

**ARGUMENT  
FROM  
CONTINGENT  
REALITIES**

**PHIL 102**

**Ethics, Politics, & Law**

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**Spring Quarter 2007**

# **PRINCIPLE AND CONTINGENT REALITIES**

- **Arguments from pure principle**
  - **Pro: Justice demands death**
  - **Con: Death is cruel and barbaric**
  - **Preaching to the choir**
- **Arguments from contingent realities**
- **Concede the point in principle**
- **Concede it would be right in a more perfect world, but in this world**
- **Student/professor affairs**

# **Death Penalty & Principle**

- **Perhaps murders deserve to die**
- **Will concede, at least for argument**
- **In a more perfect world, capital punishment would be morally and constitutionally acceptable**
- **But, in the real world . . .**

# **Eighth Amendment**

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

# **Fourteenth Amendment**

**No State shall . . . 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.**

# Recent Constitutional Law

- *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)

# 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?

# 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**