

A question of life or death

The death penalty is an example of the ultimate power of government, the taking of life. Its existence as a means of punishment is a decision that each society makes. The death penalty has been rejected in many countries, but is allowed in 37 states in the United States.

Although the Eighth Amendment to the U.S. Constitution protects individuals from cruel and unusual punishment, the U.S. Supreme Court has held that the death penalty is not cruel and unusual because a majority of Americans accept the death penalty as the proper punishment for the most vicious crime against society—first degree murder.

However, states that choose to use the death penalty must provide by law a procedure that does not automatically impose the death penalty on every defendant convicted of a capital crime. This procedure or “*due process*” is required by the Fourteenth Amendment which provides that life cannot be taken without due process of law.

This lesson will explore the death penalty debate by having students examine their own attitudes to its use, by studying the process that is required by the Constitution, and by considering difficult applications.

Students will:

1. Understand criminal rights and liberties guaranteed in the United States Constitution.
2. Understand the importance of these rights in public decision-making and how the law limits governmental actions.
3. Understand the judicial process and how judicial decisions regarding use of the death penalty are made.

Materials needed:

Copies of **Student Handout: WHAT IS YOUR OPINION OF THE DEATH PENALTY?**,
Student Handout: IS THE DEATH PENALTY CONSTITUTIONAL?
Student Handout: A SENTENCE OF DEATH?

Time needed: 2 class periods

Grade level: Grades 9-12

Procedure:

1. Ask students what is the “stiffest” penalty for a crime committed in Minnesota? (Mandatory life without parole) Is this true for all states? (37 states have capital punishment) Should Minnesota have

Procedure cont.

the death penalty? (Minnesota abolished the death penalty in 1911 but in the 1988-89 legislative session, a death penalty bill was introduced in the Senate but failed to pass.)

2. Distribute **Student Handout: WHAT IS YOUR OPINION OF THE DEATH PENALTY?** Ask students to complete the survey individually and save for later. This exercise will familiarize students with arguments on both sides of the death penalty.
3. Divide the students into two groups. Give each group a short period of time to prepare to debate the statement: *“In some cases, state and federal governments should be able to impose the death penalty for persons convicted of first degree murder.”* Ask one group to represent persons supporting the death penalty and one group to represent those people opposing its use. What are the arguments for and against the death penalty? What rights support your position? Discuss the need to balance the public’s right to protection and the accused’s right to be treated fairly. Would the death penalty tip the scales too far in any one direction?
4. After the debate, have students reread their answers to the opinion poll and see if they would change any of their answers.
5. Discuss the constitutionality of the death penalty. Ask students to read the **Student Handout: IS THE DEATH PENALTY CONSTITUTIONAL?** Discuss the following questions:
 - A. Do you agree with the Supreme Court that the death penalty is not *“cruel and unusual punishment?”* Are there circumstances where it might be?
 - B. What facts about a crime and a defendant would be *aggravating circumstances?* (prior record of defendant, lack of sorrow, viciousness of the crime, etc.)
 - C. What facts about a crime and a defendant would be *mitigating circumstances?* (absence of any prior record, defendant’s age, mental retardation, regret, etc.)
 - D. Ask the students if the jury should consider facts about the victim, (the victim was a good member of the community, regularly attending church, or victim was an alleged member of organized crime).

Explain to students that the U.S. Supreme Court has ruled (in *South Carolina v. Gathers*) that the personal characteristics of the murder victim, when unrelated to the crime itself, should not be considered by the jury in deciding whether to sentence the defendant to death.

6. Divide the class into small groups and using the **Student Handout: A SENTENCE OF DEATH?** ask each group to roleplay the sentencing jury in the hypothetical case. The students are to apply the following capitol punishment statute:

After finding the defendant guilty of murder in the first degree, the jury shall look at the circumstances of the crime, and at the character of the defendant. If it finds the *aggravating circumstances* of

Procedure cont.

the crime and the defendant outweigh the *mitigating circumstances*, it shall return a recommendation of the death penalty. Otherwise, it shall recommend life imprisonment.

Remind the students that the defendant in the case has already been convicted of first degree murder and that it is their responsibility to decide the sentence. **They only have two choices: life imprisonment or the death penalty.**

7. Instruct the students to make a list of *mitigating circumstances* (those which call for mercy) and a list of *aggravating circumstances* (those which make the crime violent or repulsive). Jurors should then compare one list with the other. If mitigating circumstances outweigh the aggravating circumstances, they are to recommend life imprisonment. If the aggravating circumstances outweigh the mitigating circumstances, they are to recommend death.
8. Ask each jury to share its decision with the entire class, summarizing how the group reached its decision. The recommendation does not need to be unanimous.
9. Complete the lesson by asking students to consider the statement: “Juries have the same power as the executioner in death penalty cases.” Do they agree or disagree? How would they act if they were a juror in a death penalty case? Would it influence their finding of guilt?

Student Handout: WHAT IS YOUR OPINION OF THE DEATH PENALTY?

The death penalty is a very controversial issue. The statements below describe some common attitudes toward capital punishment. As you begin to think about this subject, read each statement below and circle your reaction:

SA (strongly agree)	SD (strongly disagree)
A (agree)	D (disagree)
UD (undecided).	

1. Killing people who commit murder keeps other people from doing the same thing.

SA	A	SD	D	UD
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2. A person who commits murder or some other serious crime should pay _____ with his or her own life.

SA	A	SD	D	UD
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3. "An eye for an eye and a tooth for a tooth" is what justice means.

SA	A	SD	D	UD
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4. Taxpayers should not be expected to pay for the upkeep of prisoners who have committed murder.

SA	A	SD	D	UD
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5. Some people cannot be allowed in society because they are too dangerous. These people should be executed.

SA	A	SD	D	UD
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6. Anyone who places value on human life cannot approve capital punishment.

SA	A	SD	D	UD
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7. People are basically evil and must be punished for wrongdoing or they will continue to do wrong.

SA	A	SD	D	UD
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8. "Thou shalt not Kill" means that even criminals should not be executed.

SA	A	SD	D	UD
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9. People are basically good and even the worst criminal can be rehabilitated.

SA	A	SD	D	UD
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10. People are a mixture of good and bad and it's hard to make a final decision about anyone. This means capital punishment is wrong.

SA	A	SD	D	UD
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11. Unless a person admits to a crime, it is impossible to be absolutely certain that she or he committed the crime. The jury might have made a mistake.

SA	A	SD	D	UD
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Student Handout: IS THE DEATH PENALTY CONSTITUTIONAL?

Does the death penalty violate the Eighth Amendment's prohibition against "cruel and unusual" punishment? Is there a taking of "life. . . without due process of law" contrary to the Fourteenth Amendment? These questions have been presented many times to the U.S. Supreme Court as state death penalty statutes are challenged in court.

A landmark Supreme Court decision, *Gregg v. Georgia*, concluded that the death penalty is not cruel and unusual punishment nor does it violate due process if certain procedures are followed.

By a 7-2 majority, the U.S. Supreme Court declared that states could impose the death penalty as a punishment for first-degree murder. Because a majority of Americans accepted the death penalty as the proper punishment for the most vicious crime against society, first-degree murder, it was not "cruel and unusual" punishment.

However, some state laws regarding the method by which defendants were chosen to receive the death penalty violated the Fourteenth Amendment's "due process" clause. These were laws that automatically imposed the death sentence for every defendant convicted of a capital crime. Jurors had no choice about the penalty and were unable to consider circumstances about the crime that might warrant the more lenient sentence of life imprisonment.

The type of death penalty law that was constitutional in the *Gregg* case required juries, after finding a defendant guilty of first degree murder, to make a second decision on whether or not to impose the death penalty after considering everything about the defendant and the crime. This would include both the *aggravating* circumstances, or those things about the crime and the defendant which make it a cruel and vicious act, and the *mitigating* circumstances of the crime and defendant, or those things which call for mercy and leniency on the part of the jurors. Jurors are to balance the two types of circumstances and recommend the death penalty only if the aggravating circumstances outweigh the mitigating ones.

The Court said this process provided juries with enough freedom in their choice between the death penalty and life imprisonment to satisfy the due process requirements of the Fourteenth Amendment. It also prevented arbitrary decision-making by giving guidance to juries on how to make their decision.

Student Handout: A SENTENCE OF DEATH?

You are a member of the jury. You have found the defendant guilty of first degree murder. You now must decide the defendant's sentence by applying the following law:

After finding the defendant guilty of murder in the first degree, the jury shall look at the circumstances of the crime, and at the character of the individual defendant. If it finds the aggravating circumstances of the crime and the defendant outweigh the mitigating circumstances, it shall return a recommendation of the death penalty. Otherwise, it shall recommend life imprisonment.

Name: Larry Wilson
Age: 16
Sex: Male

Larry has been in and out of juvenile facilities since the age of eight for various acts of burglary, theft and arson, had attempted to kill his mother by poisoning Tylenol capsules, and had killed several animals in his neighborhood. A psychiatrist diagnosed Larry as having a personality disorder but that he could tell right from wrong.

On July 25, 1985 Larry and an accomplice, Allen, planned to rob a convenience store and murder "whoever was behind the counter" because "a dead person can't talk." A 26 year old mother of two was working behind the counter of the convenience store when Larry and Allen robbed the store. Allen held the woman to the floor, while Larry repeatedly stabbed her in the chest. When she begged for her life, Larry stabbed her four more times in the neck. Larry and Allen helped themselves to liquor, cigarettes, rolling papers, and \$450 in cash and checks, and left the woman to die on the floor. Larry was sixteen years old at the time.

Larry was certified to stand trial as an adult and entered guilty pleas to first-degree murder and armed robbery.

Sentence _____