

Textual Interpretation

**PHL 320
Critical Thinking
Distance Delivery**

Critical Thinking

The Constitution

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

Critical Thinking

Contingent Realities

- 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

Critical Thinking

Due Process Clause

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.

Critical Thinking

Eighth Amendment

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

Critical Thinking

Equal Protection Clause

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.

Critical Thinking

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

Brief Recent History of Capital Punishment

- **Constitutional precedent**
- **Trends in the 20th 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

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

- **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