CRUEL AND UNUSUAL PUNISHMENT pdf

1: Eighth Amendment to the United States Constitution - Wikipedia

Cruel and unusual punishment is a phrase describing punishment that is considered unacceptable due to the suffering, pain, or humiliation it inflicts on the person subjected to it.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. It is almost identical to a provision in the English Bill of Rights of , in which Parliament declared, "as their ancestors in like cases have usually done Oates was sentenced to imprisonment, including an annual ordeal of being taken out for two days pillory plus one day of whipping while tied to a moving cart. The Oates case eventually became a topic of the U. According to the great treatise of the s by William Blackstone entitled Commentaries on the Laws of England: For the bill of rights has particularly declared, that excessive fines ought not to be imposed, nor cruel and unusual punishments inflicted: Constitution recommended in that this language also be included in the Constitution. Mason warned that, otherwise, Congress may "inflict unusual and severe punishments. What has distinguished our ancestors? But Congress may introduce the practice of the civil law, in preference to that of the common law. They may introduce the practice of France, Spain, and Germany James Madison changed "ought" to "shall", when he proposed the amendment to Congress in Excessive Bail Clause In England, sheriffs originally determined whether to grant bail to criminal suspects. Since they tended to abuse their power, Parliament passed a statute in whereby bailable and non-bailable offenses were defined. Eventually, the Petition of Right of argued that the King did not have such authority. Later, technicalities in the law were exploited to keep the accused imprisoned without bail even where the offenses were bailable; such loopholes were for the most part closed by the Habeas Corpus Act Thereafter, judges were compelled to set bail, but they often required impracticable amounts. Finally, the English Bill of Rights held that "excessive bail ought not to be required. Thus, the Eighth Amendment has been interpreted to mean that bail may be denied if the charges are sufficiently serious. The Supreme Court has also permitted "preventive" detention without bail. In United States v. Salerno , U. Boyle , U. Texas , U. The fixing of punishment for crime and penalties for unlawful acts is within the police power of the state , and this Court cannot interfere with state legislation in fixing fines, or judicial action in imposing them, unless so grossly excessive as to amount to deprivation of property without due process of law. It is not contended in this connection that the prohibition of the Eighth Amendment to the federal Constitution against excessive fines operates to control the legislation of the states. The fixing of punishment for crime or penalties for unlawful acts against its laws is within the police power of the state. We can only interfere with such legislation and judicial action of the states enforcing it if the fines imposed are so grossly excessive as to amount to a deprivation of property without due process of law. In Waters-Pierce Oil Co. Texas the Supreme Court set up a standard for judging whether or not a fine is "excessive. Kelco[edit] In Browning-Ferris Industries v. Kelco Disposal , U. Campbell , U. Bajakajian[edit] In United States v. Bajakajian , U. In describing what constituted "gross disproportionality," the Court could not find any guidance from the history of the Excessive Fines Clause, and so relied on Cruel and Unusual Punishment Clause case law: We must therefore rely on other considerations in deriving a constitutional excessiveness standard, and there are two that we find particularly relevant. The first, which we have emphasized in our cases interpreting the Cruel and Unusual Punishments Clause, is that judgments about the appropriate punishment for an offense belong in the first instance to the legislature. United States, U. The second is that any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise. Both of these principles counsel against requiring strict proportionality between the amount of a punitive forfeiture and the gravity of a criminal offense, and we therefore adopt the standard of gross disproportionality articulated in our Cruel and Unusual Punishments Clause precedents. Helm, supra, at ; Rummel v. Cruel and unusual punishment According to the Supreme Court , the Eighth Amendment forbids some punishments entirely, and forbids some other punishments that are excessive when compared to the crime, or compared to the competence of the perpetrator. In Louisiana ex rel. Resweber , U. California , U. Robinson was the first case in which the Supreme Court applied the Eighth Amendment against the state governments through the Fourteenth

Amendment. Before Robinson, the Eighth Amendment had only been applied previously in cases against the federal government. Many instances of State injustice and oppression have already occurred in the State legislation of this Union, of flagrant violations of the guarantied privileges of citizens of the United States, for which the national Government furnished and could furnish by law no remedy whatever. Contrary to the express letter of your Constitution, "cruel and unusual punishments" have been inflicted under State laws within this Union upon citizens, not only for crimes committed, but for sacred duty done, for which and against which the Government of the United States had provided no remedy and could provide none. Georgia , U. Utah , 99 U. Oklahoma , U. Furthermore, in Roper v. Simmons , U. Virginia , U. Punishments forbidden for certain crimes[edit] The case of Weems v. United States , U. This case is often viewed as establishing a principle of proportionality under the Eighth Amendment. Dulles , U. To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. However, in Powell v. It was not until the case of Solem v. Helm , U. The Court outlined three factors that were to be considered in determining if a sentence is excessive: However, in Harmelin v. Michigan , U. The Court acknowledged that a punishment could be cruel but not unusual, and therefore not prohibited by the Constitution. Florida , U. Alabama , U. The majority in Coker stated that "death is indeed a disproportionate penalty for the crime of raping an adult woman. Louisiana , U. In a 5â€”4 decision, the Supreme Court overturned the death sentences of Furman for murder, as well as two other defendants for rape. Of the five justices voting to overturn the death penalty, two found that capital punishment was unconstitutionally cruel and unusual, while three found that the statutes at issue were implemented in a random and capricious fashion, discriminating against blacks and the poor. Georgia did not hold â€” even though it is sometimes claimed that it did â€” that capital punishment is per se unconstitutional. Some states have passed laws imposing mandatory death penalties in certain cases. The Supreme Court found these laws unconstitutional under the Eighth Amendment, in the murder case of Woodson v. North Carolina , U. Similarly, in Maynard v. Cartwright , U. However, the meaning of this language depends on how lower courts interpret it. Arizona , U. As the Court said in Herrera v. Collins , U. Estelle , U. A few months after pleading guilty Rummel was released. Andrade , U. Rees , U. Evolving standards of decency[edit] In Trop v. Thus, they say, the framers wanted the amendment understood as it was written and ratified, instead of morphing as times change, and in any event legislators are more competent than judges to take the pulse of the public as to changing standards of decency. For example, Professor John Stinneford asserts that the "evolving standards" test misinterprets the Eighth Amendment: The Framers of the Bill of Rights understood the word "unusual" to mean "contrary to long usage. Michigan where they denied that the Punishments Clause contains any proportionality principle.

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2: ruel and Unusual Punishments: Free Definition Essay Sample

Cruel and Unusual Punishment. Such punishment as would amount to torture or barbarity, any cruel and degrading punishment not known to the Common Law, or any fine, penalty, confinement, or treatment that is so disproportionate to the offense as to shock the moral sense of the community.

Cruel and Unusual Punishment Print Early Roman history is full of stories about the terrible fates that befell citizens who broke the law. When a certain Tarpeia let the enemy Sabines into Rome, she was crushed and thrown headlong from a precipice above the Roman forum. Obey thy father Roman society was fundamentally hierarchical and patriarchal. This included not only those physically living under his roof, but the wider family of brothers, sisters, nieces, and nephews as well. However, historians have debated whether the power may have been largely symbolic and little used in practice. In order for the use of such power to be justified, the son had to have committed a crime against the state. When Aulus Fulvius was killed by his father for his involvement in the conspiracy of Catiline 63 BC , the head of the household was not prosecuted. This was because Catiline and his followers had committed treason by plotting to murder the consul Cicero and seize power for themselves. Mythbusting Ancient Rome â€" Throwing Christians to the Lions A watery and crowded grave One of the most pervasive misconceptions about Roman criminal justice concerns the penalty for parricide. This allegedly involved the criminal being sewn into a leather sack together with four animals â€" a snake, a monkey, a rooster, and a dog â€" then being thrown into a river. But was such a punishment ever actually carried out? Publicius Malleolus, who had killed his mother, was the first to be sewn into a sack and thrown into the sea. Dog mosaic, cockerel mosaic, Public Domain In practice, the penalty for parricide often just involved feeding the offender to wild beasts. There is no mention here of any animals in the sack, nor do they appear in contemporary evidence for legal procedure in the late Roman Republic. In 80 BC, Cicero defended a young man called Sextus Roscius on a charge of parricide, but the murderous menagerie is conspicuously absent from his defence speech. The animals are attested in a passage from the writings of the jurist Modestinus, who lived in the mid-third century AD. This excerpt survives because it was later quoted in the Digest compiled at the behest of the emperor Justinian in the sixth century AD: But the dog and the rooster do not appear until the third century AD, when Modestinus was writing. The punishment fits the Roman crime So was anyone ever actually punished with all these creatures? Parricides were commonly punished in other ways such as being condemned to the beasts, which was very popular in the Roman world. One of the four animals that was said to have been placed in the sack was a snake. The Romans themselves believed the poena cullei was an ancestral custom â€" but as with many customs, it was based on preconceptions about the nature of ancient punishments. The best-known version of the penalty for parricide, with all the ferocious fauna included, was a product of the later Roman empire. It was designed to terrify, rather than to be enforced. The poena cullei entered the standard accounts of Roman criminal law because it fascinated medieval scholars who tried to identify the symbolism of the animals. Florike Egmond has shown that this inspired the introduction of the sack filled with creatures as a punishment in Germanic law, reflecting the belief that a civilized society should follow Roman judicial practices. Public Domain To the relief of Germans in the medieval and early modern period, such punishments were rarely carried out. On one occasion, images of the animals were sewn into the sack, as they were considered sufficient substitutes for the real thing.

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3: Cruel And Unusual Punishment | HuffPost

Under the Eighth Amendment to the U.S. Constitution, individuals convicted of a crime have the right to be free of "cruel and unusual" punishment while in jail or prison.. This means that after a criminal defendant is convicted and sentenced, the Constitution still acts to guarantee his or her fundamental rights concerning conditions of confinement and treatment by corrections personn.

What if someone really wrongs you? Like steals your sheep or somehow must have caused a crop failure or something because they gave you a shifty look that one time? Throughout the ages some extremely brutal methods of torture and execution have come and gone. And there are a few that have not yet gone, too. GK Bloemsma The upright jerker was an interesting twist on a classic execution method. Hanging, while it is a true standby all around the world, leaves much to be desired in terms of effectiveness. Depending on the weight of the person, rope, trap door, and numerous other factors, it can be a very slow or awkward way to die. The upright jerker was a modified hanging system that used heavy weights and pulleys to quickly jerk the condemned into the air. It was hoped this would be a more effective way to break the neck quickly Falling White cliffs of Dover, southeastern Kent, Eng. Throw them off a cliff! This has been a simple solution to unwanted nuisances for centuries. Crushed by elephant Asian elephant Elephas maximus. As you might guess, it was common in areas where elephants are naturally found, primarily in South and Southeast Asia. Elephants were often trained in order to ensure the trampling was as brutal as possible. Ling chi Damascus steelKnife blade made of Damascus steel. The condemned was tied to a post and bits of skin and limbs were gradually removed one by one, usually culminating in a final cut to the heart or decapitation. It was used as early as the 10th century, and continued for nearly a thousand years. Luckily it was banned in Blood eagle The blood eagle comes from Nordic legends of Viking executions. To add injury to injury, salt was poured into the wound. And as a final blow, the lungs were pulled out and draped over the rib-wings for effect. Keelhauling was a type of punishment specifically for sailors, dreamt up by the Dutch navy in the late 16th century. Offenders were tied with rope and dragged underwater from one end of the ship to the other. If they lived, that is. Boiling Water at its boiling point. But centuries ago it was a common method of execution from East Asia to England. The condemned was stripped and then placed in a vat or pot of boiling liquid, usually water, oil, or tar. Or, for a more gruesome experience, the offender could be placed in cool liquid and then heated to boiling. Records from the reign of Henry VIII show that some people were boiled for up to two hours before they finally died. Rat torture Norway rat Rattus norvegicus. Gerard Rat torture apparently lives on in the minds of creative types, as it has been featured recently in the film 2 Fast 2 Furious and in the TV series Game of Thrones. A variety of crimes are punishable by death, including tax fraud, arson, and prostitution. Many executions in China are now performed in mobile execution units, vans that are equipped with restraints and drugs necessary for lethal injection. The vans, which look like typical police vans, have been on the road for about a decade. There are dozens of them all over the country, dipensing lethal justice closer to the scenes of crimes. Not only are they cheaper than more traditional facilities, Chinese officials say, but they are more humane than the other preferred method of executionâ€”death by firing squad. Gridiron marshmallow roasting on a stickA marshmallow roasting on a stick. Nina Hale The gridiron was basically a grill. As one might expect, it looked like an iron grid, and was placed over a fire or burning coals. Some people were even basted in oil first, to ensure proper broiling. Drawing and quartering Hanged man, the 12th card of the major arcana. Mary Evans Picture Library Drawing and quartering is one of the most infamous methods of cruel and unusual punishment. The punishment was first doled out in England in the 13th century. The accused was drawnâ€”tied to a horse and dragged to the gallowsâ€”and then usually hanged, maybe disemboweled, or beheaded. Afterward, the condemned was quartered, i. This punishment was reserved for those guilty of treason, and was abolished in Strappado Cross section of the wrist showing the carpal bones. In strappado, the guilty party is strung up by the wrists, behind the head. Thought to have originated in medieval times during the Inquisition, strappado has been used into the 21st century. White torture While the term "white torture" can mean any psychological torture in general, the meaning here is more literal. Guards wear all white, lights are

kept on 24 hours a day, and no words are spoken. No color is seen. It was documented in the case of Amir Fakhravar, who was arrested in his native Iran and subjected to white torture for some 8 months in While the physical pain of sensory deprivation is minimal compared to other tortures on this list, the psychological damage is beyond compare. Fakhravar was quoted as saying when he was released, he was not a normal person anymore, and could no longer remember even the faces of his parents. The condemned was sewn into a leather sack with a number of animals, including a dog, a monkey, a snake, and a rooster. Then the whole bag was tossed into a body of water. Scaphism Scaphism was one of the worst and most painful, skin-crawling methods of torture. It was described by the Greeks as a punishment used by the Persians, and if they are to be believed, those Persians were insane. In this form of execution, the accused was trapped between two boats or in a hollowed-out tree trunk and force-fed milk and honey. But the milk-and-honey diet eventually caused horrible diarrhea, which stayed within the wooden enclosure. The unfortunate condemned was smeared with more milk and honey and left out in the sun or near still water, where bugs would be attracted to the muck and rot and sweetness. The person would inevitably die--either of dehydration, exposure, or bite and sting wounds.

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4: 15 Types of Torture | www.enganchecubano.com

Punishment prohibited by the Eighth Amendment to the www.enganchecubano.com and unusual punishment includes torture, deliberately degrading punishment, or punishment that is too severe for the crime committed.

Stand up comic, actress, writer thekellymaclean Cruel and Unusual Punishment: Hot Yoga My teacher introduces herself as Yoga Bandana, or at least thats what it sounds like to me. My teacher introduces herself as Yoga Bandana, or at least thats what it sounds like to me. An upside-down glance toward the mirror informs me that wearing khaki spandex without underwear was unwise because when I bend over you can definitely see my butt. Also, several pubes have worked their way out of the front of my spandex like the first blades of grass through frosty March soil. My hopes that no one has noticed my pants problem deflate when I see that the guy behind me is staring at my ass. This guy is about fifty years old and his hair is as long as his shorts are short. Does he not realize I can see him in the front mirror? He immediately answers this question by catching my eye in said mirror and refusing to look away for several poses. I try to avoid his gaze to no avail; he has a strange magnetism. Now we come to my least favorite part of the Sun Salutation: It could be likened to the low push up position or waterboarding. Finally, we make our way back to downward dog, the "resting" position resting?! At this point I am going out of my mind with pain and would gladly give the enemy national secrets to make it stop. I have sweat at least two gallons as evidenced by the large circles in the fabric surrounding my armpits, neck and yes, crotch. I am definitely in the lead for sweatiest yogi. I wait another 5 before looking at the clock because I want to be very gratified when I see how much time has passed. I finally allow myself to look: Yogabandna tells us to relax completely. And this is no ordinary fart. Silent but very deadly. I seem to be alone in finding the fart extremely funny. Next comes Eagle, where you wrap your left leg around the right one nine times and your arms mirror this up top. I once went to the doctor for a sprain; he said "Wow! That is one swollen ankle. YogaBandana tells us to take a deep breath and I do. Right on queue, bean cake guy out-relaxes himself. Except not an ordinary fart cloud where you would just take a nap probably, this is a torture chamber fart cloud where not only are you trapped but are forced to hold excruciating positions for years at a time. As I step back into downward dog my back foot slips, throwing me entirely off balance. Each individual limb tries to grip the slippery surface so now I look less like a downward dog and more like a dog on roller skates. I touch back in with my intention to not die. The teacher notices and she adjusts me, shifting my pelvis forward and holding it in place. Beancake guy follows suit. I make a beeline for the locker room where I strip down naked, leap into the best shower ever, towel off, and step onto the scale. This gratifying moment makes the whole class worthwhile.

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5: Eighth Amendment | Constitution | US Law | LII / Legal Information Institute

In England, the "cruel and unusual punishments" clause was a limitation on the discretion of judges, and required judges to adhere to precedent. According to the great treatise of the s by William Blackstone entitled Commentaries on the Laws of England.

Cruel and Unusual Punishments The Issue: What constitutes a "cruel and unusual punishment" within the meaning of the Eighth Amendment? Introduction What exactly is a "cruel and unusual punishment" within the meaning of the Eighth Amendment? One clue to the expectations of the framers comes from the debates of the First Congress that proposed the Eighth Amendment. In Frances v Resweber, the Court considers whether a state can put a condemned man on an electric chair a second time, after sending a non-lethal bolt of electricity through him in its first attempt. By a 5 to 4 vote, the Court in Frances permits the second execution, with the majority concluding that the "cruelty" of the punishment at issue should not be measured by what happened in the past or the mental anguish the prisoner might feel as he awaits his second date with the chair. The four dissenters, however, contended that the sequence of events was relevant, and that no one would doubt but that a punishment that consisted of two jolts of electricity weeks apart would be cruel. For a discussion of those cases, see the Death Penalty page on this site. Ingraham v Wright considered the use of corporal punishment in Florida public schools. In the case under consideration, one students was subjected to such a severe beating with a wooden paddle as to cause hematoma requiring medical attention and another was deprived of the use of his arm for a week. The four dissenters disagreed, arguing that nothing in the text of the amendment suggests the limitation found by the majority. Does the Eighth Amendment contain a requirement that punishments be somewhat proportional to crimes? Would it be unconstitutional to give a life sentence for double-parking? What about a life sentence for possession of cocaine? That letter question was the issue presented in Harmelin v Michigan , in which the Court 5 to 4 upheld the sentence of life imprisonment for the first-time offense of possession of cocaine albeit a large amount of cocaine. Two justices Scalia and Rehnquist argued that the Eighth Amendment did not address the proportionality of punishments at all. A key concurring opinion signed by three justices argued that grossly disproportionate punishments did violate the Eighth Amendment, but offered a test that would only rarely allow courts to reach such conclusions. Voting 7 to 2, the Court found a violation of the cruel and unusual punishment clause even though the inmate suffered no permanent injuries or injuries that required hospitalization. In dissent, Justices Thomas and Scalia argued controversily that the Eighth Amendment was intended to reach beatings by guards at all--rather only judicially-imposed sentences. In Roper v Simmons the Court considered whether it was cruel and unusual punishment to execute a prisoner for a crime he committed when he was a minor. In previous decisions, the Court had found it unconstitutional to execute persons who were less than 16 at the time of their crime, but had upheld executions of those 16 and 17 at the time of their crimes. The Court had also, in , held it to be a violation of the Eighth Amendment to execute mentally retarded persons. Voting 5 to 4, the Court in Roper cited recent evidence to conclude that the execution of persons who were minors at the time of their crimes now violated "evolving standards of decency" and, hence, the Eighth Amendment. Justice Kennedy, in his opinion for the Court, wrote: The State has denied him any chance to later demonstrate that he is fit to rejoin society based solely on a nonhomicide crime that he committed while he was a child in the eyes of the law. This the Eighth Amendment does not permit. Chief Justice Roberts concurred on the narrower grounds that a proportionality review made the sentence unconstitutional for the minor whose case was before the Court. Scalia, Thomas, and Alito dissented. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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6: Mythbusting Ancient Rome: Cruel and Unusual Punishment | Ancient Origins

Most often mentioned in the context of the death penalty, the Eighth Amendment prohibits cruel and unusual punishments, but also mentions "excessive fines" and bail. The "excessive fines" clause surfaces (among other places) in cases of civil and criminal forfeiture, for example when property is seized during a drug raid.

Like the general guarantees of due process and equal protection, it has been applied to every aspect of that process, ranging from the definition of criminal norms and the consequences of their violation the subject of substantive criminal law , to the imposition of punishment criminal procedure , and to its eventual infliction prison or correction law. As such, it addresses participants at all stages of the penal process, including the legislature, the judiciary whether professional or lay, permanent or temporary , and the executive at the end of the punishment line, including wardens, prison guards, and the literal "executioner. This article focuses on the scope of the federal provision, as interpreted by the U. It should be noted, however, that the scope of the federal prohibition does not necessarily match that of its state analogues. For example, in the Michigan Supreme Court overturned on state constitutional grounds the very penalty that the United States Supreme Court had upheld under the federal cruel and unusual punishments clause the previous year Harmelin v. Michigan , U. The federal version of the principle appears in the Eighth Amendment, which provides in its entirety that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. The history of the prohibition of cruel and unusual punishments is uncontroversial in one sense, hotly contested in another. Everyone agrees that its wording stems from an identical provision in the English Bill of Rights of Some argue that the Framers intended the prohibition of "cruel and unusual punishments" to apply only to the definition of punishments. Others discern an intent to limit also the definition of crimes as well as the relation or "proportionality" of crimes and their punishments. Others advocate a more flexible interpretative approach, occasionally appropriating the restrictive approach by claiming that the Framers intended that a given provision be interpreted flexibly. The Supreme Court in recent decades has favored a more expansive approach to the clause, one that takes into account the "evolving standards of decency that mark the progress of a maturing society. The malleable Trop test itself has been interpreted more or less expansively since its appearance. Its references to evolution, progress, and maturation have been used to disregard historical intent and practice alike. This epistemic difficulty has been resolved in two ways. On the one hand, the Supreme Court has invoked general principles, such as "humanity" and "the dignity of man," from which it deduced more particular limitations on the power to punish, as in Trop itself. Georgia , U. In its search for standards of decency in American society, the Court has not consulted abolitionist developments in the laws of other countries and in the international law of human rights. The plural "punishments" may suggest a similarly restrictive interpretation of the clause, which would limit its application to particular penalties, rather than treating it as the source for a wide range of constraints on punishment generally speaking. The reference to "punishments" in the principle limits its scope in other ways as well. Most generally, this reference has been interpreted as rendering the principle inapplicable outside the penal process, including the use of corporal "punishment" in schools Ingraham v. Within the realm of the penal process, it has been invoked to remove nonintentional acts of prison officials from the reach of the principle on the ground that the concept of "punishment" presumes intention Wilson v. The constitutional constraints upon the treatment of students and pretrial detainees instead derive from the general guarantees of due process and equal protection, both of which apply to all state actions, regardless of their classification as punitive or not. The due process clause, for example, in keeping with the presumption of innocence prohibits the infliction of any kind of punishment on pretrial detainees, even if it is neither cruel nor unusual Bell v. Definition substantive criminal law The primary addressee of the prohibition against cruel and unusual punishments as a limitation on the power to define crimes and their punishments is the legislature. This common error derives from the assumption that the legislature enjoys a monopoly over the definition of crimes and punishments. This assumption holds, at least formally, only in federal law, where courts are precluded from generating a common, that is, nonstatutory, criminal law. The same does not hold for the bulk

of American criminal law, which is state law and until recently relied heavily on judge-made common law. The principle, therefore, would apply to any definition of crimes and their punishments, regardless of its author. In this context, it should be noted that the federal prohibition of cruel and unusual punishments was not applied to state criminal law until Robinson v. California , U. The cruel and unusual punishments clause has the potential of serving as the constitutional backbone for the basic principles of substantive criminal law. To begin with, the clause presumably would prohibit the state today from providing for the punishment of nonpersons, such as animals and inanimate objects, familiar in premodern punishment. Within the class of persons, the state also would be barred from criminalizing the behavior of certain individuals who lack basic capacities, such as the insane and infants. The proscription of cruel and unusual punishment, however, would not apply to other state controls directed at these persons, provided that they do not qualify as punishment, such as civil commitment of one form or another. These restrictions upon the object of punishment are distinguished from those upon the ground of punishment, that is, that which may trigger the threat, the imposition, or even the infliction of punishment. The material criminal law teaches us that even a person who would generally qualify for punishment may not be punished unless certain formal and substantive conditions are met, which generally mirror the distinction between the general part and the special part of criminal law. Attempts to interpret the principle as a constitutional foundation for these conditions of criminalization and punishability have met with little success. The Supreme Court, for example, has yet to declare mens rea a constitutional prerequisite, even if mens rea is expansively defined to include negligence, a nonintentional mental state. Strict liability crimes, that is, crimes that require no mental states whatsoever, persist on the books and, in fact, continue to multiply with the expansion of modern regulatory offenses. Even the constitutional status of actus reus, the best candidate for a bedrock prerequisite for punishability, remains in doubt. The Supreme Court invoked the principle in a opinion to strike down a California law making it a misdemeanor "to be addicted to the use of narcotics, excepting when administered by or under the direction of a person licensed by the State to prescribe and administer narcotics. Robinson has been interpreted more generally to proscribe all status offenses, including those based upon a status other than that of a sick person. Six years later, in Powell v. Texas , U. Other components of actus reus find a constitutional basis, if any, elsewhere. Attempts to derive from the cruel and unusual punishments clause substantive limitations on criminalization, as opposed to punishability, have been even less successful. The Robinson opinion, for example, has not been interpreted broadly to condemn the criminalization of drug possession, rather that of drug addiction , but has in fact been interpreted narrowly, as the Powell case makes clear. In contrast to the question of whom the state may punish for what, that of how the state may do the punishing falls squarely within the scope of the cruel and unusual punishments clause. So the clause prohibits torturous and barbaric punishments. What constitutes torture and barbarity depends on the application of the Trop decency standard. As we have seen, the Eighth Amendment does not condemn capital punishment. A state today presumably would not be free to provide for other corporal punishments, such as mutilation, lobotomy, and castration, at least if they are to be inflicted without explicit consent. The Supreme Court, however, has not seen fit to impose Eighth Amendment limitations on the quantity of noncorporal punishment, including life imprisonment without the possibility of parole. Similarly, certain punishments, though generally unobjectionable under the Eighth Amendment, are cruel and unusual when imposed on certain defendants. So the death penalty may be imposed on defendants who are mentally retarded without being criminally insane Penry v. Crimes and punishments proportionality. Whether the Eighth Amendment reaches the relation between crimes and punishments, that is, the proportionality of punishment, may depend on the nature of the punishment in question. There is consensus that the punishment must be proportionate to the crime in death penalty cases. The Supreme Court has been less clear on the question of whether a proportionality requirements also attaches to noncapital punishments, and, assuming it does, what it looks like. In the capital context, the Supreme Court has invoked the proportionality principle to strike down a statute that provided the death penalty for the rape of an adult woman. In noncapital cases, the Supreme Court has struggled to find a workable proportionality test. In an irreconcilable series of opinions on recidivist statutes decided within a space of three years, the Supreme Court upheld a life sentence and a forty-year prison term, but struck down

another life sentence Rummel v. The last case in the series attempted to steady the jurisprudence in this area with a three-prong test that looked to the gravity of the offense compared to the severity of the penalty, the sentences imposed for other crimes in the same jurisdiction, and the sentences imposed for the same crime in other jurisdictions. The Solem test, however, proved short lived. Only eight years later, in a case upholding a sentence of life imprisonment without the possibility of parole for simple drug possession, a majority of the Supreme Court rejected the test, with two justices in the majority going so far as to suggest that the Eighth Amendment places no proportionality requirement on noncapital punishments, while the remaining three opined that the Amendment forbids only grossly disproportionate noncapital punishments Harmelin. Imposition procedural criminal law The Eighth Amendment has had its greatest impact on procedural criminal law in capital cases. There the Supreme Court has required a process that guarantees an individualized sentencing decision to avoid arbitrary and capricious death sentences. The Supreme Court has rejected attempts to extend this requirement to noncapital cases, even those involving a maximum sentence of life imprisonment without the possibility of parole Harmelin. Presumably, the imposition of penal norms upon an incompetent defendant would also be considered cruel and unusual. The Eighth Amendment alone, however, would not prohibit the conviction—or even the execution—of an innocent person, assuming the impositional process satisfied due process requirements Herrera v. Infliction prison or correction law Even if neither the legislative threat of a particular punishment nor its imposition on a particular defendant violates the Eighth Amendment, its actual infliction may. After all, the amendment specifically prohibits the infliction of cruel and unusual punishments, in contrast to the imposition of excessive bail or fines. Legislatures enjoy considerable latitude in determining the mode of punishment. Still, the cruel and unusual punishments clause reaches the actual infliction of punishment, even if it does not deviate from the general mode specified by the legislature say, by electrocuting a condemned man rather than hanging him. Paradoxically, the infliction of noncapital punishment has received much greater Eighth Amendment scrutiny than has the infliction of capital punishment. So the Supreme Court has consistently rejected claims based on botched execution attempts, while at the same time developing a complex jurisprudence of prison conditions, which critics have characterized as a National Code of Prison Regulations Hudson v. In the law of prisons, different tests govern the infliction of legislatively defined and judicially imposed punishments, on the one hand, and the disciplining of inmates for prison misconduct, on the other. The former amounts to cruel and unusual punishment if it reflects "deliberate indifference" on the part of prison officials. The latter violates the Eighth Amendment, for example, only if it reflects "malice and sadism" Hudson. Conclusion The cruel and unusual punishments clause today speaks to all aspects of the penal process. It remains to be seen whether it will ever realize its potential as the single most important source of substantive constitutional constraints upon American penal law, alongside the due process clause, which has long been recognized as the root of significant procedural rights. Implications of Powell v. Cite this article Pick a style below, and copy the text for your bibliography.

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7: Cruel and unusual punishment - Wikipedia

A punishment is cruel and unusual if it is "cruel in light of long usage" - that is, cruel in comparison to longstanding prior practice or tradition. This understanding of the original meaning of the Cruel and Unusual Punishments Clause leads to very different results than either the non-originalist approach or Justices Scalia's and.

A Contemporary Perspective by Bryan A. Burr lost the election, and he blamed Hamilton, so he challenged Hamilton to a duel. Dueling continued in the United States until the midth century. Burr was never prosecuted for the murder of Hamilton. Today, dueling is deemed unconscionable. No American leader could credibly support dueling as an acceptable method for resolving conflicts. It is hard for us now to understand how the Framers of our Constitution could embrace such a misguided and barbaric practice. To become a great country, America needs its laws and basic constitutional principles to evolve as our understanding of human capacity and behavior deepens. The greatness of our Constitution and America itself is dependent on how the Constitution is interpreted to ensure that all people are treated equally and fairly and have the same opportunity to exercise the rights to life, liberty, and the pursuit of happiness as the exclusive group of men who authored the Constitution. As our notions of fairness, equality, and justice have evolved, so too must our interpretation of the Constitution. No provision of the Constitution enshrines this principle more clearly than the Eighth Amendment. Read the full discussion here. This approach begs complex questions, such as who decides what is decent and what is cruel? Throughout its history, the Court has ruled that certain practices are unconstitutional or indecent even when such practices were popular. Ending racial segregation in schools or restaurants and striking down bans on interracial marriage never could have been achieved by a popular vote in the American South. Black people were a political minority, and policies that denied their basic rights were extremely popular. Accordingly, progressives believe the Court must protect the disfavored, the unpopular, the minority groups who can expect no protection from officials elected by majority vote. For progressives, what constitutes cruel punishment cannot be resolved by opinion polls or the popularity of the punishment. The legitimacy of a punishment must be assessed instead by evaluating whether it serves an appropriate and acceptable penological purpose. In this respect, the Eighth Amendment does not merely prohibit barbaric punishments; it also bars disproportionate penalties. A sentence of life imprisonment without parole may be acceptable for some crimes, but it would violate the Constitution to condemn anyone to die in prison for shoplifting or simple marijuana possession. For progressives, the constitutionality of a particular punishment cannot be evaluated in the abstract. The decency or legitimacy of a punishment can be assessed reliably only in context. I believe that the question whether the death penalty violates the Eighth Amendment cannot be resolved by simply asking whether a person deserves to die for the crime he has committed. I believe we must first ask whether we deserve to kill. If we have a death penalty that is applied in a racially discriminatory manner, where the race of the victim shapes who gets the death penalty and who does not; if we have a death penalty that is imposed not on the rich and guilty but on the poor and innocent; if we execute people with methods that are torturous and inhumane, then we have a death penalty that violates the Eighth Amendment. Since the modern era of capital punishment in the United States began in the s, people have been proven innocent after being sentenced to death. We have executed more than people during the same time period. For every nine people executed, one innocent person has been exonerated. For progressives, this is an unacceptably high rate of error: The probability that an innocent person has been or will be executed offends our standards of decency, and renders the death penalty cruel and unusual punishment that violates the Eighth Amendment. Fairness, reliability, racial discrimination, bias against the poor, political arbitrariness, and other factors that did not trouble the framers of the Constitution, nonetheless shape how a decent society must interpret the Eighth Amendment today. For progressives, the Constitution must evolve and be interpreted so that the rights of people who are less favored, less protected, and less influential are not sacrificed to serve the interests of the powerful and the popular. The framers of the American Constitution should be celebrated for creating a prohibition on punishments which are cruel and unusual; but it is incumbent on all of us to insist on a Court that applies the prohibition fairly, sensibly and justly for an evolving nation. Stinneford Against Cruel

Innovation: It argues that the Constitution should be interpreted in accordance with its original public meaning, and it demonstrates what effect such an interpretation would have in the real world. In recent years, some judges and scholars have argued that the meaning of the Constitution should change as societal values change. This approach allows the Supreme Court to get to whatever result it considers desirable, regardless of what the text of the Constitution actually means. Originalists object to this approach for many reasons, including the fact that it is inconsistent with democratic principles and the rule of law. In response to the non-originalist approach to the Constitution, some judges and scholars â€" most prominently Justices Scalia and Thomas â€" have argued for a very narrow approach to original meaning that is almost willfully indifferent to current societal needs. To understand their approach, let us revisit the four questions raised in the joint statement concerning the settled history and meaning of the Eighth Amendment: Justices Scalia and Thomas argue that the four questions raised above should be answered as follows: If a punishment was acceptable in , it must be acceptable today. A life sentence for a parking violation, for example, would not violate the Constitution. Since flogging, branding, and various forms of bodily mutilation were permissible in the Eighteenth Century, few modern forms of punishment are likely to fall into this category. In other words, a common punishment might be more cruel than a rare one: For example, it would be more cruel to commit torture on a mass scale than on rare occasions, not less. The best way to understand this is to run through those four questions once again, using our new understanding of the original meaning of the Clause: Rather, the benchmark is longstanding prior practice. If a given punishment has been continuously used for a very long time, this is powerful evidence that multiple generations of Americans have considered it reasonable and just. This does not mean that any punishment that was once part of our tradition can still be used today. If a once-traditional punishment falls out of usage for several generations, it becomes unusual. If a legislature then tries to reintroduce it, courts should compare how harsh it is relative to those punishment practices that are still part of our tradition. If a punishment is significantly harsher than punishments traditionally given for the same or similar crimes, it is cruel and unusual, even though the same punishment might be acceptable for other crimes. For example, it would be cruel and unusual to impose a life sentence for a parking violation, but not for murder. If it fell out of usage for multiple generations, however, it might become cruel and unusual. This has already occurred with respect to some once-traditional applications of the death penalty. It is no longer constitutional to execute a person for theft, for example, because this punishment fell out of usage for this crime a long time ago, and the punishments that have replaced it are far less severe. If a court were to find that their effect is significantly harsher than the longstanding punishment practices they have replaced, it could appropriately find them cruel and unusual.

8: Amendment VIII - The United States Constitution

Note: A cruel and unusual punishment is essentially one that the courts consider to violate the Eighth Amendment based on a variety of criteria. The interpretation of what constitutes cruel and unusual punishment has changed over time and has varied from jurisdiction to jurisdiction.

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What exactly is a "cruel and unusual punishment" within the meaning of the Eighth Amendment? Did the framers intend only to ban punishments-- such as "drawing and quartering" a prisoner, or having him boiled in oil or burned at the stake--that were recognized as cruel at the time of the amendment's.

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