Death Penalty in America
Legal Studies 485
Fall 2006
From this day forward, I no longer shall tinker with the machinery of death. I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies.

- Harry Blackmun (1908-1999)
former U.S. Supreme Court Justice

While a public opinion poll obviously is of some assistance in indicating public acceptance or rejection of a specific penalty, its utility cannot be very great... People who were fully informed as to the purposes of the death penalty and its liabilities would find the penalty shocking, unjust, and unacceptable.

former U.S. Supreme Court Justice

There are few issues more debated in sociolegal circles than the death penalty. For some, the issue revolves around the U.S. Constitution. Others argue that religion controls the topic. Even others turn to philosophy to answer the questions posed by the existence of capital punishment. The debate continues.

This course is designed to examine basic ideas about the death penalty. You will learn the history of capital punishment in the United States and analyze empirical data. You will also look at various U.S. Supreme Court cases concerning the death penalty and consider moral, political, and legal arguments.

The objective of this course is to gain information and knowledge on the death penalty. This should result in improved writing and critical thinking skills. By examining both sides of the issue, you should leave this course with the ability to defend your opinion, now entrenched in facts, in a knowledgeable and non-emotional manner. Opinions, while interesting and valuable, must be supported by facts. This course should give you facts on the death penalty and the criminal justice system which will generate, for you, an informed opinion.
REQUIREMENTS AND GRADING

(1) Quizzes – 20%
Four in-class quizzes each worth 5%. There will be NO make-up quizzes.

(2) Attendance and participation – 20%
There is no substitute for attending class. If you need to miss class, inform me in advance or shortly thereafter. Attending class, taking copious notes, and keeping up with the reading and assignments is imperative. There are no short cuts, so do the work. Class discussions will be the cornerstone of this course. If you are not prepared to speak, get prepared. If you are shy, this will be the time to become more vocal. If you are talkative, this may be the time to listen and learn from others as well. NOTE: If it appears that the class is not keeping up with the assigned reading, additional pop-quizzes will be administered and factored into the participation grade.

(3) Research paper – 40%
Consists of a 10-15 page paper. Your paper topic must be discussed throughout the semester during both class and/or office hours. In an attempt to avoid writing the paper in the last days of the semester and producing inadequate work, periodic assignments concerning the research paper will be due in intervals.
Title, question(s) presented, annotated bibliography – 5%
Introduction and paper skeleton/outline– 5%
Final paper – 30%

(4) Oral presentations/debates – 20%
Debate topics will be assigned. Each debate will last approximately 8 minutes. Debates will be one-on-one which means each person will need to deliver about 5 minutes of prepared speech. Debates will be graded on oral presentation skills, persuasiveness, and written work. ALL STUDENTS MUST ATTEND THE LAST TWO WEEKS OF CLASS FOR ALL DEBATES.

READING REQUIREMENTS

Available at Food for Thought Books, 106 N. Pleasant Street, Amherst.

Reading packet available at Collective Copies, 71 S. Pleasant Street, Amherst.

Online readings available at [www.umass.edu/legal/Lorenz](http://www.umass.edu/legal/Lorenz)

ACADEMIC HONESTY

Academic dishonesty in any form will not be tolerated. This means that plagiarism of any kind will be met with a swift and decisive punishment. If you are unaware of the University policy on plagiarism, you should review it. If you are unaware what entails plagiarism, you should speak with me immediately. Do not devalue your education or the reputation of the University by caving to the pressure of stress, time, family, or other issues that may arise. It should be made clear to you that anyone caught plagiarizing in this course will have their materials forwarded to the Ombuds Office and I will vigorously push for expulsion from the University.
NOTE: Reading assignments are to be completed BY that class. All reading is subject to change. Awareness of any changes is the responsibility of the student. All readings can be found in the course packet, course book, or online except where listed, in which case I will distribute the appropriate reading(s).

**September 7:** Introduction
Read syllabus.

**September 12:** History
PART 1: HISTORY
**History:** Since 1608, where the first documented lawful execution was administered, the United States has devised methods and statues to utilize death as a legal sentence. This section is designed to look at the history of capital punishment as it made its way from England to the United States.
Hugo Adam Bedau: 3-35

**September 14:** Statistics and Public Opinion
PART 2: STATISTICS AND PUBLIC OPINION
**Statistics and Public Opinion:** When having a discussion on a topic as volatile as the death penalty, it is best to arm yourself with data. This section will introduce various statistics on the death penalty and view them in light of contemporary public opinion
Hugo Adam Bedau: 36-77
Declaration of Life: to be distributed

**September 19:** Cruel and Unusual
PART 3: CRUEL AND UNUSUAL
**Cruel and Unusual:** This section introduces you to the constitutional approach in capital punishment cases. Here we ask whether the law can deal with an issue as final as death. Precedent cases here allow us to see constitutional logic and philosophy in dealing with the death penalty.
Hugo Adam Bedau: 183-188
*Furman v. Georgia* (1972) 408 U.S. 238

**September 21:** Cruel and Unusual – QUIZ #1

**September 26:** The Controversy over Deterrence
PART 4: THE CONTROVERSY OVER DETERRENCE

**The Controversy over Deterrence:** The question of deterrence is one of the most heavily debated on the subject. Deterrence involves interdisciplinary studies and allows society to view capital punishment from legal, political, and moral vantage points.
Hugo Adam Bedau: 135-161

**September 28:** The Controversy over Deterrence
Hugo Adam Bedau: 176-182
James Galliher and John Galliher: 307-333 (available online)

**October 3:** The Death Penalty and Morality
PART 5: THE DEATH PENALTY AND MORALITY

**The Death Penalty and Morality:** Morality, always difficult to define, plays an important role for many involved in debating the death penalty. In this section, we will briefly look at issues of morality related to religion and philosophy.
Davison Douglas: 137-170 (available online)
Video: Governor Ryan’s Commutations

**October 5:** The Death Penalty and Morality
Hugo Adam Bedau: 387-400
Peter Fitzpatrick: 19-33
October 10: Mandatory Death Penalty – QUIZ #2
PART 6: MANDATORY DEATH PENALTY

Mandatory Death Penalty: Post-Furman, various state legislatures argued that a mandatory death penalty for specific types of murder would avoid an inconsistent application of a death sentence. This section looks at the constitutionality of such legislation.


October 12: Murder Defendants Who Did Not Kill - TITLE, QUESTION(S) PRESENTED, ANNOTATED BIBLIOGRAPHY DUE
PART 7: MURDER DEFENDANTS WHO DID NOT KILL

Murder Defendants Who Did Not Kill: In some instances, a homicide is committed but the accused did not intend to kill his/her victim. Courts were asked to decide whether defendants who did not intend to kill their victims, but the victims died nonetheless, deserve death sentences. We will look at various cases on that topic.

Coker v. Georgia (1977) 433 U.S. 584
Godfrey v. Georgia (1980) 446 U.S. 420

October 17: Murder Defendants Who Did Not Kill
Jennifer Culbert: 206-225

October 19: Death Penalty and Juries
PART 8: DEATH PENALTY AND JURIES

Death Penalty and Juries: Generally, the states that impose capital punishment require the trial jury be unanimous in its verdict. Some questions in this section ask what role juries should play in relation to judges and how victims should be placed in the process.

Witherspoon v. Illinois (1968) 391 U.S. 510
Lockhart v. McCree (1986) 476 U.S. 162

October 24: Death Penalty and Juries – QUIZ #3
Ring v. Arizona (2002) 01-488
Austin Sarat: 33-59

October 26: Juvenile Sentences
PART 9: JUVENILE SENTENCES

Juvenile Sentences: This section looks at the history and constitutionality of executing juveniles. What is the minimum age? Who sets it? Why?

Roper v. Simmons (2005) 03-633
Burt Neuborne: to be distributed
Jeffrey Rosen: to be distributed

October 31: Executing the Insane
PART 10: EXECUTING THE INSANE

Executing the Insane: This section addresses whether it is constitutional to execute the legally insane. What is the definition of insane? What problems arise from defining sanity?

Ford v. Wainwright (1986) 477 U.S. 399
November 2: Executing the Mentally Retarded
PART 11: EXECUTING THE MENTALLY RETARDED

Executing the Mentally Retarded: This section, like the previous two, look at the constitutionality, this time of executing the mentally retarded. Again, who makes these decisions and why?

*Penry v. Lynaugh* (1989) 492 U.S. 302

November 7: Race and the Death Penalty
PART 12: RACE AND THE DEATH PENALTY

Race and the Death Penalty: This section addresses another volatile topic in U.S. sociolegal circles: Race. Here, we will look at whether race can be connected to the administering of capital punishment or the criminal justice system in general.

Randall Kennedy: 311-350

November 9: Catch-up day

There is no extra reading. We will simply try to catch-up on any topics that we did not finish and discuss research paper progress.

November 14: Race and the Death Penalty


Paul Butler: 721-773 (available online)

November 16: The Death Penalty: For and Against – QUIZ #4 - INTRODUCTION AND PAPER SKELETON/OUTLINE DUE

PART 13: THE DEATH PENALTY: FOR AND AGAINST

The Death Penalty: For and Against: The last section allows us to see scholars and philosophers debate the pros and cons of capital punishment. By this time in the semester, you should be knowledgeable on the subject and able to discern the strengths and weaknesses of their arguments.

Hugo Adam Bedau: 415-428
Hugo Adam Bedau: 445-456
Hugo Adam Bedau: 457-469

November 21: Special topics

Reading to be distributed

November 23: No class

Thanksgiving Break

November 28: Oral Presentations/Debates

Reading to be distributed

November 30: Oral Presentations/Debates

Reading to be distributed

December 5: Oral Presentations/Debates

Reading to be distributed

December 7: Oral Presentations/Debates

Reading to be distributed

December 12: Oral Presentations/Debates

Reading to be distributed

December 15-22: Final Examination Period

FINAL ASSIGNMENT DUE ON TUESDAY DECEMBER 19 AT 2:00 IN GORDON HALL 121