The Death Penalty

“"I support the death penalty because I believe, if administered swiftly and justly, capital punishment is a deterrent against future violence and will save other innocent lives."

President George W. Bush (2000)

“There are certain crimes that are so beyond the pale that I understand society's need to express its outrage. So I have not traditionally been opposed to the death penalty in theory, but in practice, it's deeply troubling.”

President Barack Obama (2015)

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Justice Robert Jackson (1943)

Official Course Description:

Reviews the history of the death penalty in the United States from colonial times through the present. Among Western democracies, the United States stands alone in its continued use of capital punishment as a sanction. Examines the contemporary death penalty and the many controversies surrounding its continued use (focusing on U.S. Supreme Court decisions around the constitutionality of the death penalty). Discusses historical and contemporary controversies around the administration of the death penalty including potential innocence, special populations, methods of execution, race and gender biases, costs, deterrence, and international relations.
My Course Description:

We often hear the term “Death is different.” In this course, we will explore why and how that is the case. We will examine the history, law, politics and policy of capital punishment. We will begin with an introduction to the origins of the death penalty in the United States and its role before and after the Civil War. After examining the history, we will explore moral and philosophical arguments associated with capital punishment. We will then study the Supreme Court’s ruling in *Furman v. Georgia* (1972), which struck down the death penalty as unconstitutional. We will then examine how, after reversing course, the states responded, and the Supreme Court embarked on a 40 year effort to define who is eligible for the death penalty and the procedures under which it must be imposed. We will study, among the key topics, the Court’s Eighth Amendment jurisprudence, innocence claims, and the main policy arguments for and against the death penalty, focusing on research concerning race discrimination and deterrence. We will conclude by examining the current status of the death penalty across the United States and the world, exploring the future of its use. Throughout, we will read leading cases, briefs, trial excerpts, portions of books, as well as prominent studies. By the end of the course, you should be able to capture the historical, political, and institutional dynamics at work regarding the Death Penalty.

Course Prerequisites:

None

Required Reading:

- Weekly readings on Blackboard

Further (Optional) Reading:

- The Death Penalty Information Center, a non-profit organization, has excellent information about the topic: [http://www.deathpenaltyinfo.org/](http://www.deathpenaltyinfo.org/)
- Visit [www.scotusblog.com](http://www.scotusblog.com) for fantastic coverage of the Supreme Court and appellate issues in general. Cornell and Northwestern also have great Supreme Court sites: [http://www.law.cornell.edu/supct/](http://www.law.cornell.edu/supct/); and the Oyez Project: [http://www.oyez.org/](http://www.oyez.org/)
Course Requirements and Keys to Success:

1. Attend class. Woody Allen apparently said that 95% of life is showing up. Since we meet once a week, missing more than 1 class lowers your participation grade.

2. Complete the assigned reading before class.

3. Complete reading questions/responses (due every class except for Week 1). Turn in printed (not handwritten) copies at the beginning of each class. You can ask a factual question, respond to the reading, or ask a conceptual question. These questions help spark our class discussions. Put your name and the date of the class on the top of it. You are required to write at least one question total per week, but that is a floor, not a ceiling. **10% of the course grade.**

4. Participation. Here, I disagree with Woody Allen. You need to attend class, of course, but I also want you to participate by being part of the class dialogue. Your participation should contribute to the class discussion, and demonstrate that you have read and thought about the assigned materials. Active, meaningful, and engaged participation will improve your grade. If you come to class and do not participate, or demonstrate that you did not prepare, this will lower your grade. Remaining silent means that your students and teachers will not learn from you. **20% of the course grade.**

5. Paper (5-7 pages) due April 5th in class and electronically via Turnitin. You will pick a recent major Supreme Court case about the Death Penalty (from a list I will provide) and read the entire opinion. After reading the entire case, you will make an argument about which opinion you agree with and why (majority, concurrence, or dissent). You should connect the justice’s position to at least one of the larger arguments/course themes related to (moral, philosophical, constitutional, application) our study of the death penalty. **30% of the course grade.**

6. Final Exam. The cumulative final exam will consist of identifications and an essay portion. If you have been attending class and completing the readings, the exam will be straightforward. **40% of the course grade.**

7. Be respectful to your classmates and Professors. This is a “no electronics, no phones, no laptop” class. I recognize that there are benefits to electronic devices, but have concluded that the costs outweigh them. This ban improves class discussions, especially a smaller one like ours. Please do not use your cell phone/blackberry/iPhone/tablet/smart phone or any other electronic device during class. Using electronics will lower your participation grade.

* I may modify this syllabus. I will announce changes via email and in class.

Grading:

- Reading Responses: 10%
- Active Participation: 20%
- Paper: 30%
- Final Exam: 40%
Plagiarism:

Do not plagiarize. Northeastern takes the issue of academic honesty very seriously. Any student who appears to violate Northeastern University’s Academic Honesty and Integrity Policy (see www.osccr.neu.edu/policy.html) may be referred to the University’s Office of Student Conduct and Conflict Resolution. If a proven violation involves an exam or course assignment, the student shall receive, at the very least, a failing grade for the assignment, in addition to sanctions imposed by the Office of Student Conduct and Conflict Resolution. Individual faculty, with the support of the Department, can impose harsher penalties as they deem necessary.

The Academic Honesty and Integrity Policy includes cheating, fabrication, plagiarism, and other types of dishonest activities. Plagiarism is defined broadly as taking ideas, concepts, or actual words of another person and passing them off as your own work. Law is a field that involves the words and writings of others, so always cite something that is not your own. Of particular note in recent years is the increase in cut-and-paste plagiarism, which involves downloading phrases from websites or other Internet sources. You should regard this as your official warning.
Weekly Schedule

Complete the reading before class (except for Week 1). Guest lecturers are tentative, and we may connect with them via skype (many of them are not local).

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<tr>
<th>Date</th>
<th>Topic</th>
<th>Reading:</th>
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<td>1/12</td>
<td>Course Introduction: The Death Penalty in America</td>
<td>None</td>
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<td>• Overview of the topic and current status of the debate</td>
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<td>• The Death Penalty as a “uniquely American” institution</td>
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<td>• Recurring themes in public discourse about the Death Penalty</td>
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<td>• Role and makeup of the U.S. Supreme Court</td>
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<td>1/19</td>
<td>History of the Death Penalty in America</td>
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<td>• The founding era</td>
<td>EM, Introduction</td>
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<td>• The Civil War and its Aftermath</td>
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<td>• Progressive Era</td>
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<td>• 20th Century Trends</td>
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<td>1/26</td>
<td>Moral Considerations, Part I</td>
<td>Blackboard</td>
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<td>• Retributive Arguments</td>
<td>EM, Ch. 1 &amp; 2</td>
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<td>• Religious Arguments</td>
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<td>2/2</td>
<td>Moral Considerations, Part II</td>
<td>Blackboard</td>
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<td>• Guest Speaker: Rabbi Michael Ragozin, Congregation Shirat Hayam (Swampscott, MA)</td>
<td>EM, Ch. 3 &amp; 4</td>
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<td>• Deterrence Part I</td>
<td>WJ, Ch. 14</td>
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<td>2/9</td>
<td>Film about the Death Penalty</td>
<td>Begin “The Ride”</td>
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<td>2/16</td>
<td>Moral Considerations, Part III</td>
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<td>• Deterrence Part II</td>
<td>EM, Ch. 5-7</td>
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<td>• Incapacitation</td>
<td>WJ, p. 1-122</td>
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<td>• Cost</td>
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• Innocence

2/23 Public Opinion, Prosecutorial Discretion and Politics

Blackboard

Finish “The Ride”

WJ, p. 123-246

Proposal due 2/22

• Prosecutorial Discretion
• Potential Guest Speakers: Robert Curley & John Slattery
• Ricky Ray Rector
• The Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA)

3/1 Constitutional Considerations, Part I

Blackboard

EM, Ch. 8

WJ, p. 247-440

• What role does the Supreme Court play? What role should it play? Introduction to the Court. Purpose, history and text of the 8th Amendment
• The Death Penalty as Applied in American History
• Justice Goldberg and the road to Furman v. Georgia
• The road to Gregg

3/7 – 3/11: SPRING BREAK

3/15 Constitutional Considerations, Part II: Race

Blackboard

EM, Ch. 15

• Legal historian Michael Klarman suggests that Furman unleashed a “backlash” where states that previously lacked the death penalty enacted it. Did Furman do more harm than good?
• Guest Speaker: Michael Meltsner
• McCleskey v. Kemp

3/22 Constitutional Considerations, Part III: Categories

Blackboard

EM: Ch. 12-14

• Populations Exempted from the Death Penalty:
  o Juveniles, Intellectually Disabled, the Insane

3/29 Application Considerations

Blackboard

EM: Ch. 21, 22, 24
• Who receives the death penalty? Race, gender, region, and class
• Delay, Methods of Execution
• The Tsarnaev Case

4/5 Application Considerations Part II
• Baze v. Rees (2008)

4/12 The Death Penalty in 2016
• Are we back on the road to abolition?

4/19 Review, Wrap up and Reflection