Death Penalty in America
Legal Studies 485
Spring 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 shortcuts, 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 6 minutes. Debates will be one-on-one which means each person will need to deliver about 3 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/deathpenalty/](http://www.umass.edu/legal/Lorenz/deathpenalty/)

COURSE SCHEDULE

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).

January 31: Introduction
Read syllabus.
February 2: 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

**February 7:** 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

**February 9:** 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

**February 14:** Cruel and Unusual – QUIZ #1


**February 16:** 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

**February 21:** No class

Monday class schedule followed

**February 23:** The Controversy over Deterrence

Hugo Adam Bedau: 176-182

James Galliher and John Galliher: 307-333 (available online)

**February 28:** 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

**March 2:** The Death Penalty and Morality

Hugo Adam Bedau: 387-400

Peter Fitzpatrick: 19-33

**March 7:** 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.


**March 9:** 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

March 14: Murder Defendants Who Did Not Kill


Jennifer Culbert: 206-225

March 16: 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

March 21: No class
Spring break

March 23: No class
Spring break

March 28: Death Penalty and Juries – QUIZ #3

Ring v. Arizona (2002) 01-488

Austin Sarat: 33-59

March 30: 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

April 4: 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

April 6: Executing the Mentally Retarded

PART 11: EXECUTING THE MENTALLY RETARDED

Executing the Mentally Retarded: This section, like the pervious 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

April 11: 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

April 13: Race and the Death Penalty


Paul Butler: 721-773 (available online)

April 18: 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.

April 20: The Death Penalty: For and Against - QUIZ #4

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

April 25: The Death Penalty: For and Against - INTRODUCTION AND PAPER

SKELETON/OUTLINE DUE

Hugo Adam Bedau: 457-469

April 27: Oral Presentations/Debates

Reading to be distributed

May 2: Oral Presentations/Debates

Reading to be distributed

May 4: Oral Presentations/Debates

Reading to be distributed

May 9: Oral Presentations/Debates

Reading to be distributed

May 11: Oral Presentations/Debates

Reading to be distributed

May 16: Review

Review

May 19-26: Final Examination Period

FINAL ASSIGNMENT DUE ON TUESDAY MAY 23 AT 2:00 IN GORDON HALL 121