This course will examine the distinctive law of capital punishment. What special rules and procedures govern the conduct of capital trials, especially the determination of punishment where death is an option? What are the burdens and responsibilities of lawyers in capital cases? In addition, we will pay particular attention to the Eighth Amendment’s prohibition of cruel and unusual punishment. How has the Eighth Amendment been interpreted in capital cases? We will also consider the current practices and status of the death penalty in the United States.

Books for the course are:

Stephen Mitchell, The Book of Job (P)
Herman Melville, Billy Budd (P)

Other readings are available on electronic reserve.

Please note that there is one film which you should see as part of the course.

I. INTRODUCTION

1. **Introduction** (April 5-330-500)

   Francis v. Resweber, 329 US (1947) 459

II. THE CONTEXT OF CAPITAL PUNISHMENT:
    PERSPECTIVES ON PUNISHMENT

2. **The Problem of Pain and the Fact of Punishment** (April 5-630-900)

   Stephen Mitchell, The Book of Job (P)
3. **Why Do We Punish? - I (April 6-330-500)**
   Herman Melville, *Billy Budd* (P)
   Herbert Morris, “Persons and Punishment” 52 *The Monist* (1968), 475-501
   Robinson v. California, 370 US (1962) 660

4. **Why Do We Punish? - II (April 6-630-900)**
   William Connolly, “The Desire to Punish,” in *The Ethos of Pluralization*, 41-49, 58-74

III. **PERSPECTIVES ON CAPITAL PUNISHMENT**

5. **Philosophical Perspectives on Capital Punishment (April 7-330-500)**

   Walter Berns, *For Capital Punishment*, 153-176


6. **Social and Political Perspectives on Capital Punishment (April 7-630-900)**


IV. **THE DISTINCTIVE LAW OF CAPITAL PUNISHMENT**


   Furman v. Georgia, 408 US 238 (1972), 238-314, 375-405

Marc Klass, “Victim Impact Statement”
Austin Sarat, When the State Kills: Capital Punishment and the American
Condition, Chapter 2


Campbell v. Wood, 18 F. 3d 662 (1994) (Opinions by Beezer, just Section VII,
and Reinhardt)
Baze v Rees, 533 U.S. 35 (2008) (opinions of Roberts and Stevens)
Austin Sarat, Katherine Blumstein, Aubrey Jones, Heather Richard, Madeline
Sprung-Keyser, and Robert Weaver, “Botched Executions and the Struggle to End
Capital Punishment: A Twentieth-Century Story,” 38 Law & Social Inquiry
(2013), 694-720


Alex Kotlowitz, “In The Face of Death,” NY Times (July 6, 2003)

V. THE FUTURE OF CAPITAL PUNISHMENT

FILM: Dead Man Walking (see before class)

11. A New Death Penalty Politics? (April 14-330-500)

Samuel R. Gross and Phoebe Ellsworth, “Second Thoughts: American’s Views on
the Death Penalty at the Turn of the Century,” in Beyond Repair: America’s Death
Penalty, Stephen Garvey, ed.
Contemp. Probs. (Autumn 1998), 125
Austin Sarat, The “New Abolitionism” and the Possibilities of Legislative Action: The

12. New Attitudes Toward Punishment? (April 14-630-900)

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