Paula forum post,

My short answer to the question of banning the death penalty as a violation of Eighth Amendment rights is that the death penalty is, in my opinion, cruel and unusual punishment.  However, do I think it is cruel and unusual punishment to put serial killers to death?  No.  If someone broke into my house and murdered my family, I assume I would want them to die, at least at first.  Cruel and unusual may be subjective words, different to every unique individual.  Admittedly, there has been an increase in exonerated death row inmates, primarily due to recent DNA technology.  This tells me that there is a distinct possibility that innocent inmates have previously been put to death.  Is there any way to GUARANTEE the death penalty is only reserved for the guilty who have committed the most heinous crimes?   As long as our criminal justice system is run by humans, it remains as humans are - fallible.  For this reason, I feel the death penalty should be abolished.  It is not worth killing one innocent person to kill ten or even a hundred guilty people.

Some may argue that eliminating the death penalty will contribute to overcrowding of prisons.  In the past ten years (2007-2016), there have been 385 executions in the United States, with 165 of them within the past five years (2012-2016). (fn. 1).   This is an average of a little less than 39 people per year.  It is hard to believe that 39 people each year would contribute to overcrowding in any way other than negligible.  What is needed in the United States is a total prison reform, including greater programs for rehabilitating offenders of non-violent crimes.  That is a conversation for another day, however.

Our lesson this week states that the Eighth Amendment is neither for nor against the death penalty. (fn. 2).  This means it has been left open for interpretation, leading some to feel that the Framers were not opposed to the death penalty. (fn. 3).  Still, others believe that cruel and unusual punishment changes as society changes with the Court determining that decency standards evolve as society matures. (fn. 4).  Although hanging was common at one time, it would be considered cruel and unusual punishment by today’s standards.  Although the death penalty is not directly addressed in the Constitution, it seems the Founding Fathers left that to interpretation based on what, at the time, is considered cruel and unusual punishment.

Although the Eighth Amendment does not spell out what equates to cruel and unusual punishment, Kumar writes that the Framers were mostly referring to torture and barbaric punishments. (fn. 5).  This was established by the Supreme Court in Solem v. Helm, 463 U.S. 277 (1983).  This protection of rights against inhumane treatment is often applied to convicted prisoners.  This allows them their basic, fundamental human rights, while keeping what they endure on a “moral” level. (fn. 6).  Once again, because it is not clearly spelled out under the Constitution, it is left to interpretation.  Many times that interpretation is left to the Supreme Court to decide.  In Glossip v. Gross, 135 S. Ct. 2726 (2015), the Supreme Court held that regarding lethal injections, administering a specific combination of drugs was not cruel and inhumane because there may be pain in any method.  Typically, the Supreme Court tries to steer clear of interfering in the state’s laws regarding the death penalty.

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” (fn. 7).  With the Eighth Amendment, the Framers intended on making sure even criminals were allotted fundamental rights.  By not allowing excessive bail, they secured a person’s right to remain innocent until proven guilty by giving them the ability to prepare a proper defense. (fn. 8).  Regarding excessive fines, the Eighth Amendment ‘‘clearly was adopted with the particular intent of placing limits on the powers of the new government.’’ (fn. 9).  And finally, they intended to ban cruelty and inhumanity to even the convicted.

~Paula