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PRISON CONDITIONS AND DIMINISHED CAPACITY—A PROPOSED DEFENSE

INTRODUCTION

The defense of diminished capacity is at the forefront of the controversial field of criminal responsibility. Essentially, diminished capacity is the defendant's lack of full responsibility for the criminal acts with which he is charged. It is available to defendants who do not harbor all of the requisite elements of the crime.

Murder in the first degree has been reduced to second degree murder, voluntary manslaughter or involuntary manslaughter on the basis of diminished mental capacity brought on by intoxication, injury, disease, or external pressures. In each situation it is the capacity to harbor premeditation, malice aforethought, or intent to kill that is affected.5

5. CAL. PENAL CODE § 187 (West Supp. 1977) defines murder as the “unlawful killing of a human being, or a fetus, with malice aforethought.” CAL. PENAL CODE § 188 (West 1970), dealing with malice, provides in relevant part: “[M]alice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, . . . when the circumstances attending the killing show an abandoned and malignant heart.” CAL. PENAL CODE § 189 (West Supp. 1977) distinguishes first and second degree murder:

All murder which is perpetrated by means of a destructive device or explosive, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of [enumerated acts], is murder of the first degree; and all other kinds of murders are of the second degree.

CAL. PENAL CODE § 192 (West 1970) provides in relevant part:

Manslaughter is the unlawful killing of a human being, without malice. It is of three kinds:

1. Voluntary—upon a sudden quarrel or heat of passion.
2. Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

See also id. § 20, which requires that in “every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.”

These distinctions can be summarized as follows: The unlawful killing of a human being with malice aforethought is murder. If because of diminished capacity the perpe-
Prison conditions can provide the type of external pressures which would allow the use of such a defense. The conditions that exist inside American prisons have been held to constitute cruel and unusual punishment in violation of the United States Constitution. The general atmosphere of fear, apprehension and degrading conditions all have their effects on the minds of those confined in prison. A defense of diminished capacity due to prison conditions is proposed in order to take these factors into account when dealing with the culpability of a person who has committed a crime while under the influence of these types of stress.

This comment focuses its analysis of the diminished capacity defense on the psychiatric testimony that has been offered in each case. It is the crucial evidence in determining the mental state of the defendant, which in turn establishes his degree of culpability for the crime charged. The psychiatric bases of diminished capacity findings can be provided by evidence of prison conditions as they presently exist. Once this relationship is established, the evidentiary basis for the introduction of prison conditions in a diminished capacity defense is explained and supported.

Ultimately, this comment argues that prison conditions can provide the basis of a diminished capacity defense, and charges against those who commit crimes while subject to incarceration should be susceptible to mitigation.

**THE DIMINISHED CAPACITY DEFENSE IN CALIFORNIA**

Diminished capacity in California is a concept in criminal law used to identify the cognitive ability of the defendant
which, upon a finding of some type of mental impairment, negates the requisite mens rea for specific intent crimes. Upon the negation of elements such as intent to kill and malice aforethought in the crime of homicide, a lesser degree of criminal responsibility is attributed to the actor's conduct for which full criminal liability would otherwise be imposed. The focus here will be on three specific types of mental impairment—those caused by mental disease or defect, unconsciousness, and irresistible impulse.  

Mental Defect or Disease

The traditional approach to criminal responsibility followed the "all-or-nothing" approach of M'Naughten's Case, which imposed on the actor either complete criminal responsibility or a complete lack of criminal responsibility due to insanity. California's interpretation of that rule states: "Legal insanity . . . means a diseased or deranged condition of the mind which makes a person incapable of knowing or understanding the nature and quality of his act, or makes a person incapable of knowing or understanding that his act was wrong."  

In People v. Wells the California Supreme Court rejected the "all-or-nothing" approach for the first time. Wells was charged with assault by a life convict. The trial court had refused to accept medical testimony that Wells was suffering from a "state of tension" with a high sensitivity to external stimuli which would cause him to react abnormally. This testimony was offered not as a defense of insanity but rather to negate the malice aforethought which was required to sustain

7. There are court decisions on diminished capacity that are omitted from this comment. The focus on psychiatric testimony relevant to a finding of diminished capacity precludes the inclusion of other decisions, including those dealing with voluntary intoxication. See generally Cooper, Diminished Capacity, 4 Loy. L.A.L. Rev. 308 (1971); Student Symposium on the Proposed Criminal Code: Insanity, Intoxication and Diminished Capacity Under the Proposed California Criminal Code, 19 U.C.L.A. L. Rev. 550 (1972); Comment, Keeping Wolff from the Door: California's Diminished Capacity Concept, 60 Calif. L. Rev. 1641 (1972); Comment, Diminished Capacity: The Middle Ground of Criminal Responsibility, 15 Santa Clara L. Rev. 911 (1975); Comment, A Punishment Rationale for Diminished Capacity, 18 U.C.L.A. L. Rev. 561 (1971).


9. COMMITTEE ON STANDARD JURY INSTRUCTIONS OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CALIFORNIA JURY INSTRUCTIONS CRIMINAL No. 4.00 (Supp. 1974) [hereinafter cited as CALJIC].


11. Id. at 344, 202 P.2d at 62.
the charge.12

The California Supreme Court held that competent evidence which tended to show that a defendant either possessed or did not possess the specific requisite mental state at the time he committed the overt act was admissible, even if it was not admissible to show legal sanity or insanity.13 The court in so holding opened the way for evidence to be admissible to negate elements of specific intent crimes at the guilt phase of trial.

Ten years later the California Supreme Court reaffirmed Wells in People v. Gorshen.14 With police officers at his side, Gorshen shot his foreman, who had sent him home from work for being intoxicated. Psychiatric evidence was admitted at trial to show that Gorshen suffered from chronic paranoid schizophrenia—a disintegration of mind and personality—which made his ability to work become increasingly important to him as proof of his manhood.15 In the psychiatrist’s opinion, Gorshen acted as an automaton, and the fact that there was no possibility of escape could not stop the train of obsessive thoughts which resulted in the killing.16

12. California’s bifurcated system of trial first subjects a defendant to a trial which determines guilt or innocence. If found guilty, a second trial is held solely to determine the issue of sanity. CAL. PENAL CODE § 1026 (West Supp. 1977). The evidence in question was offered at the guilt stage of Wells’ trial, attempting to negate elements of the assault charge. See id. § 4500.

13. 33 Cal. 2d at 347, 350-51, 202 P.2d at 63, 66. The court declined to reverse the conviction, however, on the basis that all of the evidence, including some of Wells’ own testimony, overwhelmingly proved malice. Id. at 358, 202 P.2d at 70.


15. Id. at 722, 336 P.2d at 495.

16. This type of schizophrenia is characterized by the presence of persecutory or grandiose delusions, often associated with hallucinations. The patient’s attitude is frequently hostile and aggressive, and his behavior tends to be consistent with his delusions. The patient often uses the mechanism of projection, which ascribes to others characteristics he can not accept in himself. AMERICAN PSYCHIATRIC ASS’N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS No. 295.3, at 34 (2d ed. 1968).

17. Id. at 723, 336 P.2d at 496. The psychiatrist, Dr. Bernard Diamond, testified that Gorshen was confronted with

the imminent possibility of complete loss of his sanity. . . . [A]n alternate to total disintegration . . . , it’s possible for . . . an individual of this kind, to develop an obsessive murderous rage, an unappeasable anger. . . . [A]n individual in this state of crisis will do anything to avoid the threatened insanity, and it’s this element which lends strength to his compulsive behavior so that he could think nothing else but to get O’Leary, so he went home and got the gun and shot him; and [as] is usually the case in this type of event, the shooting itself released the danger of [defendant’s complete mental disintegration].

Id. at 722, 336 P.2d at 496 (emphasis added). See generally Diamond, With Malice
The court ruled that psychiatric testimony should be admissible on the question of the defendant’s mental state prior to the killing. The court reasoned that psychiatric testimony would be crucial in determining whether the defendant was incapable of formulating the necessary mental state because of intoxication, injury or disease. However, the court refrained from stating that such evidence could negate the element of malice to reduce the murder charge to manslaughter since this would require the objective standard of provocation to be overcome. Thus, it was established that a plea of not guilty placed the existence of the requisite elements of the crime at issue, allowing the defendant to show that he did not possess a sufficient mental state at the time of its commission. The Wells-Gorshen rule required that the element negated—deliberation, premeditation, or intent to kill—have a causal relationship with the crime committed.

A change of focus began with People v. Wolff, in which the California Supreme Court established an ameliorative doctrine taking into account the quality of the actor’s reflection on his intended act. Wolff was a fifteen-year-old boy who had intended to kill his mother and had premeditated and reflected...
upon that act. While the psychiatric evidence did not negate any of the requisite mental states for murder,23 testimony was given which described the defendant as suffering from a permanent form of schizophrenia, affecting his ability to think conceptually.24 The court stated that the true test of premeditation and deliberation had to include consideration of the extent to which a defendant could maturely and meaningfully reflect upon the gravity of his contemplated acts.25

This formulation was reconfirmed in People v. Goedecke,26 where a youth's murder of his parents was characterized as bizarre and out-of-character. The defense psychiatrists testified that Goedecke was in a dissociative state which caused a lack of consciousness of his action.27 The California Supreme Court concluded that because Goedecke did not have the capacity to maturely and meaningfully reflect upon the gravity of his contemplated act, the requisite elements of the first degree murder charge were negated.28 In these cases and their progeny,29 the undisputed evidence of impaired mental pro-

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23. See note 5 supra.
24. Psychiatric testimony described Wolff as a schizophrenic who, because of his emotional problems and his own conflicts, was unable to prevent himself from acting on whatever ideas or compulsions he may have had, even if he knew the difference between right and wrong. 61 Cal. 2d at 814, 394 P.2d at 970, 40 Cal. Rptr. at 282.
25. Id. at 821, 394 P.2d at 975, 40 Cal. Rptr. at 287. The substantial impairment to thought process was seen by the court to be reflected in a limitation of his understanding. Reflection upon the murder and its consequences with realization of the enormity of the evil involved, appeared to have been materially vague and detached. Id. at 822, 394 P.2d at 976, 40 Cal. Rptr. at 288.
27. Id. at 856, 423 P.2d at 781, 56 Cal. Rptr. at 629. One of the prosecution psychiatrists described dissociation as a state in which one who committed a crime of violence believed someone else was performing the act. He then concluded that dissociative reaction in situations like Goedecke's was very often the product of the crime rather than the cause of it. Id. at 865, 423 P.2d at 786-87, 56 Cal. Rptr. at 634-35.
28. The defendant's lack of emotion confirmed to the court that his actions were completely foreign to his character and that he was not a mentally and emotionally normal individual. His ability to understand and reflect were materially vague and detached, falling short of the minimum essential elements of first degree murder. Id. at 857-58, 423 P.2d at 782, 56 Cal. Rptr. at 630. See CALJIC No. 8.77 (1976), which provides:

[If you find that the defendant's mental capacity was diminished to the extent that you have a reasonable doubt whether he did, maturely and meaningfully, premeditate, deliberate, and reflect upon the gravity of his contemplated act, or form an intent to kill, you can not find him guilty of a willful, deliberate and premeditated murder of the first degree.
cesses rather than evidence of lack of capacity to form the requisite *mens rea* resulted in a reduction in the grade of the offense.

California courts have since made determinations extending the application of the diminished capacity defense. In *People v. Long*, mental defect or mental disease was sufficient in itself to negate intent to kill so as to reduce the charge of murder to one of involuntary manslaughter.30 This decision clarified *People v. Mosher*, where the court found diminished capacity based on intoxication, while stating in dicta that mental defect or disease could also be mitigating factors.31 The *Long* court found no cases where a mental defect or mental disease in the defendant had negated the intent to kill, but saw no difference between that condition and unconsciousness due to involuntary intoxication.32

Malice aforethought has also been deemed susceptible to negation by use of a diminished capacity defense. The California Supreme Court in *People v. Conley*33 enlarged the traditional defense of nonmalicious homicide to include incapacity to harbor malice because of mental defect, mental disease or intoxication, and thereby reduced the charge of homicide to involuntary manslaughter.34 The same standards were thus required for malice as for premeditation and intent to kill.

The net effect of these diminished capacity decisions has

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32. 38 Cal. App. 3d at 686, 113 Cal. Rptr. at 534.

33. 64 Cal. 2d 310, 411 P.2d 911, 49 Cal. Rptr. 815 (1966). Conley was accused of killing two people while under a sustained intoxication. He had stated to friends that he was going to kill the victims, but recalled nothing of the incident at the time of his arrest. Id. at 315, 411 P.2d at 914, 49 Cal. Rptr. at 818.

34. Id. at 322, 411 P.2d at 918, 49 Cal. Rptr. at 822. See note 5 supra for degrees of homicide. The finding here was based on testimony that Conley was in a dissociative state at the time of the killings and because of personality fragmentation it did not function with his normal personality. 64 Cal. 2d at 315, 411 P.2d at 914, 49 Cal. Rptr. at 818. See also People v. Crosier, 41 Cal. App. 3d 712, 116 Cal. Rptr. 467 (1974); People v. Yanikian, 39 Cal. App. 3d 366, 114 Cal. Rptr. 188 (1974); People v. Gibson, 23 Cal. App. 3d 917, 101 Cal. Rptr. 620 (1972).

CALJIC No. 8.41 (1970) provides that there is no malice aforethought if the evidence shows that "due to diminished capacity caused by mental illness, mental defect, or intoxication, the defendant did not have the capacity to attain the mental state constituting malice aforethought, even though the killing be intentional, voluntary, deliberate, premeditated, and unprovoked."
been to allow negation of the elements of a specific intent crime so as to mitigate it to a crime of a lesser degree. Mental defect, mental disease and intoxication all serve this purpose, with the requisite mens rea being either negated or substantially affected due to a lack of mature and meaningful reflection on its consequences. If mental disease or defect can not be proved, there are two other categories of diminished capacity where complete criminal responsibility is not imposed.

**Unconsciousness**

Unconsciousness may solely affect an individual's state of mind; it need not reach the physical dimensions commonly associated with the term. It can exist where there is a physical act but no consciousness of that act. In such a case it is a complete defense to a charge of criminal homicide. The unconsciousness defense differs from diminished capacity in that the latter provides only a partial defense by negating the requisite mental state for the particular crime whereas unconsciousness may negate the capacity to commit any crime at all.

In *People v. Newton* the defendant was shot in the stomach and raised the defense of unconsciousness to the murder of a police officer that ensued. He remembered "crawling . . . a moving sensation," but nothing else until he found himself at the entrance of a hospital with no knowledge of how he arrived there. A psychiatrist testified at trial that Newton suffered a profound reflex shock reaction from the gunshot wound, and that it was "not at all uncommon for a person shot in the abdomen to lose consciousness and [suffer a] reflex shock condition for short periods of time."

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36. 8 Cal. App. 3d at 377, 87 Cal. Rptr. at 406. See *Cal. Penal Code* § 26 (West 1970). Some difficulty may occur however. See *CalJIC* No. 4.30 (1970), which provides: "Where a person commits an act without being conscious thereof, such act is not criminal even though, if committed by a person who was conscious, it would be a crime." This instruction implies that it is the volitional element which precludes unconsciousness arising from voluntary intoxication from being a complete defense; however, any such volitional element is lacking in the case of diminished capacity arising from mental defect or disease, which would only be a partial defense. See, e.g., *People v. Ford*, 65 Cal. 2d 41, 416 P.2d 132, 52 Cal. Rptr. 228, cert. denied, 385 U.S. 1018 (1966) (unconsciousness due to voluntary intoxication).


38. Id. at 373, 87 Cal. Rptr. at 402.

39. Id. at 373, 87 Cal. Rptr. at 402-03. The psychiatrist was Dr. Bernard Dia-
The court of appeal held that where it was not self-induced, as by voluntary intoxication or the equivalent, unconsciousness was a complete defense to a charge of criminal homicide.\(^4\) It is noteworthy, though, that the court did not adequately clarify the difference between the defenses of unconsciousness and diminished capacity due to mental disease or defect which was sufficient to negate intent to kill.

Three years later, it was suggested in *People v. Heffington* that unconsciousness "included not only states of coma or immobility, but also conditions in which the subject acted without awareness."\(^4\) That decision turned on the defendant's recollection of what occurred, which would indicate awareness so as to preclude unconsciousness. Detailed recall of the circumstances of the alleged crime would indicate that the defendant's mental impairment did not reach a level that would negate intent to kill.\(^4\) The court in *Newton* stated that "the defenses of diminished capacity and unconsciousness were [entirely separate] and neither incompatible nor mutually exclusive,"\(^4\) which indicated that both could have been raised at trial with a subsequent determination on the basis of the evidence.

As has been shown, the complete defense of unconsciousness can exist independently of or compatibly with one of diminished capacity. If a complete defense of unconsciousness can not be proved, a partial defense of diminished capacity based on unconsciousness can still be used to reduce the actor's criminal responsibility, provided, however, that there is a sufficient level of unawareness by the defendant of his actions.

**Irresistible Impulse**

Irresistible impulse has never been a complete defense to a crime in California,\(^4\) but it is relevant to negate a mental state essential to a crime. In this way irresistible impulse serves


\(^{41}\) 32 Cal. App. 3d 1, 9, 107 Cal. Rptr. 859, 865 (1973).


\(^{43}\) 8 Cal. App. 3d at 379, 87 Cal. Rptr. at 407.

\(^{44}\) *People v. Nash*, 52 Cal. 2d 36, 45, 338 P.2d 416, 421 (1959); *People v. Hubert*, 119 Cal. 216, 223, 51 P. 329, 331 (1897); *People v. Hoin*, 62 Cal. 120, 122-23 (1882).
as a type of diminished capacity defense, imposing a lesser degree of criminal responsibility on the actor.

In *People v. Cantrell* the defendant killed a young boy after sexually assaulting him; he claimed he had no memory of the act until the next day.\(^4\) Psychiatric testimony was introduced to show that Cantrell lacked the ability to form the intent to kill.\(^4\) The psychiatrists agreed that Cantrell's strangling of the victim was a compulsive reaction to the victim's vigorous and vocal resistance.\(^4\) The California Supreme Court held that a defendant who raised the defense of diminished capacity at the guilt phase of the trial had to be permitted to show by competent evidence that his act was the product of an irresistible impulse and that the irresistible impulse was due to mental disease.\(^4\) The court also held admissible evidence that the defendant killed on an irresistible impulse arising from a mental defect. The court reasoned this evidence was central to the twin issues of intent to kill and malice aforethought.\(^4\) In this way a combination of mental and externally imposed factors was deemed relevant in mitigating murder to manslaughter on the basis of an irresistible impulse.\(^4\)

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45. 8 Cal. 3d 672, 504 P.2d 1256, 105 Cal. Rptr. 792 (1973).
46. *Id.* at 679, 504 P.2d at 1260, 105 Cal. Rptr. at 796. One psychiatrist testified that at the time of the choking the defendant was trying to turn off some noise (the boy’s screaming), not trying to take a human life. Cantrell did not have sufficient mental capacity to reflect upon the gravity of the contemplated act at that moment, and his design and purpose was not specifically to take a life. *Id.* at 687 n.3, 504 P.2d at 1265-66 n.3, 105 Cal. Rptr. at 801-02 n.3.
47. Another psychiatrist diagnosed Cantrell as being a “situational homosexual” with a schizoid personality. He explained Cantrell’s violent behavior by saying that there was a point at which something happened, namely the boy’s screaming, which set off a chain reaction. Cantrell then stopped responding to the boy and his outward surroundings and began responding to his “inner world;” his violence was a result of the reaction to his own fear of going crazy. 8 Cal. 3d at 687 n.3, 504 P.2d at 1265-66 n.3, 105 Cal. Rptr. at 801-02 n.3.
48. *Id.* at 685, 504 P.2d at 1264, 105 Cal. Rptr. at 800. See note 12 and accompanying text supra.
49. 8 Cal. 3d at 686, 504 P.2d at 1265, 105 Cal. Rptr. at 801.
50. It should be noted, however, that the court affirmed Cantrell’s first degree murder conviction because the elements of premeditation and malice aforethought were eliminated by the felony murder doctrine, which merely required a showing of specific intent to commit the particular felony in order to support a finding of first degree murder. *Id.* at 688, 504 P.2d at 1266-67, 105 Cal. Rptr. at 803-04. See also *People v. Coefield*, 37 Cal. 2d 865, 868-69, 236 P.2d 570, 572-73 (1951). CALJIC No. 8.78 (Supp. 1976) summarizes the holding of this decision:

In determining if defendant had diminished capacity, if there was evidence that defendant’s act was the product of an irresistible impulse, you must consider whether or not such irresistible impulse, if any, was due to mental illness, mental disease or mental defect so as to render defen-
As had been shown, negating the specific state of mind of a defendant can be accomplished by a number of different methods, all under the theory of diminished capacity. Of the several variants of diminished capacity, irresistible impulse seems most applicable to the prison context. While prison conditions could provide a basis for mental disease sufficient to meet the standards for a Wells-Gorshen type of diminished capacity,\(^{51}\) a situation where a prisoner is acting spontaneously under external stress would tend to be classified as due to an irresistible impulse, resulting in a reduction of criminal responsibility for the act committed under that analysis.

After an examination of the conditions that exist in prisons, this comment applies the diminished capacity doctrine to those conditions in order to show that crimes committed under the stress of penal incarceration should be subject to mitigation.

**PRISON CONDITIONS IN THE UNITED STATES**

"San Quentin and Folsom are disgraceful dungeons. Vacaville and Soledad are wholly inadequate. The physical facilities of these institutions are incompatible with fundamental and minimal principles of decency and humanity."\(^{52}\)

Historically, federal courts have been reluctant to interfere with the administrative and political processes that underlie the correctional system. In recent years, however, decisions indicate that federal courts are abandoning their implicit "hands-off policy" because of the deteriorating conditions in American prisons. One of the tests for determining whether or not prison conditions constitute cruel and unusual punishment in violation of the eighth amendment\(^{53}\) is whether or not those conditions are of such character as to shock the general conscience.\(^{54}\) Both general prison conditions\(^{55}\) and specific circum-

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51. See text accompanying notes 103-113 infra.
52. **State Bar of California Committee on Criminal Justice, Report & Recommendations on Sentencing & Prison Reform** 6 (1975).
53. U.S. Const. amend. VIII provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
stances of solitary confinement have met this test and have led to findings of cruel and unusual punishment.

These conditions supply external pressures similar to those found in diminished capacity cases so as to allow a mitigation of criminal responsibility for the perpetrators of crime in the prison context. A negation of premeditation, deliberation, or intent because of the psychological effects of penal incarceration serves as the basis for this defense of diminished capacity.

**Prison Life as Cruel and Unusual**

"Prison is a closed, tightly controlled environment for those who have violated the criminal law and who have been lawfully incarcerated for doing so." It is an environment where guards and inmates coexist at close quarters, where tension between them is unremitting, and where frustration, resentment and despair are commonplace. It is in this context that the mental capacity for criminal acts committed by those confined in prison must be evaluated. Tracing the use of the cruel and unusual clause of the eighth amendment by federal courts to force prison reform highlights both the conditions themselves and society's growing awareness of these conditions.


58. Id. at 562. Not only do prisoners feel that guards deliberately foment racial conflict, but some prisoners report that guards actually help supply arms to groups of prisoners for racial fights. E. Wright, The Politics of Punishment 110 (1973) [hereinafter cited as Wright].

59. 418 U.S. at 555-56. A prisoner's justifiable escape from prison has already been recognized by the California courts in People v. Lovercamp, 43 Cal. App. 3d 823, 118 Cal. Rptr. 110 (1974). The court there recognized that if the conditions of a prisoner's incarceration were such that:

1. he [or she] is faced with a specific threat of death, forcible sexual
Early United States Supreme Court decisions interpreted the eighth amendment as prohibiting only inhuman and barbarous punishments. The Court then expanded its interpretation of the cruel and unusual punishment clause, observing that the eighth amendment "[was] not fastened to the obsolete but [acquired] meaning as public opinion [became] enlightened by humane justice." Trop v. Dulles further expanded the definition of cruel and unusual to include mental cruelty, with Chief Justice Warren stating that in determining whether or not a method of punishment was cruel and unusual a court had to look to "the evolving standards of decency that mark the progress of a maturing society."

While the above decisions defined adequate criteria for determining if a punishment was cruel and unusual, it was not until 1966, when a district court in California held that conditions of solitary confinement at the California Correctional Training Facility at Soledad constituted cruel and unusual punishment, that federal courts began to review prison conditions. In Jordan v. Fitzharris, the plaintiff was confined to an isolation cell without furniture, adequate light or ventilation, attack or substantial bodily injury in the immediate future, (2) there is no time for complaint or such action has proved futile in the past, (3) there is no time or opportunity to resort to the courts, and (4) there is no force or violence used in the escape, then an escape is deemed necessary and justifiable if the prisoner immediately reports to the proper authorities when he has attained a position of safety from the immediate threat.

Id. at 831-32, 118 Cal. Rptr. at 115. The same logic used to justify the escape can be used to mitigate criminal charges under a diminished capacity defense because of prison conditions. See Gardner, The Defense of Necessity and the Right to Escape from Prison—A Step Towards Incarceration Free from Sexual Assault, 49 S. Cal. L. Rev. 110 (1975); Note, A Reexamination of Justifiable Escape, 2 N. Eng. J. on Prison L. 205 (1976).


61. Weems v. United States, 217 U.S. 349, 378 (1910). A punishment of 15 years in prison was given to a United States government official in the Philippine Islands because of falsification of a public document. This was declared cruel and unusual punishment by the United States Supreme Court as being disproportionate to the gravity of the crime committed.

62. 356 U.S. 86 (1958). The United States Supreme Court declared unconstitutional a law which provided that a citizen shall lose his nationality by deserting the military or naval forces of the United States in time of war. This divestiture of citizenship was held to violate the eighth amendment because it was penal in nature and prescribed a cruel and unusual punishment.

63. Id. at 101.

or personal hygiene articles. The district court explicitly rejected the hands-off policy and held that confinement under such conditions constituted cruel and unusual punishment. The responsible prison authorities were charged with tolerating deplorable and inhuman prison conditions. These lamentable conditions moved the court to intervene and restore the living conditions to a level demanded by the Constitution.

In finding a violation of the eighth amendment the court noted two undesirable side-effects generated by degrading prison conditions: inmate hostility towards prison officials, which might blossom into open revolt, and violent and bizarre behavior on the part of individual inmates.

Not only have California prison conditions run afoul of constitutional standards, but the entire Arkansas prison system has been held to be violative of the eighth amendment. An Arkansas district court in Holt v. Sarver scrutinized four areas of the prison system: living conditions, solitary confinement, special privileges for inmates, and rehabilitation procedures.

65. The cell was solid concrete, six feet by eight feet, almost totally dark, and entirely devoid of furnishings except for a toilet which could only be flushed by someone outside the cell. During Jordan's eleven-day period of incarceration the cell was not cleaned; it was not only covered with his bodily wastes but also that of its previous occupants. He was given no opportunity to wash himself and was forced to handle and eat his food without even the semblance of cleanliness or any provision for sanitary conditions. Jordan was kept totally naked in the unheated cell with only a stiff canvas mat to sleep on. His repeated requests for medical assistance were effectively ignored. Id. at 676-77.

66. Id. at 680. The district court stated that persons confined in state prisons were within the protection of the Civil Rights Act of 1866, which created a cause of action for deprivations of constitutional rights against those who acted under color of state law. 42 U.S.C. § 1983 (1974) provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.


The court found that the conditions of confinement in the aggregate were inherently dangerous and that the living conditions were degrading and disgusting.\textsuperscript{69} In the court’s estimation, mere confinement within a given institution could amount to a cruel and unusual punishment where the confinement was characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people even though particular inmates were never subjected to disciplinary action.\textsuperscript{70} The Arkansas convict, subjected to an environment filled with fear and lacking legitimate rewards, quickly loses the capacity to rehabilitate himself and proceeds to develop deep feelings of resentment towards the society which confined him.\textsuperscript{71} This consideration of not only the internal conditions but also their effects upon inmates who would one day be returned to society set the stage for the many cases to follow, declaring both the general conditions of incarceration and the specific conditions of solitary confinement to constitute cruel and unusual punishment.

Following the trail pioneered by the Arkansas district court in \textit{Holt}, courts in both Mississippi\textsuperscript{72} and Alabama\textsuperscript{73} held prison conditions within their borders as constituting cruel and unusual punishment for their inhabitants. In Mississippi, a district court found the conditions at Parchman State Penitentiary unfit for human habitation.\textsuperscript{74} In the court’s view the conditions at Parchman deprived the prisoners of their constitutional right to an adequate existence.\textsuperscript{75} The court reasoned that an adequate existence should include decent food prepared


\textsuperscript{70} 309 F. Supp. at 372-73. The conditions included: trusty guards who abused their position; a barracks life where fear was constant because of the proliferation of weapons and the frequency of homosexual attacks; overcrowded and unsanitary isolation cells; and a lack of an effective rehabilitation program. While each of these factors were not per se determinative of the eighth amendment issue, when taken in the aggregate they resulted in a finding of cruel and unusual conditions.

\textsuperscript{71} Id. at 379. See also \textit{Spain v. Procunier}, 408 F. Supp. 534, 544-45 (1976).

\textsuperscript{72} Gates v. Collier, 349 F. Supp. 881 (N.D. Miss. 1972), aff'd, 501 F.2d 1291 (5th Cir. 1974).

\textsuperscript{73} Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976).

\textsuperscript{74} 349 F. Supp. at 887. This finding was based on inadequate waste disposal facilities presenting an immediate health hazard; inadequate water supply facilities; buildings in a “deplorable state of maintenance and repair” with inadequate electrical wiring, heating and bathroom facilities; and inadequate protection of inmates. Id.

\textsuperscript{75} Id. at 894. See also Hirschkop & Millemann, \textit{The Unconstitutionality of Prison Life}, 55 VA. L. REV. 795 (1969); Lipman, \textit{Mississippi's Prison Experience}, 45 Miss. L.J. 685 (1974).
under sanitary conditions, proper regard by prison authorities for the inmates physical health, and suitable medical services under state law. The court found the absence of these essential features not only cruel and unusual but also detrimental to the rehabilitation process.

A district court in Alabama held that the state's penal institutions were all in violation of the eighth amendment, emphasizing the overcrowded, unsanitary living conditions and the violent atmosphere predominant throughout the system. In 

Pugh v. Locke, a United States public health officer examined a prison's facilities and found them entirely unfit under prevailing public health standards. In light of his examination the officer recommended the facilities be closed as they represented an immediate threat to the health of the inmates. 

"[T]he rampant violence and jungle atmosphere" of the prisons was reflected by the fact "that most prisoners carried some form of homemade or contraband weapon, which was considered necessary for self-protection." Guards were found to rarely enter the cell blocks and dormitories, especially at night when their presence was most needed. Guards who did enter cell blocks to locate weapons did not search completely enough to substantially check the proliferation of weapons. Finally, the guards were unable to prevent outbreaks of violence and were unable to control outbreaks which did take place. The court concluded the prison environment thwarted any attempts at inmate rehabilitation and materially enhanced inmate dehabilitation.

Even though conditions of confinement of the general prison population have been held violative of the eighth amendment in relatively few instances, courts have been consistent, starting with Jordan, in finding conditions in solitary

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76. 406 F. Supp. at 323-24. The unsanitary living conditions were due to insect infestation; overcrowding; inadequate plumbing, heating, ventilation and electrical systems; inadequate facilities for personal hygiene; and inadequate refuse and waste disposal. Id.

77. Id. at 325. See also Holt v. Sarver, 309 F. Supp. at 376-77. A prisoner said of San Quentin Prison: "There is more tension here than anywhere else I have ever been. You never know when you are going to be hit. The only time you can relax is when you are in your cell and the door is locked." Wright, supra note 55, at 150.

78. 406 F. Supp. at 325. See also Bergesen & Hoerger, Judicial Misconceptions and the "Hidden Agenda" in Prisoners' Rights Litigation, 14 SANTA CLARA LAW. 747, 769-70 (1974) [hereinafter cited as Bergesen & Hoerger].


80. See text accompanying notes 67-71 supra.
confinement cells as constituting cruel and unusual punish-
ment. A number of cases have held punitive incarceration in
the segregation cell to be cruel and unusual even though the
conditions under which the general prison population lived
were not.

Illustrative of this trend was Wright v. McMann in which
a New York federal court found the conditions in the isolation
cells at Clinton State Prison in Dannemora, New York, uncon-
stitutional. Prominent reasons underlying the court's finding
included enforced nudity in cold cells without furniture or per-
sonal hygiene articles which made the cells "dirty, filthy and
unsanitary." In continuing, the court opined that if the condi-
tions as alleged by Wright did in fact exist, they "could only
serve to destroy completely the spirit and undermine the sanity
of the prisoner. The eighth amendment forbids treatment so
foul, so inhuman and so violative of basic concepts of de-
cency."

Several years later, another district court in New York
similarly found the conditions of solitary confinement at Green
Haven Prison cruel and unusual. The court in a strong opinion
argued that "subjecting a prisoner to the demonstrated risk of
the loss of his sanity as punishment for any offense in prison
was plainly cruel and unusual punishment as judged by the
present standards of decency." The court further held that
the conditions of Sostre's confinement were "physically harsh,
destructive of morale, dehumanizing [by being] needlessly
degrading, and dangerous to the maintenance of sanity when
continued for more than a short period of time . . . ." This
focus on the psychological effects of long-term isolation was the
important factor that arose out of the reversal of this case in
Sostre v. McGinnis. The Second Circuit declared that segre-

81. 257 F. Supp. 739 (N.D.N.Y. 1966), rev'd, 387 F.2d 519 (2d Cir. 1967). See also
82. 387 F.2d at 521. See also Hancock v. Avery, 301 F. Supp. 786 (M.D. Tenn.
1969), aff'd, 452 F.2d 1214 (6th Cir. 1972), where cruel and unusual punishment was
found due to incarceration in a five by eight foot concrete cell that lacked adequate
light, heat, ventilation and sanitary facilities.
83. 387 F.2d at 526.
Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971), cert. denied sub nom. Oswald v.
Sostre, 405 U.S. 978 (1972).
85. 312 F. Supp. at 871.
86. Id. at 868. See also Bergesen & Hoerger, supra note 78, at 773-74.
87. 442 F.2d 178, 190 (2d Cir. 1971).
gated confinement in solitary or maximum security was not per-
se cruel and unusual punishment in violation of the eighth
amendment, and that Sostre's segregation, while severe, was
not barbarous or shocking to the conscience. However, this
court's inquiry into the psychological effects of solitary confine-
ment gave further support to the mental cruelty aspect of cruel
and unusual punishment as set forth in Trop v. Dulles. Such
a direction indicates that the courts may now be receptive to a
diminished capacity defense as proposed here based on nega-
tion of elements due to the mental effects of penal incarcera-
tion.

Spain v. Procuinier is the most recent case in the mold
first set by the courts in Jordan. In Spain, the court was con-
fronted with the claims of six inmates of the Adjustment Cen-
ter at the California State Prison at San Quentin who claimed
the conditions of solitary confinement were unconstitutional.
The cells of the Adjustment Center were described as being six
feet by eight feet, with a concrete floor, a steel sleeping slab
extending from the wall, a sink, and a seatless toilet. Conditions in the Adjustment Center ranged from extreme
to total sensory deprivation, prisoners being confined in their
cells twenty-four hours a day. During family or attorney vis-
its, inmates were subjected to manacles and chains, which the
court found painful, unnecessary, and counterproductive in
that they tended to cause humiliation, rage and resentment.

In its opinion the court found that tension between officers
and inmates in the Adjustment Center controlled emotional
responses and manifested itself as hostility, fear and resent-
ment. One commentator has warned that the placement of

88. See, e.g., Burns v. Swenson, 430 F.2d 771 (8th Cir. 1970); Ford v. Board of
examination of the psychological effects of solitary confinement.
90. 408 F. Supp. 534 (N.D. Cal. 1976). This was a federal civil rights action under
91. Id. at 542. See also K. Menninger, The Crime of Punishment 72-73 (1968).
92. Hollander, The "Adjustment Center": California's Prisons Within Prisons,
1 Black L.J. 152, 153 (1971) [hereinafter cited as Hollander].
An inmate is supposed to be let out for exercise each day, but frequently he is not
allowed out for several days at a time. Inmates are never permitted any yard or outdoor
privileges or exercise whatsoever. 408 F. Supp. at 543.
93. 408 F. Supp. at 544.
94. Id. at 545 n.15.
95. Id. at 543. See also Pugh v. Locke, 406 F. Supp. 318, 329-30 (1976); Hol-
lander, supra note 92, at 154. See generally S. Cohen & L. Taylor, Psychological
Survival: The Experience of Long Term Imprisonment 60-84 (1972).
"an inmate in the Adjustment Center cannot be considered a mere regulation for safe custody of prisoners, but one which can cause mental illness, suicidal tendencies, and drastically interfere with the possibility of rehabilitation." The court concluded that the continuous segregation of plaintiffs, the denial of fresh air and regular outdoor exercise, the unwarranted use of tear gas to remove plaintiffs from their cells, and the abhorrent and shocking use of excessive restraints for all out-of-cell movements constituted cruel and unusual punishment in violation of the eighth and fourteenth amendments to the Constitution.

These decisions demonstrate the dehabilitative conditions of prisons. The evidentiary findings of the federal courts in these cases and the legal conclusion that they violate the eighth amendment emphasize the character of the external stresses that prisoners must endure. Against this background, an examination of the psychological effects of prison confinement, particularly solitary confinement, highlights the applicability of diminished capacity to crimes committed in prison.

**The Psychological Effects of Penal Incarceration**

Any type of prolonged incarceration is capable of producing grave psychological effects. These effects are most accurately illustrated by studies of mental deterioration produced by solitary confinement.

Part of the rationale for declaring the conditions of solitary confinement to be cruel and unusual is the distinct deterioration of psychological functioning that is noted in the inmates. The two major reasons usually given for this are the sensory deprivation induced by such an environment and the involuntary aspects of isolation.

Sensory deprivation can cause a normal adult to begin experiencing psychotic-like symptoms and push a troubled person in the direction of serious emotional illness. An inmate placed in solitary confinement loses all contact with sensory stimuli other than the constant and generally unpleasant sti-

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96. Hollander, *supra* note 92, at 155. A former prison psychiatrist has stated of the Adjustment Centers: "I don't think a place more destructive of a man's mental health could be devised if we tried." *Id.* at 154.

97. 408 F. Supp. at 545.

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muli of his surroundings. Psychologists have observed that such sensory isolation produces declines in mental functioning and the most extreme forms of psychopathology such as depersonalization, hallucinations and delusions.99 This has been explained by the fact that in addition to giving specific information, senses have a non-specific function of maintaining the normal organization of the brain. If the use of the sensory systems is severely limited for any length of time, this normal organization begins to falter. In addition, the uniform regulated atmosphere of solitary confinement deprives the inmate of the stimuli needed to maintain thinking and perceiving skills. The structural setting of solitary confinement also has an adverse effect on the inmate's ability to interact with other people and to creatively respond to the outside environment.100 Prolonged exposure to a monotonous environment impairs thinking, evokes childish emotional responses, disturbs visual perception, changes brain wave patterns, and causes hallucinations. Without a changing sensory environment, the brain ceases to function adequately, leading to abnormalities of behavior.101 Persons living in solitary confinement report symptoms such as extreme boredom, restlessness, irritability, anger, unrealistic fears and anxieties, and depression.102 It is these behavioral abnormalities which act to negate the requisite mens rea of crimes committed while incarcerated and which provide the basis of the diminished capacity defense based on prison conditions.

The destructive aspects of involuntary isolation significantly hinder the rehabilitation process.103 The rigid organization of the prisoner's life divests him of the opportunity to

99. See, e.g., SOLOMON, SENSORY DEPRIVATION (1961); Heron, The Pathology of Boredom, 196 SCIENTIFIC AMERICAN 52 (Jan. 1957) [hereinafter cited as Heron].
101. See Heron, supra note 99, at 56. Prisoners of war returning from North Vietnam reported that "the isolation and monotony of prison surpasses in psychological horror and human degradation all the beatings and rats and diarrhea." Hollander, supra note 92, at 154-55.
make meaningful choices and this divestment serves to erode the prisoner's self-respect which can result in severe emotional problems. The emotional problems, manifested by suicidal or homicidal tendencies, represent the inmate's desire to affirm the fact of his existence to others. A failure to do so would result in withdrawal, which may lead to a psychotic-like state. 104

An experiment conducted under simulated prison conditions is quite illustrative of the debilitative effects of punitive isolation. The coercive environment was shown to cause deterioration of the subject-prisoners' psychological functioning at both social and interpersonal levels. 105 The negative anti-social reactions observed were not viewed as the product of an environment created by combining a collection of deviant personalities, but rather as the result of an intrinsically pathological situation which distorted and rechanneled behavior in essentially normal individuals. 106 The "prisoners" exhibited various reactions to their confinement. Some suffered severe emotional disturbances. Others endeavored to be model "prisoners" by obeying every order. Still others openly rebelled against the repressive situation by using both direct force and shrewd maneuvering, designed to foemat unrest among fellow inmates. "The breakdown in prison cohesion was the start of social disintegration which gave rise not only to feelings of isolation but deprecation of other prisoners as well." 107 The loss of personal identity, the arbitrary control by the "guards," and the "prisoners" dependency and emasculation all combined to re-


The loss of freedom means that the prisoner is divested of responsibility for his life—everything is done for him, all decisions of importance are outside his control. He is utterly powerless, subject to the arbitrary will of others. The prisoner is constantly reminded of his total lack of freedom, and the awareness of his subjugation becomes the central motif in his life. WRIGHT, supra note 58, at 150.


106. Haney, supra note 105, at 90. The experiment was conducted by arbitrarily separating the subjects into "guards" and "prisoners." After a short period of time the "guards" seemed to derive pleasure from insulting, threatening, humiliating and dehumanizing their peers. The typical "prisoner" syndrome was one of passivity, dependency, depression, helplessness and self-deprecation. The experiment was terminated after only six days due to the severity of the subjects' reactions. Id. at 81-89.

107. Id. at 95.
result in the pathological prisoner syndrome brought on by their confinement.108

These resultant psychological effects of prison incarceration, while severe enough to warrant a finding of cruel and unusual punishment, have not yet been applied to the spectre of criminal responsibility. However, the same type of analysis can be used to provide a diminished capacity defense for crimes committed during incarceration while under the influence of severe emotional stress similar to that found in earlier diminished capacity cases.

THE DEFENSE

Findings of diminished capacity have historically been based on evidence of injury, disease, intoxication, or external pressures affecting a person's reasoning ability.109 The existence of deplorable conditions inside prison can supply the external pressures or produce the mental defect or disease upon which mitigation of criminal responsibility can be found, based on a specific psychiatric disorder.

The Psychiatric Basis

There is a mental disorder recognized by the American Psychiatric Association known as a transient situational disturbance,110 which will provide an example of the medical basis for a finding of diminished capacity caused by prison conditions. This classification encompasses "transient disorders of any severity that occur in individuals without apparent underlying mental disorders and which represent an acute reaction to overwhelming environmental stress."111

Upon a showing that the conditions inside prison are so repressive to the individual, a psychiatrist can draw the conclusion that these factors amount to such a degree of environmental stress as to bring about a transient situational disturbance.112 This disorder is also more likely to appear in persons

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108. See id. at 95-96.
109. See cases cited in notes 1-4 supra.
110. AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS No. 307, at 48 (2d ed. 1968) [hereinafter cited as DSM II].
111. Id.
112. See E. GOFFMAN, ASYLUMS (1968), where Goffman comments on the prisoner's adaptation to the repressive atmosphere through the mechanism of "situational withdrawal." The inmate withdraws apparent attention from everything except events immediately around his body and sees these in a perspective not employed by others present. Id. at 61.
DIMINISHED CAPACITY

suffering from an epileptoid personality disorder, otherwise known as an explosive personality. Such persons are generally considered excitable, aggressive and over-responsive to environmental pressures. As this description fits many of those incarcerated in prison, it appears that the concurrence of these two disorders could result in violent behavior over which the actor would have little or no control. If the patient suffering from a transient situational disturbance has a strong adaptive ability his symptoms would usually recede as the stress diminishes. This would account for the relatively normal behavior of the inmate after removal from such a repressive atmosphere.

It is this author's opinion that the acute reactions to overwhelming environmental stress are similar to the psychiatric bases upon which diminished capacity cases have been decided. By drawing parallels between those cases and the psychological effects of penal incarceration, a persuasive argument can be made for the extension of the diminished capacity defense.

Mental defect or disease. The earliest decision involving the use of the diminished capacity defense was People v. Wells, in which the defendant was confined in prison at the time he assaulted a guard. Although their testimony was not admitted by the trial judge, psychiatrists described Wells as suffering from a state of tension under which he was highly sensitive to external stimuli which caused him to react abnormally. It is noteworthy that the United States Supreme Court has recently held that such a state of tension permeates the prison context where the inherent conflicts between guards and prisoners make interpersonal relationships of any kind a source of fear and distrust. With the prevalence of such conditions, a high sensitivity to external stimuli could easily result in acute

113. DSM II, supra note 110, No. 301.3, at 42. This behavior pattern is characterized by gross outbursts of rage or of verbal or physical aggressiveness, which is strikingly different from the patient's usual behavior patterns.

114. Id.


reactions to the overwhelming environmental stress—in effect, a transient situational disturbance.

The mental defect recognized in *Gorshen* as the basis of the diminished capacity finding can also be analogized to the prison situation. With police officers at his side, Gorshen shot his foreman. Testimony was admitted to show that his act was a compulsive reaction to an inner unappeasable anger, and that the resulting behavior was a mental release from threatened insanity. It is proposed that if the conditions of a prisoner's incarceration created a state of impending mental disintegration from overwhelming environmental stress, a resulting criminal act should also be viewed as an uncontrollable reaction for which the actor does not have full responsibility. An inmate's confinement and lack of control over his own life have been found to generate rage, personal disorganization, and a constant sense of panic. The fact that an inmate has no possibility of escape could not stop a train of obsessive thoughts which would result in an outbreak of violence serving to release the danger of mental disintegration. Compulsive behavior to avoid threatened insanity should be recognized as the cause of much of the violence in prison, and mitigation of crimes by the use of the diminished capacity defense should be extended to encompass such situations.

The test of criminal responsibility in *Wolff* and *Goedecke* was the extent of mature and meaningful reflection upon the gravity of a contemplated act. It can be argued that criminal acts in prison which are the product of a moment's opportunity are not subject to this mature and meaningful reflection. The nature of the transient situational disturbance is such that outbursts of rage and aggressiveness occur without notice or time for formation of the requisite mental state for legal culpability. In such cases the defense of diminished capacity based on prison conditions should be applicable.

120. See text accompanying notes 103-104 supra. See also Stender, Violence and Lawlessness at Soledad Prison, in Wright, supra note 58, at 229.
121. See People v. Gorshen, 51 Cal. 2d 716, 723, 336 P.2d 492, 496 (1959), where the defendant's obsessive thoughts of killing his victim were not obviated by the presence of police officers at his side.
Unconsciousness. A similar finding should be made on an analysis of the determination of unconsciousness in Newton.\textsuperscript{124} The defendant suffered a reflex shock reaction from a stomach wound which caused him to act while not conscious of his actions. With the rampant jungle atmosphere and wide proliferation of weapons inside prison,\textsuperscript{125} it is not uncommon for prisoners to be stabbed or wounded and then act in retaliation against their aggressors or innocent third parties. In such cases the actor may be suffering from a similar reflex shock reaction, which, if it occurred outside of prison, would be a complete defense to a charge of criminal homicide. This should be no less of a defense simply because the actor was incarcerated at the time the act was committed—the conditions of incarceration make it even more likely for such “unconsciousness” to occur.

Irresistible Impulse. Cantrell\textsuperscript{126} presented the proposition of mitigation of a criminal homicide charge through irresistible impulse. Cantrell was diagnosed as being a “situational homosexual” whose act of strangulation was a compulsive reaction to external stress. He had no control over his actions, which were aimed at turning off the external stimulus to prevent his going crazy. His actions were similar to the acute reaction to overwhelming environmental stress which characterizes the transient situational disturbance. A prisoner’s response to the repressive conditions of his incarceration could be such that he would have to act to prevent the loss of his own sanity. Violence can be a highly individualistic form of rebellion by a prisoner to defend his dignity.\textsuperscript{127} The resultant mental disorder, through which the actor loses control over his actions, should allow mitigation of the committed act as a compulsive reaction to externally imposed stress. The transient nature of the disturbance lends more weight to the argument for mitigation, since relatively normal behavior results after the repressive stimulus has been removed.

The factors historically used to mitigate criminal acts through diminished capacity have their parallels in the prison


\textsuperscript{126} People v. Cantrell, 8 Cal. 3d 672, 504 P.2d 1256, 105 Cal. Rptr. 792 (1973). See text accompanying notes 45-50 supra.

\textsuperscript{127} Stender, Violence and Lawlessness at Soledad Prison, in Wright, supra note 58, at 230.
context. It is urged that the repressive conditions of incarceration provide an external stimulus which is equally, if not more psychologically damaging than those previously relied upon in diminished capacity decisions. The defense, therefore, should be extended to encompass this area of criminal responsibility.

**The Evidentiary Basis**

Despite the existence of evidence of prison conditions, a problem exists in placing that evidence before the court. Courts have excluded such evidence as irrelevant, but there is authority for allowing sociological testimony in a criminal proceeding which can provide the basis for the diminished capacity defense.

In *People v. Poddar*, the defense attempted to place in evidence testimony by an expert social scientist to aid in establishing a defense of diminished capacity. The trial judge admitted testimony by an anthropologist as to facts of cross-cultural difficulties but did not permit the expert to testify as to the direct effect of cultural stress on the defendants. The trial judge also allowed psychiatric experts to answer hypothetical questions based on research supplied by the sociological expert. The court of appeal agreed, warning that "to allow [direct presentation of independent] testimony on sociological, ethnic or like influence" without review by experts in psychological sciences would result in distracting the jury and removing the mental capacity of the accused from their deliberation. The net effect of the court's ruling was to allow the admissibility of the sociologist's testimony as long as it did not go to the direct consequences of the external factors on the defendant's mind. This technique permits the sociological expert to describe those factors in his testimony prior to having a psychiatrist relate the probable effect of such stress on the defendant's capacity to harbor malice aforethought, premeditation and intent to kill.

Whether or not a psychologist qualifies as an expert witness concerning the sanity or insanity of a defendant depends

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128. 103 Cal. Rptr. 84 (1972) *rev'd on other grounds*, 10 Cal. 3d 750, 518 P.2d 342, 111 Cal. Rptr. 910 (1974). The decision of the court of appeal approved of the use of an anthropologist as an expert witness. The supreme court reversed the decision based on error in the instructions, expressly deeming it unnecessary to resolve the remaining contentions. 10 Cal. 3d at 761, 518 P.2d at 350, 111 Cal. Rptr. at 918.

129. 103 Cal. Rptr. at 88.

130. *Id.*
on the relevant facts, the questions propounded to the witness, and his particular qualifications. Similarly, whether or not a sociologist qualified as an expert for this defense will depend on his qualifications to testify as to prison conditions, which are within the concern of the court.

The prevailing view permits expert testimony on specialized matters outside the scope of ordinary experience. The expert testimony attempts to provide persons of ordinary experience with working knowledge of a special field, so that these persons can make informed judgements on matters pertaining to that field. What the social scientist can do in the courtroom is to present certain social facts that otherwise would have to be assumed, which serve as conditions affecting the outcome of the case. In the opinion of one commentator, "reliability of conclusions of sociological and psychological research is generally higher than diagnoses made by psychiatrists, which have long been accepted as expert testimony by the courts."

While the court in Poddar ruled that sociological testimony cannot go directly to the determination of one's mental state, the sociologist can testify as to the factors affecting it, leaving to the psychiatrist the determination of whether or not mental capacity was actually diminished due to the external influences. It is proper for an expert witness to express his own opinion based on facts testified to by another expert witness, put to him in the form of hypothetical questions. Therefore, for the purposes of this defense, a sociologist or criminologist could testify about the conditions that exist inside prison, but not as to their effect on the minds of those incarcerated therein.

131. See People v. Davis, 62 Cal. 2d 791, 801, 402 P.2d 142, 148, 44 Cal. Rptr. 454, 460 (1965). See also Cal. Evid. Code § 720 (West 1974), which provides in relevant part: "A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." For articles commenting on the importance of psychologists and sociologists as expert witnesses, see generally Clark, The Social Scientist as an Expert Witness in Civil Rights Litigation, 1 Soc. Prob. 5 (1953); Louisell, The Psychologist in Today's Legal World, 39 Minn. L. Rev. 235 (1955); Robbins, The Admissibility of Social Science Evidence in Person-Oriented Legal Adjudication, 50 Ind. L.J. 493 (1975).


The psychiatrist, basing his opinion on his examination of the defendant in light of the testimony of the sociologist, can then evaluate the effects of prison conditions on the defendant.\textsuperscript{135}

The practitioner presenting a defense of diminished capacity based on prison conditions should anticipate the evidentiary challenges to the sociologist's expert testimony by laying a factual foundation to support its relevancy. This can be accomplished by calling as witnesses tiermates or cellmates of the accused, who could testify first-hand as to the particular conditions of their confinement. The sociologist could then relate their testimonies to his own expertise on prison conditions, analogizing that the circumstances of the defendant's incarceration were similar to those which have been examined and declared to be cruel and unusual. The psychiatrist could then present his own opinion as to the effect of those conditions on the capacity of the defendant to harbor intent, malice or premeditation, basing his conclusions on the preceding testimonies together with his personal examination of the defendant.

In this manner all the factors that should be considered by the court for a finding of diminished capacity based on prison conditions could properly be placed into evidence. A determination of either the presence or the lack of capacity to harbor malice, intent and premeditation can then be made in light of all of the relevant evidence necessary for a finding of mitigation.

\textbf{CONCLUSION}

Diminished capacity can mitigate criminal responsibility. Psychiatric testimony introduced in previous diminished capacity decisions analogized to the prison context shows how conditions of incarceration could produce the same type of psychological disturbances that gave rise to a finding of mitigation, and the method of using experts to present this evidence for the court's consideration is clear.

This proposed defense does not suggest that there be no

\textsuperscript{135} See Diamond, \textit{Criminal Responsibility of the Mentally Ill}, 14 STAN. L. REV. 59, 83 (1961), where it is stated that the practice of modern psychiatry demands a total approach to the patient which includes everything that has happened to him, starting with his ancestors and going through the entire life history up to the present moment. This same totalistic approach, Diamond suggests, should be carried over into the courtroom. Thus, this approach would include relevant data from psychologists or sociologists relating to the social variables that contribute to the particular state of mind of the defendant.
culpability for crimes committed by inmates in prisons. None-
theless, the diminished capacity defense should be applicable
to certain acts which were the product of either a moment’s
opportunity or the stress of degrading prison conditions, miti-
gating the crime to a lesser offense. The existence of a dimin-
ished capacity defense based on prison conditions is ultimately
a sad commentary on the conditions themselves, and it is
hoped that the problems inherent in our modern correctional
system will be faced and solved in the future.

Michael Lee Marx