drug-related crimes, yet are being punished disproportionately by the institutionalized denial of medical resources. Women suffer great emotional and bodily injury as a result of this neglect. The courts use legal precedents like “deliberate indifference” that allow actions by correction agencies to go unchecked. The conditions of medical resources for incarcerated women are “cruel and unusual” because of their lack of regulation and untrustworthy distribution. In the following essay I will provide context to the needs of women incarcerated in the American prison system, identify the problems with the current state of health care women prisoners, give a specific case of the dire consequences of poor medical services for females, and argue that the case of *Estelle v. Gamble* shows the inadequacy of medical resources for women in prisons constitutes cruel and unusual punishment in violation of the Eighth Amendment.

I will use this paragraph to give context to the unique circumstances women in the corrections systems face. In 2012, women made up only 9% of the incarcerated population, a substantial increase historically (National Commission on Correctional Health Care). Drug-related offenses are the most likely offenses committed by women with an extremely low percentage of violent crime (National Commission on Correctional Health Care). In 1998, a study by Greenfeld and Snell showed the percent of drug offenses committed by women in federal prison make up 72% of crimes and violent offenses only 7% (Baldwin and Jones, 2002). Incarcerated women enter the correction’s system with a higher rate of reported alcohol and drug abuse, sexually transmitted infection, sexual and physical abuse, and mental illness than men (National Commission on Correctional Health Care). Addiction is the primary influence that lands women in prison. The median age of incarcerated women is under 50 years, demonstrating a clear necessity for specific reproductive health services (Baldwin and Jones, 2002). Reports from the National Commission on Correction Health Care indicate that 56% of women in federal correctional agencies have children, 57% of women prisoners enter prison having experienced physical or sexual abuse, 33% of women prisoners tested positive for an Sexually Transmitted Disease at admission, and 40% of women were under the influence of drugs at the time of their offense (National Commission on Correctional Health Care). These facts paint a picture of a population of citizens in dire need of medical help and the following paragraph will give an idea of the help they are provided in prison.

Prisons’ medical services for women are unregulated, insubstantial, and demoralizing. Correctional agencies have no federal body regulating their actions; instead, correction agencies can choose to be accredited by non-governmental agencies like the American Correctional Agency or the National Commission on Correctional Health Care (National Institute of Corrections). Not all prisons are accredited, allowing for lapses in health services. When health care services are accessible, medical visits and treatments may require a co-pay, a burden to a population facing large rates of poverty (Prison Policy Initiative). A study at the New York State Department of Corrections and Community Supervision (DOCCS) listed issues of inadequate access to and delays in gynecological services, substandard or traumatizing treatment from certain medical providers, lack of health education, and poor quality medical charts. (Kraft-Stolar, 2015) Women also report receiving an insufficient amount of sanitary napkins and severely limited access to contraceptive options (Kraft-Stolar, 2015). Imprisoned women’s access to reproductive health services is so limited as to be dangerous, as seen in the case I will detail next.

In a report by the Correctional Association of New York for the Women in Prison Project written by Kraft-Solar in 2015, a case of a woman named only by her first name, Sara, entails the deadly consequences of poor medical treatment at the New York State Department of Corrections and Community Supervision (DOCCS). Sara found a lump in groin area and waited a week for an appointment with a medical practitioner. After an initial test it took a full month for Sara to receive the results of her biopsy. When those results demonstrated a red flag for cancer her case was not fast-tracked or referred to a senior doctor. It took Sara another nine weeks to see the senior doctor at the prison, another month before she had surgery to remove her tumor, and another month before she began chemotherapy and radiation. Five months after her release Sara died. Whether she died because of lack of care is unclear, but a visiting doctor from the Correctional Association forming a report for the Women in Prison Project sited “That it took six to seven months to get this patient on treatment is shocking” (Kraft-Solar, 2015). It may be said that Sara’s prison sentence into a death sentence due to inadequate health care.

From this specific case I will demonstrate the violation of the Constitution’s Eighth Amendment using the argument that lack of medical access for incarcerated women is “cruel and unusual”. The precedent of *Gregg v. Georgia* establishes the Court’s understanding of cruel and unusual punishment partly as “punishments involving wanton infliction of pain as well as punishments disproportionate to the nature of the crime” (Weatherhead, 2003). As the majority of incarcerated women are facing time for non-violent offenses, the culmination of possibly prevented death due to extended treatment delays, is punishment undue to fit the crime. While not all women subject to a lack of medical resources face the threat of death or serious injury, it is unjust that some must suffer fear and isolation surrounding their bodies at the hands of the government. No matter what the crime, denial of medical rights is disproportional punishment and a violation of basic human rights. The reality is that American prison systems are primarily run by men, and men do not fully understand women’s health care needs. While the gender bias of the system could be argued as also a violation of the Fourteenth Amendment equal protection clause, my point is that it constitutes “wanton infliction of pain”, which is cruel and unusual punishment in violation of the Eighth Amendment.

In the following paragraph I will explain the presence of “wanton infliction of pain” by applying the New York State Department of Correction’s (DOCCS) example of medical neglect to the Supreme Court case *Estelle v. Gamble*. While this case did not involve a woman prisoner, it did set a precedent for understanding the Eighth Amendment in relation to medical treatment in prison. In the case of *Estelle v. Gamble*, J.W. Gamble claimed the Huntington Unit of the Texas prison system subjected him to cruel and unusual punishment after committing him to solitary confinement based on a refusal to work. He received substandard care from a hospital nearby, making seventeen visits without ever receiving an accurate diagnosis. *Estelle v. Gamble* established the precedent of “deliberate indifference” in determining the presence of an Eighth Amendment violation. Deliberate indifference is defined as acting with knowledge of the severity of the medical problem, an understanding of the potential for harm if medical care is denied or delayed, where the plaintiff must show a pattern of suffering existed, actual harm caused by denial of care, and the prevention of access to medical personnel capable of evaluating the need for treatment (Weatherhead, 2003).

In the DOCCS case discussed above, the New York State prison had immediate access to the urgency of the medical case, the severity of the illness, and the potential harm caused by denial of care. The DOCCS case was such blatant miscarriage of justice that even under the too-narrow “deliberate indifference” standard, it is clear that the case violated the Eighth Amendment. The issues I identified earlier, including traumatizing gynecological appointments, poor quality services, and lack of health education, are a part of a larger system of institutionalized abuse and neglect. This report is not a singular incident, but a product of a broken system that does not provide for its citizens, occasionally yielding results as catastrophic as the case at the Department of Corrections and Community Supervision.

In conclusion, the untrustworthy supply of medical services for women in prison is at fundamental odds with the rights guaranteed by the Eighth Amendment of the United States Constitution. The prison system’s neglect of competent reproductive health services, medical knowledge and supplies for women is an unfair additional burden of their criminal sentences. Poor medical provisions are a punishment disproportionate to those affected partly because our current society would argue that medical rights are basic human rights; but also because they have the potential to inflict serious harm or death upon those affected.

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