



***Robinson v. California*** (1962). **OPINION:** Justice Stewart...The trial judge instructed the jury that the statute made it a misdemeanor for a person "either to use narcotics, or to be addicted to the use of narcotics..."

The judge further instructed the jury that the appellant could be convicted under a general verdict if the jury agreed [that the State has shown] either that the defendant used a narcotic in Los Angeles County, or that while in the City of Los Angeles he was addicted to the use of narcotics...

Under these instructions the jury returned a verdict finding the appellant "guilty of the offense charged," [which was affirmed on appeal and we granted certiorari.]...

[I]t is impossible to know from the jury's verdict whether the defendant was convicted of "using" or "being addicted" or both...

This statute...makes the "status" of narcotic addiction a criminal offense, for which the offender may be prosecuted "at any time before he reforms." California has said that a person can be **continuously guilty** of this offense, whether or not he has ever used or possessed any narcotics within the State, and whether or not he has been guilty of any antisocial behavior there.

It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments...

To be sure, imprisonment for ninety days is not...a punishment which is either cruel or unusual. But **...even one day in prison would be a cruel and unusual punishment for the "crime" of having a common cold...Reversed...**

**CONCURRENCE:** Justice Douglas...The command of the Eighth Amendment, banning "cruel

and unusual punishments"...is applicable to the States by reason of the Due Process Clause of the Fourteenth Amendment...

The question presented in the early [torture] cases concerned the degree of severity with which a particular offense was punished or the element of cruelty present. A punishment out of all proportion to the offense may bring it within the ban against "cruel and unusual punishments." *O'Neil v. Vermont*. So may the cruelty of the method of punishment, as, for example, disemboweling a person alive. But the principle that would deny power to exact capital punishment for a petty crime would also deny power to punish a person by fine or imprisonment for being sick.

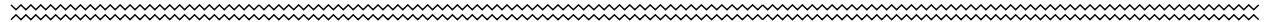
The Eighth Amendment expresses the revulsion of civilized man against barbarous acts -- the "cry of horror" against man's inhumanity to his fellow man. *O'Neil v. Vermont*<sup>1</sup> (dissenting opinion); *Francis v. Resweber*<sup>2</sup> (dissenting opinion).

...We would forget the teachings of the Eighth Amendment if we allowed sickness to be made a crime and permitted sick people to be punished for being sick. This age of enlightenment cannot tolerate such barbarous action...

**DISSENT:** Justice White...I do not consider appellant's conviction to be a punishment for having an illness or for simply being in some status or condition, but rather a conviction for the regular, repeated or habitual use of narcotics immediately prior to his arrest and in violation of the California law. As defined by the trial court, addiction *is* the regular use of narcotics and can be proved only by evidence of such use. To find addiction in this case the jury had to believe that appellant had frequently used narcotics in the recent past...

The Fourteenth Amendment is today held to bar any prosecution for addiction regardless of the degree or frequency of use, and the Court's opinion bristles with indications of further consequences. **If it is "cruel and unusual punishment" to convict appellant for addiction, it is difficult to understand why it would be any less offensive to the Fourteenth Amendment to convict him for use on the same evidence of use which proved he was an addict...**

Well, when you put it that way...  
Things are not always as they seem, are they?



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<sup>1</sup>Case 8A-CUP-2 on this website.

<sup>2</sup>Case 8A-CUP-4 on this website.