

PROCEDURE:**1. THINK AND WRITE: Preview / Hook Activity / Do Now (2-3 minutes):**

As the students walk into the class, they will see the symbol for the 8th Amendment from the *Interactive Constitution*. Have the students describe the details of the symbol and identify what they think they will discuss during the lesson.

**2. INTRO:** Use the student observations about the symbol to start a broader discussion about the 8th Amendment, what the students will be doing, and why they are going to be doing it. Use the following questions to guide the discussion.

- ★ Where are specific rights of American citizens protected? (Students will say the Constitution or Bill of Rights)
- ★ Who interprets, or answers legal questions about, the Constitution? (The students might say the government, the President, but they will likely say the Supreme Court.)
- ★ How might the justices on the Supreme Court form their opinions? (Students might say personal experience, history, etc. The Justices actually form their opinions based on the work of constitutional experts. They also form ideas working with their clerks, staff who help look at history and modern debates.)
- ★ Where do clerks get their information? (They get their information from constitutional scholars, too.)
- ★ “So, today, we will investigate opinions from top constitutional scholars—just like clerks and Justices at the Supreme Court to better understand debates about the 8th Amendment.”

This may be a good point to emphasize that Supreme Court Justices use more than their personal opinions and beliefs to interpret the Constitution when making rulings. The students will not use their personal political opinions during this lesson, either. They will look at the arguments put forth by the constitutional scholars and decide who makes the better argument.

3. SHORT LECTURE (5-10 minutes): Common Interpretation: The Common Interpretation essay on the 8th Amendment was written by Bryan A. Stevenson (Professor of Clinical Law, New York University School of Law, and Executive Director, Equal Justice Initiative) and John F. Stinneford (Professor of Law and Assistant Director, Criminal Justice Center, University of Florida Levin College of Law)—leading conservative and liberal scholars on the 8th Amendment. It includes information and interpretations on which the two scholars **agree**. It provides a foundation of *common* ground before students consider opposing viewpoints about how we might interpret the Amendment in the future.

Break students into groups of 3 or 4. Each group will read the excerpt of the Common Interpretation or they can use the Interactive Constitution App or website to read through it. The groups should spend about 5 to 10 minutes tracing the historical development and application of the 2nd Amendment. After the groups are done reading, the teacher should lead a quick review of the Common Interpretation and its key points to insure that all of the groups have a similar understanding of the Common Interpretation.

Key Points from the Common Interpretation:

- ★ The 8th Amendment prohibits the federal government from using harsh penalties for criminal defendants, either as the price for pretrial release **or** as punishment for crime after conviction. “Cruel and Unusual Punishments Clause” is most important and controversial part of the amendment.
- ★ Modern debates: What does it mean for a punishment to be “cruel and unusual”? How do we measure cruelty? If punishment is cruel, why should we care if it is “unusual”?
- ★ Founding Era: The phrase “cruel and unusual” comes from England in 1689. The Constitution made the federal government more powerful than under the Articles of Confederation. Significant new power was power to create federal crimes and to punish those who committed them. Opponents of the Constitution feared this allowed Congress to use cruel punishments to oppress the people.
- ★ Today: Most people also agree “Cruel and Unusual Punishments Clause” limits state power as well as federal power.
- ★ Questions today: How should the Court use to decide if punishment is cruel? Does the Amendment only prohibit harsh methods of punishment, or does it prohibit punishment that does not match the crime (a life sentence for chewing gum in school)? Does the Amendment prohibit the death penalty? Do modern methods of punishment violate the Amendment?

4. **GROUP ACTIVITY (12-14 minutes):** Each group will read the excerpts from the “Matters of Debate” essays by Bryan A. Stevenson and John F. Stinneford. In these essays the same scholars who wrote the Common Interpretation write individual essays about how they believe the Amendment should be interpreted moving forward.

As the students are reading, they should identify the thesis or “main point” of each scholar by highlighting, circling, or underlining the thesis of each essay and filling in each side of the graphic organizer. This will help the students focus on the argument the scholar is trying to make.

After finding the thesis for each scholar, students should write at least one question they have for the scholars.

- ★ “If the scholars were in the room with us, today, what is something you would want to ask them about their opinion? What would need to have clarified to understand their argument?”



- ★ While students complete these the teacher should post the names “Bryan A. Stevenson” and “John F. Stinneford” on opposite sides of the classroom.
- ★ Teacher will circulate through the room to support students, as needed, with isolating the thesis, understanding new vocabulary, etc.

Once they identify the theses and develop questions, each group should, then, write each thesis and two of their questions on separate sticky notes (four, total, for each group).

Students should place their sticky notes—with the theses and questions—on the wall under the corresponding scholars’ names.

- ★ Having the students use sticky notes to report their findings and question at the front of the room allows the teacher to quickly assess the answers from all the groups at once rather than going around the room group by group. The anonymity also removes the pressure of students being “put on the spot” when reporting out the theses or asking their questions.

5. **SHARE (6-8 minutes):** Once every group has posted their theses and questions, use their findings and questions to facilitate discussion about Stevenson’s essay and Stinneford’s essay. This can help as a quick assessment to make sure each group knows what each scholar is trying to say. The teacher will be able to clarify any questions the students may have and highlight the key arguments of each scholar.

Teacher will remind the students, as needed, that they are analyzing the scholars’ constitutional arguments—not having a political debate.

NOTE: The teacher will answer the “Questions for Stevenson” and “Questions for Stinneford” based on the scholars’ essay. So she/he will need to be familiar with the full text of those essays before using this lesson.

- ★ **Full essays available here:**
[“The Eighth Amendment- A Contemporary Perspective”](#) (Stevenson)
[“Against Cruel Innovation: The Original Meaning of the Cruel and Unusual Punishments, and Why it Matters Today”](#) (Stinneford)

6. **LINE-UP (6-8 minutes):** After the students have gathered information from the common interpretation and the essays, ask the students to use the understandings they developed from the readings and discussion (not their political opinions) to stand on the side of room near the name of the scholar they think does **a better job of providing an understanding of how the Amendment should be applied**. Explain to the students that they can stand somewhere in the middle if they do not fully agree with one side or the other, if they have more questions, or if they need more information. Once the students have picked a place to stand, lead a discussion asking some students why they stood where they did reminding the student that they should relate their answer back to the history, common interpretation, and scholar essays.



(It is important to remind students throughout that they are considering the arguments are presented in the lecture, essay excerpts, and whole class discussion—they are NOT debating political/personal opinions.)

- ★ Ask a student standing near Stevenson to explain why they think Stevenson offers the stronger argument.
- ★ Ask a student standing near Stinneford to explain why they think Stinneford offers the stronger argument.
- ★ Ask a student in the middle why they are standing in the middle.
- ★ Ask a student standing near Stevenson to explain why they think someone else might think Stinneford offers the stronger argument (get the students to consider the other side of the argument)
- ★ Ask a student standing near Stinneford to explain why they think someone else might think Stevenson offers the stronger argument.

- 7. REFLECTION/EXIT SLIP (2 minutes):** Students will then go back to their seats and write a brief reflection on how their understandings of the scholars' viewpoint affected their understanding of the amendment. This, along with the work from the rest of the activity, will be on their 8th Amendment graphic organizer and can be collected to assess class participation and learning outcomes.



TEACHER KEY

8TH AMENDMENT**Notes on the “Common Interpretation”. What are the things on which the scholars agree?**

- ★ The 8th Amendment prohibits the federal government from using harsh penalties for criminal defendants, either as the price for pretrial release or as punishment for crime after conviction. “Cruel and Unusual Punishments Clause” is most important and controversial part of the amendment.
- ★ Modern debates: What does it mean for a punishment to be “cruel and unusual”? How do we measure cruelty? If punishment is cruel, why should we care if it is “unusual”?
- ★ Founding Era: The phrase “cruel and unusual” comes from England in 1689. The Constitution made the federal government more powerful than under the Articles of Confederation. Significant new power was power to create federal crimes and to punish those who committed them. Opponents of the Constitution feared this allowed Congress to use cruel punishments to oppress the people.
- ★ Today: Most people also agree “Cruel and Unusual Punishments Clause” limits state power as well as federal power.
- ★ Questions today: How should the Court use to decide if punishment is cruel? Does the Amendment only prohibit harsh methods of punishment, or does it prohibit punishment that does not match the crime (a life sentence for chewing gum in school)? Does the Amendment prohibit the death penalty? Do modern methods of punishment violate the Amendment?

BRYAN A. STEVENSON:

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.

JOHN F. STINNEFORD:

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.

QUESTION FOR STEVENSON:**QUESTION FOR STINNEFORD:**

How do you understand current debates about this Amendment based on the “Common Interpretation” and what Stevenson and Stinneford say? (Why did you stand where you did when everyone lined up and why did you not stand somewhere else?)

