MSc in Criminology and Criminal Justice
Hilary Term 2016

The Death Penalty

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This option runs on Fridays from 14:00-15:30 in Seminar E Manor Road

Objective of the Option
To provide students with a good understanding of the scope and practice of capital punishment and the movement - backed by international organizations and human rights treaties - to abolish the death penalty worldwide. Students will learn about the extent to which defendants in capital cases are protected by due process and have access to qualified defence counsel, and where they lack protection from police abuse, unfair trials, and painful forms of execution. They will explore what happens when the due process safeguards fail and innocent people are convicted and sentenced to death. Further, they will consider whether capital punishment can ever be administered equitably, without discrimination on grounds of race, geography, gender or other non-legal variables. Throughout this course students will draw on recent and controversial cases and decisions, as well as the social scientific literature.

Schedule of Seminars

1. Abolition and Retention: a brief tour of the world
2. Capital punishment in law and practice
3. Procedural Protections for the Accused
4. Protecting Vulnerable Defendants
5. Inequity and Arbitrariness in the Administration of Capital Punishment
6. Convicting and Sentencing the Innocent
7. Alternatives to death: is life imprisonment better than death row?
8. Guest Lecture, Carlton Gary: a case study of a wrongful conviction

Key Text for the Course


Accessible overview on some of the topics:
UN Human Rights (2014) Moving Away from the Death Penalty at
http://www.ohchr.org/Lists/MeetingsNY/Attachments/52/Moving-Away-from-the-Death-Penalty.pdf
Preparation for Class

Everyone should come to each seminar ready to engage in discussion with the same level of knowledge of the subject. Therefore you should try to read all or most of the pieces on the list for each week. On some weeks you will be asked to give a presentation on one of the topics. Presentations will be assigned at least one week before the class. Presentations should be brief (approximately 5 minutes) and can be accompanied by a short handout, providing the basic information about the topic, to be given to the other students (you are allowed to photocopy the handouts on the machine in the Centre for Criminology).

The introductory paragraph to the readings for each week provides a guide to the key issues you should be considering when preparing for class. However, as with most of your studies at graduate level, you should also formulate your own questions as you do the reading, and raise these in class for discussion.

The following websites will prove useful during your studies:
http://www.deathpenaltyinfo.org/ Death Penalty Information Center
http://www.deathpenaltyworldwide.org Death Penalty Worldwide
www.amnesty.org: Amnesty International
http://www.deathpenaltyproject.org/ The Death Penalty Project
http://www.handsoffcain.info/ Hands Off Cain

If you notice any errors on the reading list or have any suggestions for further readings please let me know.

Carolyn Hoyle
2015-16
Seminar One

Abolition and Retention:
A brief tour of the world

The first part of this seminar will cover the pace of abolition and the new wave of abolition across the world, asking what the prospects are for international acceptance or rejection of capital punishment, and what the alternatives are for those jurisdictions that abolish the death penalty. The second part will focus on Asia, where there have been some significant changes in the past decade and the third part on the post-Furman American experience, asking whether America is exceptional in its retention of the death penalty. After the overview section, students should study EITHER the US OR Asia.

Presentations: After a discussion about the death penalty worldwide, two students will be asked to present brief presentations: 1) on Asia and 2) on the US.

All students should read Part 1, then EITHER part II OR part III

Part I: A ‘Whistle-Stop’ Tour of the World

Amnesty International, Death Sentences and Executions in 2014 (download at


R. Hood and C. Hoyle (2015), chapters 1-3 (but excluding the final section of ch 3 on the US) OR

READ EITHER PART II OR PART III
Part II: A Focus on Asia

Read at least one of the following reports:
Death Penalty Project, The Death Penalty in Taiwan, 2014;
Death Penalty Project, The Death Penalty in Malaysia, 2013;
Death Penalty Project, The Death Penalty in Japan, 2013;
Download all DPP reports at http://www.deathpenaltyproject.org/legal-resources/research-publications/


Fort Fu-Te Liao (2014) ‘Why Taiwan’s de facto Moratorium was Established and Lost’ in Lill Scherdin (ed) Capital Punishment: A Hazard to a Sustainable Criminal Justice System?, Ashgate


Roger Hood & Surya Deva (eds.) (2013), ‘Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion’ (Oxford University Press), Chapter 1 on Asia (by Franklin Zimring); and chapter 8 on Singapore (by Michael Hor).


**Part III: America: An Exceptional Case?**

Up to date information on the current use of the death penalty in the US is produced by the Death Penalty Information Center, Year-end Report 2014: [http://deathpenaltyinfo.org/documents/2014YrEnd.pdf](http://deathpenaltyinfo.org/documents/2014YrEnd.pdf)


**Note:**
For those unfamiliar with US death penalty jurisprudence since 1972 the following cases are referred to in the literature (a good place to find brief descriptions of these cases is [http://campuspress.yale.edu/capitalpunishment/](http://campuspress.yale.edu/capitalpunishment/)):

- **Furman v Georgia** 408 U.S. 238 (1972) (The death penalty as administered is declared unconstitutional.)
- **Gregg v Georgia** 428 U.S. 153 (1976) (the death penalty is not per se unconstitutional)
Lockett v Ohio 438 U.S. 586 (1978) (reaffirms the concept of individualised sentencing)
Coker v Georgia 433 U.S. 584 (1977) (the death penalty for rape is unconstitutional)
and Post Furman: Callins v Collins 510 U.S. 1141 (1994) (Blackmun J. dissenting from denial of certiorari; and Scalia J. concurring in the denial of certiorari)
Seminar two seeks to understand the scope of capital punishment in law and practice, the process of execution and the experience of those on death row. We will consider which offences the death penalty is used for around the world, how prisoners are held on death rows, what challenges are posed by attempts to execute prisoners, and who else suffers when the death penalty is imposed.

**Presentations:** Three students will be asked to present brief presentations: 1) the scope of capital punishment around the world; 2) death row; 3) executing prisoners

**Overview**

**Scope of Capital punishment**
Skim information about Pakistan, India, Iran, and other countries you’re interested in from the AI report detailed in week 1 reading list.


**Death row**


American Civil Liberties Union (ACLU), *A Death before Dying: Solitary Confinement on Death Row* (July 2013).

**Executions**
Martschukat, J., “No improvement over Electrocution or even a Bullet” Lethal Injection and the meaning of Speed and reliability in the Modern Execution Process’ in C. G. Ogletree, Jr. and A. Sarat (eds.), *The Road to Abolition? The Future of Capital Punishment in the United States* (2009), pp.252-278.

Denno, D. ‘For Execution methods Challenges, the Road to Abolition is Paved with Paradox’ in C. J. Ogletree and A. Sarat (eds.), *The Road to Abolition*, (2009), New York: NYU Press, pp. 183-214.

The Conversation, Utah’s firing squad is another twist in America’s long quest for a perfect execution method, April 8, 2015. (Daniel LaChance)

The Conversation, Punishment, secrecy and lethal injection: a few thoughts on Glossip v Gross, July 2, 2014 (John Stinneford).

*Collateral damage*

Seminar Three
Procedural Protections for the Accused

Seminar 3 looks at the procedural protections for the accused and the extent to which they protect the innocent from conviction. In doing so, it questions the extent to which juries are able to make fair and accurate decisions. After the overview section, students should study EITHER the US OR Asia.

Presentations: Two students will be asked to prepare brief (5-minute) presentations to lead our discussions on procedural protections in 1) Asia and 2) the US.


All students should read EITHER part II OR part III

Asia:


The US:


Seminar Four

Protecting Vulnerable Defendants

In this seminar we shall examine how mental health, disability, and age affect the application of the death penalty and the links between these two related concepts. The treatment of vulnerable defendants has been the subject of fairly recent judgments of the US Supreme Court in *Atkins* and *Roper* and even more recently with cases regarding the mentally ill. Some of the questions raised are: Should vulnerable defendants be treated any differently? If so, what does “vulnerable” mean in this context? Are there good reasons to retain the death penalty in these cases? What is the appropriate role of the Court in these questions? And how, if at all, should social science affect Court decisions?

Presentations

Three students will be asked to prepare brief (5-minute) presentations on the main issues covered in this week’s readings: 1 on juveniles, 1 on intellectual disability, and 1 on mental illness, but other students should aim to cover TWO of these three topics in full and be ready to discuss them in class.

Overview


1. Intellectual Disability: From *Atkins* to *Hall*


J Amy Dillard, (2011) ‘And Death Shall Have No Dominion: How to achieve the categorical exemption of mentally retarded defendants from execution’ 45, *University of Richmond Law Review* 961-1008

2. Mental Illness


Lyn Entzeroth (2011) The Challenge And Dilemma Of Charting A Course To Constitutionally Protect The Severely Mentally Ill Capital Defendant From The Death Penalty 44 Akron L. Rev. 529


3. Juveniles: from Roper to Miller


Hood and Hoyle, The Death Penalty, 5th edn., chapter 11, pp. 496-501


Google recent newspaper articles on the on-going interpretation of Miller
In this seminar we consider the various types of inequities and arbitrariness in the administration of capital punishment. In particular, we examine how the US Supreme Court has dealt with the argument that the application of the death penalty is racist and discuss recent studies of the place and importance of race within capital punishment.

**Presentations**: Two students will be asked to give brief (5-minute) presentation on 1) racism in the administration of capital punishment, 2) the role of victim impact evidence.

**Overview**


**On Geography**

Frank R. Baumgartner, The Geography of the Death Penalty

**Racism in the administration of capital punishment**


2. Victim Impact Testimony


D Minot (2012) Silenced Stories: how victim impact evidence in capital trials prevents the jury from hearing the constitutionally required story of the defendant’, Journal of Criminal Law and Criminology, 102(1)

S. Phillips (2009), ‘Status Disparities in the Capital of Capital Punishment’, Law and Society Review, vol. 43, No. 4, pp. 807-
Having in previous weeks considered the procedural safeguards in place to protect the innocent, and particularly those who are deemed to be ‘vulnerable’, in this seminar we consider what happens when those safeguards fail to protect defendants and innocent people are convicted and sentenced to death. We explore what has failed in the criminal process when the innocent are convicted; what difficulties defendants encounter in trying to prove their innocence; and how social scientific research has developed our understanding of innocence. This class will focus on the US, though for information on wrongful convictions in death penalty cases see: R. Hood and C. Hoyle (2015), The Death Penalty: A Worldwide Perspective, 5th edn., Oxford University Press, ch 7, (section on Wrongful convictions).

**Presentations**: Two students will be asked to give brief (5-minute) presentations addressing the following:

1) What, in your opinion, is the most intractable problem for those who would like to reduce the number of wrongful convictions in capital murder cases?

2) How helpful is the innocence movement for death penalty abolitionists?

*For up-to-date information and reports see:*
National Registry of Exonerations held by the law school at the University of Michigan
http://www.law.umich.edu/special/exoneration/Pages/about.aspx

J. Roman, K. Walsh, et al., "Post-Conviction DNA Testing and Wrongful Conviction," Urban Institute Justice Policy Center, June 2012. The report is at this link. You need only read the executive summary at pp. 1-3 for class, but if you write a paper on this topic you’ll need to read the full report.

**Academic studies on US:**

*For an overview on research on sources of wrongful conviction, see J. Gould and R. Leo (2010), One Hundred Years Later: Wrongful Convictions after a Century of Research, The Journal Of Criminal Law & Criminology, Vol. 100, No. 3.*


The Conversation, ‘Coerced confessions and jailhouse snitches: why the death penalty is so flawed’, August 5, 2015, (Brandon Garrett).


The Conversation, Loss of Innocence: the experience of exonerated death row inmates, August 3, 2015 (Saundra Westervelt & Kimberly Cook).

Seminar Seven

Alternatives to death: is life imprisonment better than death row?
(with Marion Vannier)

Abolitionists cannot content themselves with arguing the negative aspects of capital punishment. Those that seek to abolish the death penalty face the task of establishing a viable alternative or alternatives. They must have a clear idea about what punishment is appropriate for those who commit terrible offences. In this final seminar of the course we will discuss how perceptions and understandings of life imprisonment have evolved over time (from prison management concerns to humanitarian issues).

For an overview of how different countries have dealt with the question of alternatives to death, see: Hood and Hoyle, The Death Penalty, 5th edn., chapter 11, and for the specific issues to be discussed in class, from p. 485

Presentation: one student will introduce the seminar with by a five-minute presentation on the key issues that come out of this literature, and the questions it raises.

Most of the class will focus on a discussion that draws on the following pieces:


Wright, Julian (1990) "Life-Without-Parole: An Alternative to Death or Not Much of a Life at All?". 43 Vand. L. Rev. 529


Seminar Eight
Guest Lecture, Carlton Gary: a case study of a wrongful conviction

Optional reading for this guest lecture:

http://www.amazon.co.uk/The-Big-Eddy-Club-Stranglings/dp/1595586717
I'm tough on crime - I support executions!

Oh, yeah? Well, I support executions of juveniles!

Well, I support preventive executions of juveniles!!

Preventive executions?

See - my opponent would wait until a crime had already been committed!!