Excessive bail shall not be required, nor excessive fines imposed, and neither cruel nor unusual punishments, as determined by the evolving societal standards of decency, shall be inflicted.

Annotated Bibliography


This article seeks to determine whether the Constitution prohibits punishments that are both cruel and unusual or punishments that are just one or the other. It analyzes the language of the Bill of Rights to help determine what the authors meant by “cruel and unusual,” mostly by examining how “and” is used in other amendments. It then compares multiple Supreme Court decisions, pointing out how inconsistently the Court has addressed this issue. Published in 2010, it's a fairly recent article, and the author provides a thorough, objective analysis of the 8th Amendment and relevant cases.


This author takes a living originalist approach to the Constitution, arguing that what is considered cruel and unusual is dynamic and evolving. He analyzes the common law doctrine of desuetude, which claims disused punishments become “unusual” over time and can be rejected. He also provides examples of this occurring in American history,
namely with flogging, branding, and death by firing squad and hanging. The article is recent and comprehensive, and the author has written on this topic before.


The opinion of Chief Justice Warren in this case gave rise to the “evolving standards of decency” test. I included some of this language in my amendment. The Court also recognized, by referring to *Weems v. United States*, that the Eighth Amendment is imprecise and its “scope is not static.” I use this as evidence for adding to the Eighth Amendment to improve its clarity and solidify the decency test as law.