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# **Textual Interpretation**

**PHIL 203  
Critical Thinking  
Distance Delivery**

**Critical Thinking**

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# **The Constitution**

- **History**
- **Written document**
- **Interpretive theories**
  - **Plain meaning**
  - **Originalism**
  - **Concrete intentions**
  - **Abstract intentions**
  - **Non-originalism**
- **Constitutional precedent**

**Critical Thinking**

**P** **Contingent Realities**

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- Arguments of pure principle
  - Preaching to the choir
  - Arguments from contingent realities
    - Concede that in a more perfect world X would be permitted
    - But in this world contingent realities prohibit it
    - Professor/student affairs

**3** **Critical Thinking**

**P** **Due Process Clause**

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Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No State shall** make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State **deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.

**3** **Critical Thinking**

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## **Eighth Amendment**

**Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.**

**Critical Thinking**

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## **Equal Protection Clause**

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**Critical Thinking**

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## **Abstract Intention Regarding Capital Punishment**

- **Constitution permits**
- **Only if there is Due Process of law**
- **Only if it is not cruel and unusual**
- **Only if it does not deny Equal Protection of the law**
- **The death penalty must be imposed fairly, and with reasonable consistency, or not at all.**

**Critical Thinking**

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## **Brief Recent History of Capital Punishment**

- **Constitutional precedent**
- **Trends in the 20<sup>th</sup> Century**
- **McGautha v. California, 402 U.S. 183 (1971)**
- **Furman v. Georgia, 408 U.S. 238 (1972)**
- **Gregg v. Georgia, 428 U.S. 153 (1976)**
- **Callins v. Collins, 510 U.S. --- (1994)**

**Critical Thinking**

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**Critical Thinking**

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## **Arbitrary Administration**

- **Procedural cruelty**
- **Lightning analogy**
- **Class grades thought experiment**
- **Isn't this true of all punishment?**
- **Is there a higher responsibility for justice and fairness when the stakes are higher?**
- **Aren't they all guilty, so where's the injustice?**

**Critical Thinking**

## **WHY IT'S STILL ARBITRARY**

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- **Presupposition in Furman - It's the jury**
- **Post-Furman corrections**
- **Better define aggravated murder**
- **Two stage trials**
- **Where the real power lies**
- **O. J. Simpson trial**
- **Lynne Abraham**
- **Robert Colville**
- **Justice Blackmun's conversion**

**Critical Thinking**