

## **Who Gets to be Human: The Plight of the Rightless in the American Justice System**

By: Kaylah Holmes

"Who gets to be human?" This perplexing inquiry resonates deeply within the convoluted corridors of the modern legal system, particularly regarding individuals within the incarceration system, further complicating the matter. The contemporary Western notion of legal justice removes incarcerated individuals' personhood. Stripping them of the right to (and) recognition of suffering through manipulating the language in the law.<sup>1</sup> The effects of this dehumanization are exacerbated by a common consensus on who has the right to exert violence. It begs the question of who society recognizes as human and how the language of the law has enabled these narratives to change throughout history. There is a collective Western desensitization to watching the right-less suffer. To understand the plight of rightless and stateless individuals, I will use Colin Dayan's definition of wanton-ness and its role in defining legal malice when determining criminal intent. The arbitrariness surrounding such definitions contributes to malice within the law. Covertly affecting the limits of torture and further complicating interpretations of legal jargon. In the context of this paper, we can define those in power as individuals who have the power to keep "non-humans" as wards of the state: prison officials, government officials, prison owners, etc.

To understand the evolution of the relationship between law and human dignity, it is imperative to assess the history of religion. Religious doctrines have influenced legal systems for centuries, establishing fundamental principles and moral codes underpinning societal norms. As a result, the concept of inherent human dignity and human worth served as the bedrock for early legal systems. Ancient codes of law, such as the Code of Hammurabi in Mesopotamia or the Ten Commandments in Judeo-Christian traditions, were emblematic of this fusion between religious morality and legal governance. These codes provided guidelines for societal conduct and established the sanctity of human life and property.<sup>2</sup> The concept of natural law, deeply embedded in Christian philosophy, proposed that certain universal moral principles were inherent to human nature and the basis for just laws. This notion was pivotal in shaping legal

---

<sup>1</sup> Dayan, Colin. (2011). *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons*. Princeton University Press.

<sup>2</sup> Berman, Harold J. (1983). Religious Foundations of Law in the West: An Historical Perspective. *Journal of Law and Religion*, 1(1), 3-43. Cambridge University Press.

thought and laid the groundwork for recognizing human rights and dignity within the legal framework.

The secession of theocratic dominance occurred due to the Enlightenment, and eventually, secular interpretation gained more traction. The concept of the soul has traditionally been more metaphysical around the individual as a moral entity, subject to divine judgment. However, with this rise in enlightenment ideals, the law's ideology shifted to a more secular rational framework.<sup>3</sup> This integration marked a significant evolution in legal practice, reflecting broader societal changes and philosophical shifts towards a more nuanced understanding of justice and accountability. Furthermore, the criminal justice system began to integrate more of the constructs of tort law into criminal prosecution. Unlike criminal law, where punishment focuses, tort law centers on compensating and redressing individuals who have suffered damage due to civil wrongs. The legal pursuit in torts aims to compensate the injured party rather than punish the wrongdoer, focusing on redressing the damage caused. Tort law considers intent, inadvertence, foresight, and blame as principles.<sup>4</sup> This differentiates intentional wrongful acts and negligence. Wanton or willful misconduct doesn't always require proof of intent to injure, leading to complexities in determining liability between the non-humans and actors of the state (individuals with power). In this paper, I will analyze two court cases, their contribution to this phenomenon, and the written circumstances within tort law that bolster its proliferation.

### **Hudson V. McMillian**

Keith Hudson, a Louisiana prison inmate, testified that he had suffered minor bruising, a broken palate, and loosened teeth, amongst other injuries, after an alleged beating by two prison guards, Marvin Woods and Jack McMillian. During the attack, Hudson was shackled and proved no immediate threat to the guard's safety. A supervisor who witnessed the beating simply told the guards, "Don't have too much fun." Hudson's district court had ruled in his favor and awarded him damages, but this ruling was reversed by the Fifth Circuit Court of Appeals, who

---

<sup>3</sup>What Is the Enlightenment and How Did It Transform Politics?" CFR Educator Resources, Council on Foreign Relations, <https://education.cfr.org/learn/reading/what-enlightenment-and-how-did-it-transform-politics>

<sup>4</sup> Introduction to Tort Law. Congressional Research Service, 15 Dec. 2020, <https://crsreports.congress.gov/product/pdf/IF/IF11291>.

argued that Hudson had not proven significant injury.<sup>5</sup> There is an objective component of the 8th Amendment wherein the alleged wrongdoing must be compelling enough to constitute a constitutional violation. “Whenever prison officials stand accused of using excessive physical force constituting “the unnecessary and wanton infliction of pain” violation of the Cruel and Unusual Punishments Clause—the core judicial inquiry is that set out in *Whitley v. Albers*: “whether force was applied in a good-faith effort to maintain or restore.”<sup>6</sup> The effects of depersonalization take hold through the arbitrary, reckless, and indifferent infliction of pain and suffering upon incarcerated individuals by those in positions of authority. This comes from wantonness and affects curating a “burdened personhood.” The concept of “burdened personhood” refers to a state where the physical body is displaced.<sup>7</sup> In this instance, as long as the scars the prison guards leave heal or are found to be mental and not physical, it is not extreme violence. For example, an individual can be placed in solitary confinement for weeks on end, suffering extreme mental deterioration, but this may not constitute cruel and unusual punishment without the presence of physical scars or abuse. Essentially, the expectation of an inmate to prove significant injury in a position of “non-human status” underscores a legal system that strips individuals of their agency and humanity, effectively burdening them with the weight of punishment and proof. The visible and quantifiable effect of abuse on the psyche is a notable human consequence of abuse. Unlike animals who cannot verbally express the impact of abuse, humans have the unique capacity to do so. Negating the effect this has on an incarcerated individual forces them to prove their humanity, creating this burdened personhood. Ignoring this impact is the system's refusal to recognize the dignity and humanity of all individuals, regardless of their legal status. The statement from the prison supervisor to “not have too much fun” underscores an environment with a lack of empathy and humanity for the non-person. When law enforcement officers or other state actors are granted broad discretion to use force to pursue their duties, the application of force to maintain or restore order can become a pretext for the abuse of power. After reading this case, we should question, “Why must an inmate prove significant injury in a position of depersonalization?”<sup>8</sup>

---

<sup>5</sup> Supreme Court of the United States. "Oral Argument Transcript: Oklahoma Tax Commission v. Jefferson Lines, Inc." Supreme Court of the United States, 13 Nov. 1991, [www.supremecourt.gov/pdfs/transcripts/1991/90-6531\\_11-13-1991.pdf](http://www.supremecourt.gov/pdfs/transcripts/1991/90-6531_11-13-1991.pdf).

<sup>6</sup> *ibid*

<sup>7</sup> Dayan, Colin. (2011). *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons*. Princeton University Press.

<sup>8</sup> Wilson v. Seiter, 501 U.S. 294 (1991). Cornell Law School, Legal Information Institute. <https://www.law.cornell.edu/supremecourt/text/501/294>

## **Perry Wilson V. Richard Seiter**

While incarcerated at the Hocking Correctional Facility in Nelsonville, Ohio, Pearly Wilson sued two state prison officials, Richard Seiter, and Carl Humphreys. Wilson alleged that the conditions in the prison violated the Eighth Amendment's prohibition against cruel and unusual punishment. Wilson argued that the prison's policies and practices, specifically overcrowding and double-celling (housing two inmates in a cell designed for one), constituted cruel and unusual punishment. The District Court ruled in favor of the state officials, and the Sixth Circuit Appellate Court affirmed. The ruling in Pearly Wilson V. Richard Seiter shows how the law contributes to the displacement of the physical body.<sup>9</sup> As long as the physical scars heal, it is not extreme violence. For those existing in the non-human state, bearing the undue burden of proving suffering extenuates the mental and physical suffering of the incarcerated. In proving the extent of one's suffering, the judicial system asserted that mental suffering is negligible. For example, an inmate who mentally deteriorates in solitary confinement cannot be considered for a defense of cruel and unusual punishment as it pertains to their mental incapacitation.

Furthermore, the United States Court of Appeals for the Sixth Circuit asserted that "if deprivations are not a specific part of a prisoner's sentence, they are not punishment unless imposed by prison officials with a "guilty mind." The harmful conditions Wilson endured were not the determining factor for guilt; the assumed intent of the abuser was. The capacity to be wanton, defined as cruel or violent action that is deliberate and unprovoked, can only be attributed to someone with power. Therefore, wantonness becomes a test to advocate for constitutional rights. You must disprove the recklessness of the powerful and convince those dependent on your subjugation of rights only granted to those with human status. Only those with power are afforded such a status in the justice system. This case creates a legal assertion that those with non-human status cannot suffer mental scars; their abuse must leave visible marks on the skin. This is reflective of a desensitization to the experiences of the rightless. This burden of proof disregards the complexities of emotional or psychological harm experienced by individuals. There is an unspoken notion that a non-human, in the eyes of the law, cannot suffer mentally. The ability to think complexly and express pain and emotions through words is a

---

<sup>9</sup> Wilson v. Seiter, 501 U.S. 294 (1991). Cornell Law School, Legal Information Institute. <https://www.law.cornell.edu/supremecourt/text/501/294>

canonical human experience. As non-humans, they are barred from asserting such a right. It creates a gap in legal understanding and protection for those who may experience trauma or harm beyond physical manifestations.

With the integration of tort law verbiage into criminal justice, how do the principles of tort law blur the lines between immorality and strict cruelty? Unlike criminal law, where punishment focuses, tort law centers on compensating and redressing individuals who have suffered damage due to civil wrongs.<sup>10</sup> Tort law aims to compensate the injured party rather than punish the wrongdoer, focusing on rectifying the damage caused and shifting the focus away from the assaulter. Tort law considers intent, inadvertence, foresight, and blame as part of its principles. This differentiates intentional wrongful acts and negligence. Wanton or willful misconduct doesn't always require proof of intent to injure, leading to complexities in determining liability. Tort law blurs dichotomies like public/private, subjective/objective, and personal/impersonal, influencing perceptions of good or bad behavior—this change in language and application of torts may impact society's definitions of responsibility and liability, potentially affecting who takes on moral blame.<sup>11</sup>

Power, and who can utilize it in the context of the law, often feels like a distant, solely theoretical construct. However, when one peels back the layers that overshadow it, we see the power within the language of laws, statutes, and legal doctrine. Language isn't merely a tool for legal power but wholly embodies it. Language is the vessel for which legal authority and influence can be exercised. The way legal verbiage is manipulated endorses the unequal distribution and application of power, particularly to determine the rights and status of the non-human.

---

<sup>10</sup> Introduction to Tort Law. Congressional Research Service, 15 Dec. 2020, <https://crsreports.congress.gov/product/pdf/IF/IF11291>.

<sup>11</sup> Introduction to Tort Law. Congressional Research Service, 15 Dec. 2020, <https://crsreports.congress.gov/product/pdf/IF/IF11291>.