



POLI 195-002
The End of the Death Penalty
Mondays, Wednesdays, 12:00–12:50pm
Stone Center 103, Spring 2013

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This class is about a surprising political development that is happening right around us: The death penalty seems to be disappearing. A large majority of Americans supports the death penalty in the abstract. But across the country for about the past 15 years, the number of death sentences and executions has been declining. In North Carolina, a new law, the Racial Justice Act, allows condemned inmates to present statistical evidence that racial bias may have affected their sentencing. Activists (many of them students) have brought attention to problems in the administration of justice as it relates to capital punishment, especially the potential to execute an innocent person. But these things are not new; problems in the administration of justice have been with us for a long time. Similarly, charges of racial bias in the application of the death penalty have been with us for many centuries. So we will try to understand why has public attention come to focus on the possibility of executing the innocent and why the legislature passed the Racial Justice Act. In sum, we'll be following real world events this semester, and we can rest assured that there will be many events of interest.

This class will be accompanied by a speakers series, and attendance at these events is mandatory. In fact, this may be where you learn the most. As of the first day of class, the list of speakers is not yet completely finalized, but it does include several individuals who have served time in jail or on death row for crimes of which they were later found to be innocent; their attorneys and advocates; a prison warden who once administered executions using Florida's electric chair; a representative of family members of victims of homicide; a mother whose son was the first death row inmate to have his death sentence commuted to life in prison and whose other son was murdered; members of the NC House and Senate who have been involved in the Racial Justice Act debate; and some of the most prominent death penalty attorneys in the nation. Others invited but not yet confirmed include representatives of the state conference of District Attorneys. These individuals have real-world experience and can speak to the issues we will be discussing on ways that no professor can match. So you will learn a lot from them.

One thing this class is not about is whether any of us personally support or oppose the death penalty. It may be difficult to separate your personal views on the topic, especially if they are related to your religious beliefs. No matter whether you support or oppose the death penalty, I will expect all to show respect for the views of others. Our task this semester is not to reach an individual decision about what we believe—that is a personal matter. Rather, I want us to analyze a true puzzle, which is how we got here and where we may be going.

This is a political science class, not a class on doing politics. So we'll be taking a step back from the real world events we'll be reading about and asking some more basic questions. What is the role of public opinion in such a policy? What should it be? How do we gauge public opinion on a topic like capital punishment: in response to general questions, or only in the jury box with respect to a particular individual and after learning the facts in the case? How much discretion should police officers, district attorneys, and judges have in protecting us from criminals? How much do we owe to defendants who cannot afford an attorney? How does one mount a political movement in favor of a group of individuals who may be despised by the vast majority in society? So there are some big questions here related to the very functioning of a democratic system. We should not shy away from discussing what this particular debate means about the functioning of our political system.

Assignments will include active participation in the lecture and in discussion sections; two 5-7 page (double spaced) papers; a set of exams to be conducted in section; and a final exam. The paper assignments will allow you to go into greater detail about items covered in class or to focus on the individual experiences of some of our speakers. In any case, they should be documented with academic sources or your own primary research, should be written in a professional manner, and should go beyond what is covered in class, not simply repeat information we have covered together. Derek Epp, the teaching assistant, will have full authority to make assignments in discussion sections as well.

Grades will be calculated according to this formula:

Participation including in lecture and discussion section	20
Quizzes and exams in discussion section	20
Two papers, equally weighted	40
Final exam	20

Missed class and late assignments: Missing class more than a few times will certainly affect your participation grade; missing class more than 5 times will lead to a full grade reduction in your final grade. Similarly, missing the final exam will lead to a 10 point reduction in your grade and a revised exam which may well be more difficult. Papers are due at the beginning of class on the day they are due. Any late papers will be accepted but down-graded by 10 points after the class when they are due, then 10 more points each 24 hours including weekends; if you are late with the assignment, email me or Derek the paper. Now, all this sounds very harsh and I apologize for that. If you know ahead of time you will miss an assignment for some good reason, contact me after class, by email, or in my office hours and we may agree on an alternative, without any penalty. Similarly, if you have an illness or a university supported excuse then no penalties will apply. Just stay in touch.

Caveat: I consider the syllabus in a class to be a contract. However, I do reserve the right to make changes to the syllabus, including project due dates and test dates (excluding the officially scheduled final examination), when unforeseen circumstances occur. These changes will be announced as early as possible so that students can adjust their schedules. I will also make available as soon as possible the list of speakers, and attendance at these events will be

mandatory. Generally they will be on Wednesday evenings, 5:30-7:00pm, but some speakers may need different arrangements.

Books for purchase: Buy this book on line or at the bookstore. (I'll donate my royalties [17 cents each copy!] to a cause you can decide on.)

- Baumgartner, Frank R., Suzanna L. De Boef and Amber E. Boydston. 2008. *The Decline of the Death Penalty and the Discovery of Innocence*. New York: Cambridge University Press.

Other than that, all the required readings will be on the class web site. Visit this site often: <http://www.unc.edu/~fbaum/teaching.htm>, then look for our class. Some speakers may make things available to you and I will post them there as soon as I have them.

Disabilities: Please let me know in the first two weeks of class if you need any accommodation for a disability. No problem. But don't delay in letting me know.

Academic Honesty: Study together but make sure the work you hand in is your own. For all course work, the Honor Code applies; the student's signature on her/his work confirms that the Code rules were respected. Familiarize yourselves with the Code at http://honor.unc.edu/index.php?option=com_content&view=article&id=44&Itemid=71. You also need to familiarize yourself with the concept and practice of plagiarism in order to make sure that you avoid it. Plagiarism is defined as deliberate or reckless representation of another's words, thoughts, or ideas as one's own without attribution in connection with submission of academic work, whether graded or otherwise. Take the library's tutorial at <http://www.lib.unc.edu/instruct/plagiarism/> and ask me if you have any questions.

Effort: Don't come to class unprepared to participate.

Intimidation Factor: I'm the author of some of the work discussed here. That can either be a cause not to critique and discuss, or an opportunity to engage with a person who is active in the field. I have thick skin and welcome criticism, discussion, and challenges. So feel free!

Computers and cell phones: Turn them off, period. Pay attention to the discussion. Bring paper copies of the readings, and a pad and pen to take notes. Type your notes into a computer file after class; that will help you review and learn the material.

Weekly schedule and discussion topics

Note: Readings should all be done *before the Monday class*. Most of these readings are easy to understand but a few get technically difficult at times. Don't worry too much about any statistical presentations or legal concepts that you can't understand. However, do your best, and come to class with questions. You should definitely understand and pay careful attention to the concepts and conclusions being presented. I'll occasionally have quick quizzes designed to evaluate whether you've done the readings. This will be partially based on my sense of whether people are doing the readings. So, to avoid quizzes, come with questions and comments that show you have read the material!

Week 1, Wed Jan 9, Introduction and overview of the course

Week 2, Jan 14, 16, Historical background and statistics about the death penalty in America

1. Baumgartner De Boef and Boydston, ch. 2

Week 3, Jan 23, Overview of current controversies

(No class on MLK day, happy holiday)

2. Jost, Kenneth. 2010. Death Penalty Debates: Is the capital punishment system working? *CQ Researcher* 20 (41, Nov. 19): 965-988.

Week 4, Jan 28, 30, How the death penalty came back so strongly in the 1970s

3. Simon, Jonathan. 2011. Interposition: Segregation, Capital Punishment, and the Forging of the Post-New Deal Political Leader. In David Garland, Randall McGowen, and Michael Meranze, eds. *America's Death Penalty: Between Past and Present*. New York: New York University Press, pp. 166-90.
4. Garland, David. 2010. *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Cambridge: Harvard University Press. Chapter 9, New Political and Cultural Meanings, pp. 231-255.

Week 5, Feb 4, 6, Guest lectures by Profs. Isaac Unah and Seth Kotch

5. Unah, Isaac. 2011. Empirical Analysis of Race and the Process of Capital Punishment in North Carolina. *Michigan State Law Review* 2011: 609-658.
6. UNC Wilson Library Special Collections on the History of the Death Penalty: <http://www.lib.unc.edu/mss/exhibits/penalty/intro.html>
7. Kotch, Seth, and Robert P. Mosteller. 2010. The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina. *UNC Law Review* 88: 2031-2132. (Part I: pp. 2031-2077)

(First paper topic proposal due in discussion section this week for approval.)

Week 6, Feb 11, 13, The North Carolina situation leading up to the RJA

8. Kotch, Seth, and Robert P. Mosteller (Part II: pp. 2077-2111)
9. Welty, Jeff. 2012. The Death Penalty in North Carolina: History and Overview. Working paper, UNC School of Government, April.

Week 7, Feb 18, 20, Changing debates about the death penalty over time

10. Radelet, Michael L., and Marian J. Borg. 2000. The Changing Nature of Death Penalty Debates. *Annual Review of Sociology* 26: 43-61.
11. Baumgartner De Boef and Boydston, ch. 1, 3

Week 8 Feb 25, 27, How these terms of debate shifted and affected public opinion

12. Baumgartner De Boef and Boydston, ch. 4-6

Week 9, Mar 4, 6, The impact of the shifting terms of debate on the number of death sentences

13. Baumgartner De Boef and Boydston, ch. 7-8
(First paper due, March 6, in lecture)

(Spring Break, March 9-17)

Week 10, Mar 18, 20, Passage of the 2009 The Racial Justice Act

14. Cook, Philip J. 2009. Potential Savings from Abolition of the Death Penalty in North Carolina *American Law and Economics Review* 11, 2: 498-529.
15. Kotch, Seth, and Robert P. Mosteller (Part III: pp. 2111-2131)
16. Racial Justice Act, 2009
17. Reform of the Racial Justice Act, 2011

Week 11, Mar 25, 27, Scandal at the NC State Bureau of Investigation

18. Read the four part series in the *Raleigh News and Observer* regarding the State Bureau of Investigation, from August 2010. http://www.newsobserver.com/agents_secrets/
(Second paper topic proposal due in discussion section this week for approval.)

Week 12, Apr 1, 3, Litigating the Racial Justice Act

19. Grosso, Catherine M., and Barbara O'Brien. 2012. A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials, *Iowa Law Review* 97: 1531-1559.
20. O'Brien, Barbara, and Catherine M. Grosso. 2011. Confronting Race: How a Confluence of Social Movements Convinced North Carolina to Go where the McCleskey Court Wouldn't. *Michigan State Law Review* 2011: 463-504.

Week 13, Apr 8, 10, The first Racial Justice Act decision by Judge Weeks

21. State of North Carolina v. Marcus Reymond Robinson, Order Granting Motion for Appropriate Relief, 91 CRS 23143, 20 April 2012.

**Week 14 , Apr 15, 17, room for further discussion, catch-up, discussion
(Second paper due in lecture, April 17.)**

**Week 15, Apr 22, 24 (last day of class) Review, discussions, complaints about the professor
(optional)**