

John Jay College of Criminal Justice	Professor Barry Latzer – Office 3246N
CRJ 81000 Philosophical and Ethical Issues in Criminal Justice: The Death Penalty	212-237-8192 email: blatzer@jjay.cuny.edu
Spring 2003	Professor Evan J. Mandery – Office 422-21
Thursdays, 6:20 – 8:20 pm Room 437 T	212-237-8389 email: emandery@hotmail.com

COURSE DESCRIPTION AND OBJECTIVES

This course examines the moral and legal issues surrounding the death penalty as practiced in America. Team-taught by two law-trained instructors, one pro-death penalty, one abolitionist, this course confronts the most controversial issues in the death penalty debate, including: Is the death penalty racist? Does it deter crime? Does it provide justice for heinous crimes? Does it create too great a risk of executing innocents? Is it just and constitutional if applied to juveniles and the retarded? Students will read and analyze the major Supreme Court decisions on the death penalty, including the cases establishing the elements of capital case procedure. They will also study the leading scholarly treatments of various aspects of capital punishment.

TEXTS

- S. Banner, *A History of Capital Punishment in America* (Harvard University Press 2002)
 B. Latzer, *Death Penalty Cases* (Second Edition) (Butterworth-Heinemann 2002)
 H. Bedau, *The Death Penalty in America* (Oxford University Press 1997)

COURSE REQUIREMENTS

- Paper and Oral Presentation 50%
 Final Exam 50%

PAPERS AND ORAL PRESENTATION

Each student will be asked to lead class discussion once during the course of the semester. On certain weeks, two students will be designated to lead discussion – one in favor of particular viewpoint, the other against. The students will consult with the professors in advance of class to refine arguments. The expectation is that the topic for a 15-page paper will evolve from this preparation.

PLAGIARISM AND CHEATING

We refer you to the college policy on plagiarism. Any student plagiarizing on any assignment or cheating will receive an F for the course and risk dismissal from the Doctoral Program. Plagiarism extends to both the content and expression of an idea. Any time you use an idea that is not your own, the source must be cited. Any time you quote from any work, the source must be cited. There are no exceptions to this policy.

SCHEDULE OF CLASSES AND READINGS

January 28: History of Death Penalty in the United States

Stuart Banner, *The Death Penalty: An American History* (Harvard University Press, 2002)

February 4: Morality of the Death Penalty/Quantitative Data/Public Opinion

A. QUANTITATIVE DATA/PUBLIC OPINION

Latzer casebook, Appendix A

U.S. Department of Justice, Bureau of Justice Statistics, *Capital Punishment 2001* (2002) (available online)

Ellsworth and Gross, "Hardening of the Attitudes: Americans' Views on the Death Penalty" [Bedau reader, Ch. 7]

Gallup Survey (available online)

B. MORALITY OF THE DEATH PENALTY

Ernest van den Haag, "The Death Penalty Once More" [Bedau reader, Ch. 32]

Hugo A. Bedau, "A Reply to van den Haag" [Bedau reader, Ch. 33]

H. Wayne House, "The New Testament and Moral Arguments for Capital Punishment" [Bedau reader, Ch. 30]

John Howard Yoder, "Noah's Covenant, The New Testament, and Christian Social Order" [Bedau reader, Ch. 31]

February 11: Deterrence and Retribution

A. DETERRENCE

Latzer casebook, pp. 13-15

Bailey & Peterson. "Murder, Capital Punishment, and Deterrence: A Review of the Literature" [Bedau reader, Ch. 9]

Bowers, William J., and Glenn L. Pierce. "Deterrence or Brutalization: What Is the Effect of Executions?" 26 Crime and Delinquency 453 (1980)

Mocan, H. Naci, and R. Kaj Gittings. "Pardons, Executions and Homicide" (available online)

B. RETRIBUTION AND INCAPACITATION

Latzer casebook, pp. 15-17

Marquart & Sorensen, "A National Study of *Furman*-Commuted Inmates" [Bedau reader, Ch. 10]

Walter Berns, Ch. 5, "The Morality of Capital Punishment" in For Capital Punishment (Basic Books, 1979)

February 18-25: The Supreme Court and the Modern Death Penalty

Latzer casebook, pp. 1-4

Furman v. Georgia [Latzer casebook, Ch. 2]

Gregg v. Georgia [Latzer casebook, Ch. 3]

Woodson v. North Carolina [Latzer casebook, Ch. 6]

Steiker, Carol S. and Jordan M. Steiker. "Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment" 109 Harvard Law Review 355 (1995)

McCord, David. "Judging the Effectiveness of the Supreme Court's Death Penalty Jurisprudence According to the Court's Own Goals: Mild Success or Major Disaster?" 24 Florida State University Law Review 545 (1997)

March 4: Nondeathworthy Murderers: Execution of Rapists, Juveniles, and Felony-Murderers

A. RAPISTS

Coker v. Georgia [Latzer casebook, Ch. 5]

B. FELONY-MURDERERS

Enmund v. Florida (1982) [Latzer casebook, Ch. 11]

Tison v. Arizona (1987) [Latzer casebook, Ch. 12]

C. JUVENILES

Stanford v. Kentucky (1989) [Latzer casebook, Ch. 22]

March 11: Nondeathworthy Murderers II: Execution of the Insane and the Retarded

A. INSANE CONVICTS

Ford v. Wainwright (1986) [Latzer casebook, Ch. 23]

B. MENTALLY RETARDED

Atkins v. Virginia (2002) [Latzer casebook, Ch. 24]

Latzer, Barry. "Misplaced Compassion: The Mentally Retarded and the Death Penalty" 38 Criminal Law Bulletin 327 (2002)

March 18: Mistakes and Innocence

Latzer casebook, pp. 17-18

Bedau, Hugo A., and Michael L. Radelet. "Miscarriages of Justice in Potentially Capital Cases" 40 Stanford Law Review 21-90 (1987)

Markman, Steven J., and Paul G. Cassell. "Protecting the Innocent: A Response to the Bedau-Radelet Study" 41 Stanford Law Review 121-160 (1988)

Latzer, Barry. "Reflections on Innocence" (paper presented at Conference on Equal Treatment and the Death Penalty, John Jay College of Criminal Justice, Nov. 11, 2002)

United States v. Quinones, 205 F.Supp.2d 256 (S.D. N.Y. 2002), *reaff'g* 196 F.Supp.2d 416 (S.D.N.Y. 2002)

Herrera v. Collins (1993) [Latzer casebook, Ch. 26]

March 25: Race and Sex Discrimination

Latzer casebook, pp. 18-19

Rothman, Stanley, and Stephen Powers. "Execution by Quota?" 116 *The Public Interest* 3-17 (1994)

United States General Accounting Office. *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities*. [Bedau reader, Ch. 21]

Wolfgang, Marvin E., and Marc Riedel. "Race, Judicial Discretion, and the Death Penalty" 407 *The Annals of the American Academy of Political and Social Science* 119-33 (1973)

Rapaport, Elizabeth. "Some Questions About Gender and the Death Penalty" 20 *Golden Gate University Law Review* 501 (1990)

McCleskey v. Kemp (1987) [Latzer casebook, Ch. 25]

Katz, Joseph. "Warren McCleskey v. Ralph Kemp: Is The Death Penalty In Georgia Racially Biased?" (available at <http://dsc.gsu.edu/dscjlk/>)

April 2: Capital Case Procedure: Aggravating and Mitigating Factors

A. AGGRAVATING FACTORS

Latzer casebook, pp. 4-13

Godfrey v. Georgia (1980) [Latzer casebook, Ch. 8]

B. MITIGATING EVIDENCE

Lockett v. Ohio (1978) [Latzer casebook, Ch. 9]

McKoy v. North Carolina (1990) [Latzer casebook, Ch. 10]

Kirchmeier, Jeffrey. "Aggravating and Mitigating Factors: The Paradox of Today's Arbitrary and Mandatory Capital Punishing Scheme" 6 *William & Mary Bill of Rights Journal* 345 (1998)

April 9: Victim Impact Evidence

Payne v. Tennessee (1991) [Latzer casebook, Ch. 16]

April 23: Capital Case Procedure: Jury Selection/Quality of Representation

A. JURY SELECTION

Witherspoon v. Illinois (1968) [Latzer casebook, Ch. 13]

Lockhart v. McCree (1986) [Latzer casebook, Ch. 14]

Turner v. Murray (1986) [Latzer casebook, Ch. 15]

B. DEFENSE COUNSEL

Burger v. Kemp (1987) [Latzer casebook, Ch. 18]

Bright, Stephen B. "Counsel for the Poor" [Bedau reader, Ch. 22]

April 30: Capital Case Procedure II: Jury Instructions and Sentencing

A. JURY INSTRUCTIONS

Hoffman, Joseph L. "How American Juries Decide Death Penalty Cases" [Bedau reader, Ch. 24]

Simmons v. South Carolina (1994) [Latzer casebook, Ch. 17]

B. SENTENCING

Spaziano v. Florida (1984) [Latzer casebook, Ch. 19]

Arizona v. Rumsey (1984) [Latzer casebook, Ch. 21]

May 6: Capital Appeals

A. APPELLATE REVERSALS

Latzer, Barry, and James N.G. Cauthen. "Capital Appeals Revisited" 84 *Judicature* 64-71 (2000)

Liebman, James S., Jeffrey Fagan, and Valerie West. "Death Matters: A Reply to Professors Latzer and Cauthen" 84 *Judicature* 72-77, 99 (2000)

B. PROPORTIONALITY REVIEW

Pulley v. Harris (1984) [Latzer casebook, Ch. 20]

Latzer, Barry. "The Failure of Comparative Proportionality Review of Capital Cases (with Lessons From New Jersey)" 64 *Albany Law Review* 1161-1196, 1235-1244 (2001)

Mandery, Evan J. "In Defense of Specific Proportionality Review" 65 *Albany Law Review* 883-934 (2002)

May 13: Final Examination