

The Death Penalty in Virginia

Fall 2021

Seminar 707 001

Syllabus

Prof. Lerner

(August 12, 2021)

Class Schedule:

Class meets on the first seven Tuesdays of the semester from 4 to 6 pm.

Office hours:

Given the university's restrictions, there will be no "office" hours. I will, however, arrange a time to meet with students—no masks required—outside in the courtyard, with details to be determined. I am also happy to arrange a time to talk on the phone or have a zoom meeting. Please feel free to email me at clerner@gmu.edu.

Internet policy:

Use of your phone or the internet in any form is prohibited during class. If students have a special need to be able to access the internet during a class, they should notify me.

Weekly reactions:

On the Monday before every class, no later than 5:00 pm, each student is required to submit a 1-page reaction to any of the reading that week. The reactions need not reflect any independent research. If there is anything in the readings that struck you as interesting, outrageous, persuasive, or inspiring, explain why. Include your name at the top of the reaction. After submitting on Twen, add your paper to the appropriate folder on google drive. A link to the Google Drive is posted on Twen. Only *after* you have posted your own reaction should you read other students' reactions.

The first weekly reaction is due August 23, no later than 5:00 pm.

Classroom discussion:

In the classes that do not have a guest speaker, I will start off with brief opening remarks; the discussions are expected, however, to be student-directed. We will take our bearings from the student reactions.

For three of the weeks, I have invited distinguished Virginia lawyers to talk about their experiences with the death penalty. They will guide our discussions those weeks.

Many of the cases we will study involve sensitive and controversial topics. You should expect to hear opinions that are contrary to your own beliefs. You are

encouraged to formulate reasoned responses and refutations. Students are free to speak their minds on relevant subject matter, and they are expected to do so in a professional manner.

Grading:

The seminar will be graded pass-fail, on the basis of the weekly reactions and classroom discussion.

Readings:

The readings will be: cases, which you can download through Westlaw or Lexis; articles or books accessible on the Internet, for which you will be provided a link; or other material, which you can find on Twen.

Class 1 (August 24): Virginia's Death Penalty Through 1972.

Cesare Beccaria, *On Crimes and Punishments* (1764). Read chapters 1-3, 6-7, 12, and 27-28. <https://www.thefederalistpapers.org/wp-content/uploads/2013/01/Cesare-Beccaria-On-Crimes-and-Punishment.pdf>

Excerpts from Ronald D. Pestritto, *Founding the Criminal Law: Punishment and Political Thought in the Origins of America*. Pages 45-53, 116-125, and 132-135. This reading can be found on Twen.

Thomas Jefferson, *A Bill for Proportioning Crimes and Punishments* (1778), at <https://press-pubs.uchicago.edu/founders/documents/amendVIIIIs10.html>

Whiteford v. Commonwealth, 27 Va. (6 Rand.) 721 (1828) [1828 WL 867]

The Trial of John Brown: An Account, by Douglas O. Linder, at <https://famous-trials.com/johnbrown/620-home>

(It's all interesting, but feel free to start reading about half-way through, beginning with "The Attack on Harper's Ferry.")

Harrison v. Commonwealth, 79 Va. 374, 52 Am. Rep. 634 (1884)

Spencer v. Commonwealth, 143 Va. 531, 129 S.E. 351 (1925)

Pannill v. Commonwealth, 185 Va. 244, 38 S.E.2d 457 (1946)

Hampton v. Commonwealth, 190 Va. 531, 58 S.E.2d 288 (1950)

(For background on the case, you can read the Wikipedia entry on the Martinsville Seven—https://en.wikipedia.org/wiki/Martinsville_Seven.)

Wansley v. Commonwealth, 205 Va. 419, 137 S.E.2d 870 (1964)

(For background, you can read *Virginian Freed in 1962 Rape Case*, N.Y. Times, Jan. 18, 1973, at <https://www.nytimes.com/1973/01/18/archives/virginian-is-freed-in-1962-rape-case.html>.)

Class 2 (August 31): Virginia's Death Penalty After 1972, Part I

Readings to be determined.

Class 3 (September 7): Defending Death Penalty Cases (Guest Speaker--Jonathon Sheldon)

Readings to be determined.

Class 4 ((September 14): Prosecuting Death Penalty Cases (Guest Speaker—Judge James Willett)

Readings to be determined

Class 5 (September 21): Abolishing the Death Penalty (Guest Speaker—State Senator Scott Surovell)

Readings to be determined.

Class 6 (September 28): Virginia's Death Penalty After 1972, Part II

Readings to be determined.

Class 7 (October 5): The Future of the Death Penalty

Readings to be determined.