

COURSE APPROVAL DOCUMENT
Southeast Missouri State University

Department: CRIMINAL JUSTICE & SOCIOLOGY Course No. UI460

Title of Course: Death Penalty History and Issues Date: 5/07/2015

Please check: New
 Revision

I. Catalog Description (Credit Hours of Course): Exploration of the history of capital punishment in Anglo-American law, constitutional issues, and policy arguments for and against the practice (3)

II. Co- or Prerequisite(s): Junior or Senior Standing

III. Purposes or Objectives of the Course (optional):

- 1) Review the history of the death penalty in Anglo-American society
- 2) Analyze Constitutional issues related to death penalty jurisprudence
- 3) Review the sociological theories relevant to the death penalty, including deterrence & retribution
- 4) Assess & analyze the finality of the death penalty & the effect of wrongful convictions & executions on the appropriateness of capital punishment
- 5) Address the concept of evolving standards of decency of our society & how that impacts the practice of capital punishment

IV. Student Learning Outcomes (Minimum of 3):

- 1) Students will describe the trends in the history & practice of the use of capital punishment in Anglo-American society.
- 2) Determine the Constitutional protection & analyze their relationship with current issues & trends related to the death penalty
- 3) Analyze the sociological theories relevant to the death penalty, including deterrence & retribution

V. Optional departmental/college requirements:

- A.
- B.

VI. Course Content or Outline (Indicate number of class hours per unit or section):

- | | | |
|----|--|------------|
| A. | The Death Penalty: History | (12 hours) |
| B. | The Death Penalty Theoretical Perspectives | (3 hours) |
| C. | Race & the Death Penalty | (3 hours) |
| D. | Juveniles & the Death Penalty | (3 hours) |
| E. | Innocence & the Death Penalty | (3 hours) |
| F. | Methods of Execution (including project) | (9 hours) |
| G. | Cost of the Death Penalty | (3 hours) |
| H. | Is the Death Penalty an Appropriate Punishment | (9 hours) |

Please Attach copy of class syllabus and schedule as an example

Signature: _____
Chair

Date: _____

Signature: _____
Dean

Date: _____



Department of Criminal Justice and Sociology

Death Penalty History and Issues
UI 460



Winter Intersession 2015-2016

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Purposes or Objectives of the Course

- 1) Summarize the history of the death penalty in United States society.
- 2) Analyze Constitutional issues related to death penalty jurisprudence.
- 3) Summarize the sociological theories relevant to the death penalty, including deterrence and retribution.
- 4) Assess and analyze the finality of the death penalty and the effect of wrongful convictions and executions on the appropriateness of capital punishment.
- 5) Analyze and discuss the concept of evolving standards of decency of our society and how that impacts the practice of capital punishment.

Student Learning Outcomes:

- 1) Students will describe the trends in the history and practice of the use of capital punishment in United States society.
- 2) Determine the Constitutional protections and analyze their relationship with current issues and trends related to the death penalty.
- 3) Summarize the sociological theories relevant to the death penalty, including deterrence and retribution.

Prerequisite: Junior or senior standing.

Required texts:

Banner, Stuart (2002). *The Death penalty: An American history*. Harvard University Press, ISBN 0-674-01083-3. Available as an "e-book" through the Kent Library.

Bedau, H. & Cassell, P. (2005) *Debating the death penalty*. Oxford University Press. ISBN 0-19-516983-2

Additional Materials

Additional readings from cases and current periodical and online sources will be required.

Expectations of Students:

- 1) Students are expected to locate, read and critique all assigned cases and materials and to actively participate in all assignments (University Studies Objectives 1, 2 & 9).
- 2) Students will be required to analyze and synthesize information, demonstrate the ability to identify the legal, ethical and social values involved in complex issues related to capital punishment and demonstrate the ability to participate in online Forums on assigned topics (University Studies Objectives 2, 3, 7 & 9).
- 3) Students will be required to demonstrate the ability to seek to understand the perspectives of others as measured by their ability to write position papers on assigned death penalty topics (University Studies Objectives 2, 3, 6, 7 & 9).
- 4) Students will be required to analyze and synthesize information, demonstrate the ability to identify the legal, ethical and social values by engaging in research and reflection in the writing of a paper (1500 words) discussing the appropriateness of the death penalty as a form of punishment in contemporary American society (University Studies Objectives 1, 2, 3, 7 & 9).

Research Resources: Your sources for your presentations must be limited to peer reviewed journals, law reviews, cases and books. "Law reviews" are published by ABA accredited law schools. Examples include Harvard Law Review, Columbia Law Review, Missouri Law Review and the Arkansas Law Review. Law reviews and court decisions can be found through a search of the WestlawNext database described in the next section. The social science journals may be searched through several of the Kent Library databases such as Proquest, or Academic Search Premier. Many of these search engines allow you to limit the search to peer reviewed journals. Also, you may use [Google Scholar](#) for searches. Links to death penalty resources may be found on the "[Course Description](#)" page.

Also, see the National Death Penalty Archive:

<http://library.albany.edu/speccoll/ndpa.htm>

Forums: The Forums are the online equivalent of class discussion. There are a total of 10 Forums. Each person must participate in each Forum. Participation requires one initial post and another post that is in response to a post by another student. A maximum of 10 points may be earned in each Forum. The primary post must be at least 100 words. The purpose of the forum discussions is to delve into the controversy and conflict that is inherent in socio-legal issues such as the death penalty.

Position Papers: Much of the learning in the course will occur in the assigned readings and related Position Papers. The assignments include the writing of ten short position papers (at least 800 words) covering an assigned topic. You will be asked to state and justify a position on a relevant assigned topic. The papers must include consideration of the assigned readings and applicable cases. These papers will be submitted through the Moodle "upload paper" links on the class website. A maximum of 30 points is possible for each paper. Points will be awarded based upon the following rubric:

Scoring Guide

Criteria	Points Possible	Points Earned
Focus and Organization: the topic clearly stated and the paper is organized with an introduction, discussion of the issues and a conclusion.	10	
Thorough discussion of the assigned readings: the paper discusses the assigned readings in relation to the topic.	10	
Correctness: there is correct usage of grammar, syntax, spelling, and correct usage of APA guidelines.	10	
Total	30	

You should review the professor's comments to the uploaded paper assignments each week.

Group Presentations

Group 1 - Secrecy in execution processes.

Many death penalty states have enacted statutory provisions that prohibit release of information related to sources of lethal injection drugs, including the identity of companies that manufacture, compound or sell the drugs. Is this a violation of due process for condemned prisoners?

Group 2 - Controversy of the three-drug method of lethal injection.

Discuss the controversy that has arisen over the three-drug method of lethal injection that until very recently was the standard procedure for lethal injection in all jurisdictions using the death penalty. Include consideration of the SCOTUS decision in *Baze v. Rees* (2008) and *Glossip v. Gross* (2015). Why did the majority of the court in *Baze* find that there was no violation of the Eighth Amendment prohibition of cruel

and unusual punishment in Kentucky's lethal injection protocol? How important to policy makers is the goal of a humane method of execution? What is the best method of execution of condemned prisoners?

Group 3 - Shortages of lethal injection drugs.

Discuss the recent shortage of sedative drugs needed for lethal injections. Explain the reasons for these shortages and possible solutions. Consider the Eighth Amendment issues related to methods of execution discussed in *Baze v. Rees* (2008). How important to policy makers is the goal of a humane method of execution? What is the best method of execution of condemned prisoners?

Group 4 - Physician participation in executions.

Does the medical nature of the process of putting a condemned prisoner to death suggest that having trained medical personnel involved in the process is essential to a humane execution? Do the ethical constraints of physicians in regard to participation in executions have any practical or constitutional impact on the use of capital punishment? How important to policy makers is the goal of a humane method of execution? What is the best method of execution of condemned prisoners?

Presentations

The overall theme of the presentations is to consider methods of execution used in capital punishment and the goal of having a humane form of execution. Because this is such a broad topic, each group will have a different assignment, but all groups must answer the questions of "whether seeking a humane method of execution is important" and "what is the best method of execution?" The presentations must discuss any relevant chapters of the Banner and Bedau books, U.S. Supreme Court cases, journal articles, and professional association and special interest group publications. The website has links to several sources, but you are encouraged to locate and use any other relevant sources.

Each group will work on and prepare a ten-minute presentation on the assigned topic. You are divided into groups of five students. Each student will have a different role in the group work.

Roles within each group

Researchers: Two students will conduct research on the issue for use in the presentation. This includes cases found in Westlaw Next, scholarly articles in law reviews and peer-reviewed journals, and relevant news media articles.

Presentation Creators: One student in each group will create the presentation that will include PowerPoint slides, an outline and notes for the presentation giver.

Presentation Giver: One student will give the presentation for the group by way of the "Big Blue Button" in Moodle.

Presentation Grader: One student will grade the presentations of the other groups based upon the grading rubric.

Wiki

Each group will collaborate in their individual Wiki in Moodle Activity, discuss their roles and research findings. They will determine what to present and create an outline of their presentation.

Presentation

The presentation will be a ten-minute discussion of the research and findings of the group. PowerPoint slides will be used to facilitate the presentation. Two students will create the presentation from the research of all students in the group. One student will be selected to make the presentation. The medium for the presentations will be a video submitted by way of the Big Blue Button in Moodle. When recording the presentation in Big Blue Button, give it the name of your group and topic. Email your professor when you have recorded the presentation so that he may post the link to the presentation. You are required to view all group presentations.

Group paper

Each group must write a 1500 word paper that summarizes and synthesizes the presentations and the answers the overarching questions of the importance of a humane death for the condemned prisoner and the best method of execution. Consider both sides of the issues in formulating your position. Support your paper with facts gleaned from the presentations.

Timeline for group presentation during Week 3

Monday Roles must be assigned
Sunday Have research completed

Timeline for group presentation during Week 4

Tuesday Upload presentation to Big Blue Button
Wednesday-Thursday Review other group presentations and work on group paper
Friday Upload group paper

Grading

Each group will prepare and submit a PowerPoint presentation via the Big Blue Button. The groups will assess and grade each other. Group 1 will grade Group 2. Group 2 will grade Group 3. Group 3 will grade Group 4 and Group 4 will grade Group 1. Grades will be made based upon the attached rubric.

One student in each group will be assigned the duty of grading the presentation of one other group. The rubric for grading presentations is linked below.

Assessment of the performance of other members of your group will be through Moodle Questionnaire. You will rate the other members and yourself.

Possible Points for Presentations

Presentation		50
Grading the other group	20	
Rating each in own group		30
Presentation group paper		100
Total		200

Westlaw Primer: You may find cases and law review articles on WestlawNext as follows:

Go to the Kent Library web page; then to "Find articles, journals, etc"; then to "Databases A-Z" ; then to "WestlawNext"; here, you find a page where you may begin a search. You may narrow the scope of the search by federal, state, subject matter topics, or tools such as the West Key Number System.

For cases begin with the Browse window; if you know the case name and citation (such as *Whitley v. Albers*, 475 U.S. 312 (1986)), insert the name and citation in the search window; in the next box to the right of the search window choose whether to search federal or state cases, or both and click the "Search" button. If you know the case name, but not the citation, insert the name in the search window. However, this may give you several results from which you must determine which is the correct decision. If you have the full citation you will use that in to search. You will get a list of cases including the subject case and cases that have cited your subject case.

For general research, go to the "Search" window; insert a word or phrase, and select a database such as "All State & Federal" to search. You can search cases (for this course, your searches will usually be more productive if you limit the search to federal cases), or law reviews and journals (select "Secondary Sources"). Included in Secondary Sources are law review articles (your most useful sources), American Jurisprudence (a legal encyclopedia) and American Law Reports (cases with exhaustive annotations dealing with the subject matter of the featured case). American Jurisprudence (Am Jur) and American Law Reports (ALR) can lead to cases and law review articles and other very good sources.

If you are searching for cases and law review articles related to the duty of correctional staff to protect inmates from violence go to the Browse page, insert "duty to protect inmate from violence" in the search window. Choose "All Federal" and click "Search." You will see the summary of hits on the left side of the page. This query produces the "Overview" section with 9 hits; 2682 Cases (at the time of the writing of this primer), 37 statutes, 60 secondary sources (these will include the law reviews that you should review) and other sources.

West Key Number System: The West Key Number System is an indexing system of cases, statutes and law review sources organized by subject matter. To search using the West Key Number System, in the Browse window, select "Tools," then click on the "West Key Number System" hyperlink. You will then see the list of 450 topics. Each numbered topic is a hyperlink to the sub-topics within each topic.

Video Tutorials on WestlawNext: <https://www.youtube.com/watch?v=c-AfLaVMFLc&list=PL6037808380960772&index=8>

Grades will consist of the following points:

Forums	100	(10 x 10)
Position Papers	300	(30 x 10)
Group presentation	200	
Total	600	

ACCESSIBILITY STATEMENT

SOUTHEAST MISSOURI STATE UNIVERSITY'S ACCESSIBILITY PLAN

Southeast Missouri State University will take such means as are necessary to insure that no qualified disabled person is denied the benefits of, excluded from participation in, or otherwise subject to discrimination because Southeast Missouri State University's facilities are physically inaccessible to, or unusable by disabled persons. The accessibility standard required by Federal law for 'existing facilities' is that the recipient's program or activities when viewed in its entirety, must be readily accessible to disabled persons.

Southeast Missouri State University may meet this standard through such means as reassignment of classes, or other services to accessible locations, redesign equipment, assignment of aides, alterations of existing facilities, and construction of new accessible facilities. Southeast Missouri State University is not required to make structural changes in existing facilities where other methods are sufficient to comply with the accessibility standard described above.

Because scheduling classes, coordinating accommodations, and arranging housing in accessible facilities may require reasonable advance planning, students with disabilities accepted for admission should identify themselves and their disability within five days of the start of the semester of enrollment and indicate the nature of accommodation needed for their disability.

For more information, see the [Disability Support Services](#) page or contact Disability Support Services, room 302, University Center, One University Plaza ms1300, Cape Girardeau, MO 63701; (573)651-2273.

ACADEMIC HONESTY

Policy. Academic honesty is one of the most important qualities influencing the character and vitality of an educational institution. Academic misconduct or dishonesty is inconsistent with membership in an academic community and cannot be accepted. Violations of academic honesty represent a serious breach of discipline and may be considered grounds for disciplinary action, including dismissal from the University.

Academic dishonesty is defined to include those acts which would deceive, cheat, or defraud so as to promote or enhance one's scholastic record. Knowingly or actively assisting any person in the commission of an above-mentioned act is also academic dishonesty.

Students are responsible for upholding the principles of academic honesty in accordance with the "University Statement of Student Rights" found in the Undergraduate or Graduate Bulletin. The University requires that all assignments submitted to faculty members by students be the work of the individual student submitting the work. An exception would be group projects assigned by the instructor. In this situation, the work must be that of the group. Academic dishonesty includes:

Plagiarism. In speaking or writing, plagiarism is the act of passing someone else's work off as one's own. In addition, plagiarism is defined as using the essential style and manner of expression of a source as if it were one's own. If there is any doubt, the student should consult his/her instructor or any manual of term paper or report writing. Violations of academic honesty include:

1. Presenting the exact words of a source without quotation marks;
2. Using another student's computer source code or algorithm or copying a laboratory report; or
3. Presenting information, judgments, ideas, or facts summarized from a source without giving credit.

Cheating. Cheating includes using or relying on the work of someone else in an inappropriate manner. It includes, but is not limited to, those activities where a student:

1. Obtains or attempts to obtain unauthorized knowledge of an examination's contents prior to the time of that examination;
2. Copies another student's work or intentionally allows others to copy assignments, examinations, source codes or designs;
3. Works in a group when she/he has been told to work individually;
4. Uses unauthorized reference material during an examination; or
5. Have someone else take an examination or takes the examination for another.

General Responsibilities for Academic Honesty. It is the University's responsibility to inform both students and faculty of their rights and responsibilities regarding such important matters as cheating and plagiarism. Most of what is considered unethical or dishonest behavior can be avoided if faculty and students clearly understand what constitutes such practices and their consequences. The University community should also be aware of the procedures to be followed should a breach of academic honesty occur.

The faculty member is responsible for clarification to his/her class of those standards of honesty for class assignments or functions where such standards may be unclear or when such standards vary from the accepted norm. Further, some faculty may choose to utilize preventive measures (multiple exams, alternate seating, etc.) to help insure the maintenance of academic honesty. However, the use of such measures is the prerogative of the individual faculty member and is not a responsibility or requirement of faculty in general.

The fundamental responsibility for the maintenance of honesty standards rests upon the student. It is the student's responsibility to be familiar with the University policy on academic honesty and to uphold standards of academic honesty at all times in all situations.

Protocol for Adjudicating Alleged Violations of Academic Honesty. Faculty members who discover evidence of academic dishonesty should contact the student within five business days of discovering the alleged dishonesty to arrange to meet and discuss the allegation. Prior to this meeting the faculty member may consult with the Department Chairperson, the appropriate Dean, and the Office of Judicial Affairs. The following sections describe the procedures to be adhered to in each of the listed instances: the student acknowledges the violation, the student denies the violation, and the appeals process. If the faculty member is the Department Chairperson, a departmental designee will assume the Department Chairperson's role in this protocol and references to the Department Chairperson should be read as departmental designee. The procedures below should be followed with online, ITV or face-to-face classes.

CIVILITY AND HARASSMENT

A major determinant of a successful educational experience is a shared sense of respect among and between the students and their instructor. Some of the texts and issues we will discuss may cause disagreements among members of the class. Multiple viewpoints are an essential component of any college course, and disagreeing with someone is fine. However, rude, disrespectful, aggressive, offensive, harassing, or demeaning behavior—either face-to-face or in an online discussion—toward anyone in the class will not be tolerated; students are expected to abide by the Code of Student Conduct (<http://www6.semo.edu/stuconduct/code.html>). Should a student feel someone has acted inappropriately toward them in class, please speak with the instructor at once so the situation can be addressed. The instructor for the course reserves the right to ask a student to leave the classroom or the online discussion

for any inappropriate behavior, and if the situation warrants, may call campus security to remove the offending student from class.

Questions, Comments or requests regarding this course or program should be taken to your instructor. Unanswered questions or unresolved issues involving this class may be taken to Dr. Jeremy Ball.

Tentative Class Schedule
UI 460 Death Penalty History and Issues

Week 1, December 20-27, 2015

Goals for Week 1

At the end of the week, you will be able to:

- (1) Express your current position on the use of capital punishment. (Course Objectives [CO] 4, 5)
- (2) Describe any changes in location of executions from colonial to modern times and their impact upon the efficacy of capital punishment. (CO 1, 5)
- (3) Explain the historic and modern roles and relationships between executive clemency and appellate and habeas corpus review of death sentences. (CO 1, 4, 5)
- (4) Analyze the use of extreme forms of execution such as burning as a means of ranking seriousness of condemned prisoners. (CO 1)
- (5) Explain the geographical differences that appear with regard to usage of the death penalty in America. (CO 1)
- (6) Analyze the problems with application of the death penalty found that resulted in halting this punishment by the U.S. Supreme Court in *Furman v. Georgia* (1972), and explain the changes approved by SCOTUS that reinstated the death penalty in *Gregg v. Georgia* (1976). (CO 1, 2, 5)

History of the death penalty

Public Executions

Readings:

Bedau & Cassell, Chapters 1, 2, 3

Banner, Chapters 1, 2, 6

Will, George (1991). "Capital punishment and public theatre." *Washington Post*, May 12, 1991.

Levi, Nicholas (2002). Veil of secrecy: Public executions, limitations on reporting capital punishment, and the content-based nature of private execution laws, *Federal Communications Law Journal*, 55(1), 131-152.

KQED v. Vasquez, 1995 WL 489485.

Forum 1: Introductions

Describe your academic major and your current position on the use of capital punishment. Weekly Goal [WG] 1)

Paper 1: Place of executions

Describe the differences in location of executions in colonial and early American history as compared to the private and isolated manner in which modern executions are carried out. Do these differences have any impact on the efficacy of capital punishment as a form of punishment? (WG 2)

History, methods and clemency

Bedau & Cassell, Chapter 8 Banner, Chapter 3

Forum 2: Death penalty history - clemency and pardons

Discuss the role of clemency or pardons in the practice of capital punishment in colonial and early American history and how it compares to modern appellate and habeas corpus review of death sentences. (WG 3)

Paper 2: Death penalty history - extreme methods

How did extreme methods of execution such as burning provide means for distinguishing different types of crimes and criminals? (WG 4)

History, suspension and re-instatement (*Furman* and *Gregg*)

Bedau & Cassell, Chapters

Banner, Chapters 4, 5, 9, 10

Zimring, F.E. & Hawkins, G. (1984). Capital punishment and the Eighth Amendment: *Furman* and *Gregg* in retrospect. *U.C. Davis Law Review*, 18, 927.

Furman v. Georgia, 408 U.S. 238 (1972)

Gregg v. Georgia, 428 U.S. 153 (1976)

Forum 3 Geography and the death penalty

Discuss how geographical differences may have impacted the differences in usage of the death penalty that persist to this day in the states that retain and use capital punishment and those that have either abolished or rarely use this form of punishment. (WG 5)

Paper 3 *Furman* and *Gregg*

Explain the rulings of the U.S. Supreme Court in *Furman v. Georgia* (1972) and *Gregg v. Georgia* (1976). What changes had Georgia implemented in order to re-institute the death penalty in *Gregg* and how did they resolve the problems identified in *Furman*? (WG 6)

Week 2, December 27, 2015 - January 3, 2016

Goals for Week 2

At the end of the week, you will be able to:

- (1) Compare and contrast the relationship between race and socio-economic status and the death penalty. (CO 3, 4)
- (2) Analyze the effect of aggravating circumstances and race of the victim and offender as independent variables in capital punishment. (CO 2, 3, 5)
- (3) Explain the SCOTUS decision of *Roper v. Simmons* (2005) that held offenders under the age of 18 are not death-eligible. (CO 2, 5)
- (4) Analyze the progression followed by the Supreme Court in narrowing the focus of the death penalty based upon cognitive development and age of the offender. (CO 2, 5)
- (5) Describe the theoretical perspectives that are applied by sociologists to discussions of capital punishment. (CO 3)
- (6) Explain whether the death penalty is effective as a deterrent to murder. (CO 3)

Deterrence, retribution and the death penalty

Readings:

Sunstein, C. & Vermeule, A. (2006). Is capital punishment morally required? Acts, omissions, and life-life tradeoffs. *Stanford Law Review*, 58, 703-750.

Streiker, C. (2006). No, capital punishment is not morally required: Deterrence, deontology, and the death penalty. *Stanford Law Review*, 58, 751-789.

Donahue, J. & Wolfers, J. (2006). Uses and abuses of empirical evidence in the death penalty debate. *Stanford Law Review*, 58, 791-845.

Sunstein, C. & Vermeule, A. (2006). Deterring murder: A reply. *Stanford Law Review*, 58, 847-857.

Davis, M. (2002). A sound retributive argument for the death penalty. *Criminal Justice Ethics*, 21(2), 22-26.

Forum 4 Death penalty theories

What is the most compelling theoretical justification for the death penalty: deterrence or retribution? Justify your position. (WG 6)

Paper 4 Death penalty and deterrence

Is the death penalty a deterrent to murder? Why or why not? Discuss the assigned readings in your paper. (WG 6)

Special topics

Race and the death penalty

McCleskey v. Kemp, 481 U.S. 279 (1987).

Bedau & Cassell, Chapter 4

McAdams, J. (1998). Racial disparity and the death penalty. *Law and Contemporary Problems*. 61(4), 153-170.

Scheidegger, K. (2012). Rebutting the myths about race and the death penalty. *Ohio State Journal of Criminal Law*. 10(1), 147-165.

Forum 5 Race and the death penalty

What is the most important variable in whether or not a death sentence is rendered: race or socio-economic status of the victim or offender? Is it race or money that determines life or death? (WG 1)

Paper 5 Race and the death penalty

Consider the effect of aggravating circumstances and race of the victim and offender as independent variables in an analysis of racial discrimination and capital punishment. Does the specific facts of a crime have a place in the analysis of racial discrimination and capital punishment? Include consideration of the assigned case and readings in your paper. (WG 2)

Juveniles and the death penalty

Readings:

Roper v. Simmons, 543 U.S. 551 (2005)

Bedau & Cassell, Chapters 2, 6

Tepker, H.F. (2006). Tradition and the abolition of capital punishment for juvenile crime. *Oklahoma Law Review*, 59, 809-831.

Brim, M. (2005). A sneak preview into how the court took away a state's right to execute sixteen and seventeen year old juveniles: The threat of execution will not longer save an innocent victim's life. *Denver University Law Review*, 82, 739-755.

Forum 6 Juveniles

Was *Roper v. Simmons* (2005) correctly decided by the U.S. Supreme Court? Why or why not? (WG 3)

Paper 6 Juveniles

Discuss the court's evolution in its path to abolishing capital punishment for minors in *Roper*. Include discussion of the assigned readings and cases. (WG 4, 5)

Week 3, January 3-10, 2016

Goals for Week 3

At the end of the week, you will be able to:

- (1) Evaluate the risk of wrongful conviction and execution in capital cases. (CO 4)
 - (2) Explain how appellate and post-conviction review of capital cases seek to avoid wrongful conviction or executions in capital cases. (CO 4)
 - (3) Describe the costs of the death penalty as compared with life imprisonment without parole. (CO 4, 5)
 - (4) Evaluate the efficacy of the death penalty as compared with life imprisonment without parole. (CO 3, 4, 5)
 - (5) Explain whether a painless execution should be one of the goals of policymakers. (CO 2, 5)
 - (6) Discuss the use of new methods of execution such as nitrogen-induced hypoxia, and whether states should give serious consideration to such innovations. (CO 2, 5)
 - (7) Demonstrate progress on your group presentation by assigning roles within your group. (CO 2, 5)
 - (8) Demonstrate progress on your group presentation by completing research for your presentation. (CO 2, 5)
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Special topics: Innocence and the death penalty

Readings:

Bedau & Cassell text, Chapter 1, pp. 1-14

Herrera v. Collins, 506 U.S. 390 (1993)

Grann, D. (2009). Trial by fire: Did Texas execute an innocent man? *The New Yorker*, September 7, 2009. http://www.newyorker.com/reporting/2009/09/07/090907fa_fact_grann

Katz, J. M. & Eckholm, E. (2014). DNA evidence clears two men in 1983 murder. *New York Times*, September 2, 2014. Retrieved June 15, 2015 at: http://www.nytimes.com/2014/09/03/us/2-convicted-in-1983-north-carolina-murder-freed-after-dna-tests.html?_r=0

Thomas, G., Young, G. Sharfman, K. & Briscoe, K. (2003). Is it ever too late for innocence? Finality, efficiency and claims of innocence. *University of Pittsburg Law Review*, 64, 263-302.

Forum 7: Wrongful conviction and the burden of proof

The burden of proof in criminal trials is "proof beyond a reasonable doubt." Capital trials use a heightened standard of care, but they employ the same burden of proof as other criminal trials. Is this heightened standard of care enough, or should capital trials utilize a burden of proof that is higher than proof beyond a reasonable doubt? (WG 1, 2)

Paper 7: Appellate and habeas review

Does appellate and habeas corpus review diminish the chance for wrongful conviction in capital cases? If so, is it enough? Consider the competing interests of thorough review and prevention against wrongful convictions against the interests of society and victims in the prompt execution of a sentence. (WG 1, 2)

Special topics: Cost of the death penalty

Readings:

Streiker, C. (2010). "Cost and capital punishment: A new consideration transforms an old debate." *University of Chicago Legal Forum*, 117-152.

Radelet, M. & Borg, M. (2000). The changing nature of death penalty debates. *Annual Review of Sociology*, 26, 43-61.

Forum 8: Cost of the death penalty

Are the relative costs of capital punishment compared with life imprisonment without parole valid considerations in the debate over the death penalty? (WG 3)

Paper 8: Death penalty costs

Which is the most efficient form of punishment: death or life in prison without the possibility of parole? Consider the costs of investigation, trial, appellate and post-conviction review and incarceration in your analysis. (WG 3, 4)

Special topics: Methods of execution

Readings:

Banner, Chapters 3, 7

Bedau & Cassell, Chapter 6

Fulkerson, A. & Suttmoeller, M. (2008). Current issues involving lethal injection. *Criminal Justice Studies*, 21(4) pp. 271.

Creque, S. A. (1995). Killing with kindness. *National Review*, 47(17), 51-53.

BBC documentary by Michael Portillo, "How to Kill a Human Being."
http://www.youtube.com/watch?v=XQTHqg_8_UA

Baze v. Rees, 553 U.S. 35 (2008).

Glossip v. Gross, (2015).

The manufacturer of propofol (a common and powerful sedative) is Fresenius Kabi. The company has set up a website addressing the controversial nature of allowing its drug to be used in lethal injection executions in the U.S.

<http://propofol-info.com>

Forum 9: Painless execution?

Should a painless death for a condemned prisoner be the goal to which we should aspire in the method of execution? Explain. (WG 5)

Paper 9: Methods of execution

View the BBC documentary (see link) produced by Michael Portillo on "How to Kill a Human Being." Is nitrogen-induced hypoxia a viable method of execution that should be considered by death penalty states and the federal government? (WG 6)

Presentations - preliminary work (WG 7, 8)

Group members should divide up roles within the group and begin research for the presentations

Week 4, January 10-15, 2016

Goals for Week 4

At the end of the week, you will be able to:

- (1) Participate in one of four group projects addressing methods of execution and current challenges facing the 32 states and federal system that utilize capital punishment. (CO 2, 5)
- (2) Evaluate the ideas and proposals submitted by other groups in the class. (CO 2, 5)
- (3) Explain and support a position on retention or abolition of capital punishment. (CO 2, 3, 4, 5)

Group assignments

Group 1 - Secrecy in execution processes.

Many death penalty states have enacted statutory provisions that prohibit release of information related to sources of lethal injection drugs, including the identity of companies that manufacture, compound or sell the drugs. Is this a violation of due process for condemned prisoners?

Group 2 - Controversy over three-drug method of lethal injection.

Discuss the controversy that has arisen over the three-drug method of lethal injection that until very recently was the standard procedure for lethal injection in all jurisdictions using the death penalty. Include consideration of the SCOTUS decision in *Baze v. Rees* (2008). What is the best method of execution of condemned prisoners?

Group 3 - Shortage of lethal injection drugs.

Discuss the recent shortage of sedative drugs needed for lethal injections. Explain the reasons for these shortages and possible solutions. What is the best method of execution of condemned prisoners? Consider the Eighth Amendment issues related to methods of execution discussed in *Baze v. Rees* (2008) and *Glossip v. Gross* (2015).

Group 4 - Physician participation in executions.

The expert testimony in *Baze v. Rees* (2008) was clear on both sides that if the first drug (the anesthetic) wore off before the death of the prisoner the other drugs would result in an extremely painful death. Why did the majority of the court find that there was no violation of the Eighth Amendment prohibition of cruel and unusual punishment in Kentucky's lethal injection protocol? What is the best method of execution of condemned prisoners?

Presentations (WG 1, 2)

Each group will prepare and submit a PowerPoint presentation via webinar. The groups will assess and grade each other. Group 1 will grade Group 2. Group 2 will grade Group 3. Group 3 will grade Group 4 and Group 4 will grade Group 1. Grades will be made based upon the attached rubric.

Forum 10: Execution witnesses

Should a prosecutor who successfully represents the state in a capital case, resulting in a death sentence be required to be present at the execution of the defendant? Why or why not? (WG 3)

Paper 10: Death penalty as punishment?

In the instructions given by the trial judge to jurors in capital trials, the jurors determine whether one or more of the statutory aggravating circumstances have been proven by the state beyond a reasonable doubt. The juror is then instructed to consider any mitigating circumstances offered by the defendant. The jury is then instructed to determine whether the aggravating circumstances outweigh the mitigating circumstances beyond a reasonable doubt. Then, the jury must consider the final question of whether the death penalty is appropriate as the punishment beyond a reasonable doubt. Similarly, you must now address that final question. Assume the state has proven the defendant is guilty of capital murder, and assume that aggravating factors have been proven beyond a reasonable doubt, and the aggravating factors outweigh the mitigating factors beyond a reasonable doubt. Is the death penalty an appropriate form of punishment in the U.S. criminal justice system? Explain why your position on this issue has, or has not, changed over the time of this course. Include discussion of relevant readings in the course. (WG 3)