



Rule of Law and the Death Penalty

GRADE LEVEL: 11TH–12TH GRADES

**TIME ESTIMATE: DAY ONE, 55 MINUTES, AND OPTIONAL
DAY TWO, 55 MINUTES**

Lesson Overview

In this first lesson, students will have an opportunity to analyze and evaluate the constitutionality of capital punishment. Students will work together to analyze key points of different Supreme Court cases and apply their analysis to evaluate to what extent the Constitution merits capital punishment. In the optional day two lesson activities, students will have an opportunity to extend their learning to understanding international policies about capital punishment internationally. This lesson is designed for high school students and is an excellent way to introduce concepts relating to government, world history, and United States history.

Due to the sensitive and challenging nature of this topic, it is important to establish class norms and provide a framework for civil discourse in advance of engaging your class in the lesson discussion. Take time prior to the lesson to create a class contract and establish class norms that you and your students agree upon. You may display the norms where it is visible to all students and reference them during the lesson to ensure that everyone is adhering to the agreed-upon norms. In our [Civil Discourse Primer](#), you will find helpful tips for implementing these strategies.



Lesson Day One

• Objectives

- Define and interpret the Fifth, Eighth, and Fourteenth Amendments
- Identify and explain how the Supreme Court's interpretation of these amendments in reference to capital punishment has changed over time
- Analyze and evaluate the constitutional merits of maintaining capital punishment

• Vocabulary

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|---------------|----------------------|-------------|
| • Due process | • Arbitrary | • Abolition |
| • Indictment | • Deterrence | • Reinstate |
| • Moratorium | • Capital punishment | • Precedent |

• Materials

- Highlighters and a pen/pencil
- Copies of the Fifth, Eighth, and Fourteenth Amendment excerpts either printed or displayed digitally
- Amendment graphic organizer
- Printed copy of the Death Penalty Information Center's [Constitutionality of the Death Penalty](#) article and graphic organizer
- Printed copy of the Death Penalty Information Center's [Arbitrariness](#) article
- Printed copy of Heritage Foundation's [Do Wrongful Convictions Add Weight to the Argument for Abolishing the Death Penalty](#) article

• Prework (~10 minutes):

- Have learners watch a video on the [Supreme Court from Cato](#) and answer the following question: *What is the Supreme Court's role in establishing or changing legal precedent based on its interpretation of the Constitution?*

• Warm up (~10 minutes):

- Display or provide copies of the Fifth, Eighth, and Fourteenth Amendment excerpts below for your class to read along with. Have learners annotate the key vocabulary you identify together as a class.
- **Fifth Amendment:** "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or **indictment** of a Grand Jury. . . nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without **due process** of law..."
- **Eighth Amendment:** "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

- **Fourteenth Amendment, Section 1:** “Nor shall any State deprive any person of life, liberty, or property, without **due process** of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Amendment	Protections	Significance
Fifth		
Eighth		
Fourteenth, Section 1		

- Ask learners to use the graphic organizer to independently interpret the protections in their own words. Afterward, prompt students to do a pair share with the following guiding questions to discuss. Remind students to apply their contextual knowledge of United States history to answer.
 - Why did the First Federal Congress view the protections outlined in the Fifth and Eighth Amendments as important enough to be codified into the Constitution?
 - Why did the First Federal Congress specify in the Bill of Rights a protection against “cruel and unusual punishments?”
 - What is the significance of the additional clause of “nor shall any State” in the Fourteenth Amendment and how does it differ from the the Fifth Amendment for due process?
- Upon completion, invite learners to share their reflections. Remind students that while the Fifth Amendment focuses on setting a federal statute, the Fourteenth Amendment was created during the Reconstruction period and focuses on ensuring that the states are also accountable for enforcing due process to all citizens.
- **Lesson Activities**
 - **Activity Part One (~15 minutes)**
Share with students that they will apply their understanding of the three amendments they interpreted to analyzing the way the Supreme Court has interpreted them in ruling on the constitutionality of the death penalty.
 - **Step One:** Split students into groups of three for the article analysis.
 - **Step Two:** Share the graphic organizer with students and pass out the Death Penalty Information Center’s [Constitutionality of the Death Penalty](#).

- **Step Three:** Have students use the jigsaw method for reading the article by each taking one of the sections of the article outlined in the graphic organizer. Remind students to use the following three strategies:
 - i. Define key words and add them to the graphic organizer.
 - ii. Paraphrase the main points in the synthesis section.
 - iii. Identify significant connections and use this information for analyzing responses to the questions.

Section	Key Supreme Court Cases and Terms	Synthesis
Challenging the Death Penalty		
Suspending the Death Penalty		
Reinstating the Death Penalty		
Analysis		
How has the Supreme Court's interpretation and application of the Fifth, Eighth and Fourteenth Amendments changed over time?	What precedent has been set in regard to state versus federal sovereignty for capital punishment decisions?	

- **Activity Part Two (~30 minutes)**

The First Federal Congress was concerned about the use of the death penalty in an arbitrary or disproportionate manner. The cases you studied in the previous activity outline how the Supreme Court sought to address capital punishment and this concern of the penalty being used in an arbitrary manner. Share with students that they will apply their understanding of these court cases and the Constitution to analyze the present arguments around constitutional merits for continuing to use the death penalty in sentencing.

- **Step One:** Have students examine in the same groups of three, the [Arbitrariness article from the Death Penalty Information Center](#) and the Heritage Center article

Do Wrongful Convictions Add Weight to the Argument for Abolishing the Death Penalty?

Use the jigsaw method to have students break up the articles. Ask students to consider the following guiding question as they read the articles. Have students do Cornell notes or annotate the articles using color coding to identify the argument points.

How do each of the articles outline the risk of using capital punishment as a penalty in an arbitrary or disproportionate manner?

- **Step Two:** When students finish reading their articles, have them, as a group, apply their understanding of the various perspectives to analyze the risk of using capital punishment as a penalty in an arbitrary or disproportionate manner. Upon completion, ask students to share their responses as a class.
- **Step Three:** Share with students that they will now have an opportunity to engage in a Socratic seminar and apply their analysis to evaluate the following question:
To what extent does the Constitution merit capital punishment?

Have students consider their understanding of court cases, various perspectives, and the amendments they studied. Remind students that the goal is to focus on having a discussion, not a debate, and to use the civil discourse discussion framework. As students engage in the seminar, ensure that they focus on the four key components of a successful Socratic seminar: the text they have used, the prompt, the facilitator of the seminar, and their classmates. Further tips on seating arrangements may be found in the [Civil Discourse Primer](#).

- **Extension Activity**

Students may develop their critical thinking and argumentative writing skills in crafting an argumentative essay supporting their answer to the following question:

To what extent does the Constitution merit capital punishment?

Instruct students to practice using the ACE strategy for building their argument, citations, and evidence. For AP students, this is a great opportunity to practice extended essay writing skills in advance of their test.

Optional Day Two: Human Progress and International Focus

- **Objectives**

- Identify factors that contributed to a decline in capital punishment globally
- Compare and contrast capital punishment in the United States to other countries
- Explain how capital punishment internationally has led to new political, economic, or social changes

- **Vocabulary**

- Moratorium
- Arbitrary
- Deterrence
- Capital punishment
- Abolition
- Reinstate
- Precedent
- Enlightenment

- **Materials**

- Laptops
- [Heroes of Progress](#) video about Cesare Beccaria
- Human Progress article [Capital Punishment Has Declined Dramatically but Further Progress Will Be Tough](#)
- Human Progress graphs [U.S. Execution rate](#) and [International Number of Executions Rank List](#)
- Highlighters
- Pens or pencils

- **Warm Up (~5 minutes)**

Invite students to take out their amendment organizer from the previous day's lesson. Share that they are going to watch a [Heroes of Progress](#) video about Cesare Beccaria who is considered the father of criminal justice. Ask students to consider their interpretations of the language in the amendments as they watch the video to identify any influences from Beccaria.

Once students are done watching the video have them talk with a partner about the following questions:

- What factors contributed to Beccaria's beliefs about criminal justice? Consider the social, political, religious, economic, and geographical factors of the time.
- How does Beccaria define cruel and unusual punishment?
- In what ways did Beccaria influence criminal justice reform internationally?
- How is his influence reflected in the amendments you studied?
- Upon completion, invite learners to share their reflections.

- **Lesson Activities**

- **Activity One (15 minutes)**

Share with students that they will apply their understanding of Beccaria's influence to trace the decline of capital punishment globally.

- **Step One:** Group students into pairs to read the Human Progress article [Capital Punishment Has Declined Dramatically but Further Progress Will Be Tough](#). Remind students to circle key words they may not know and underline important events, places, and people.

- **Step Two:** Ask students to answer the following questions.
 - i. Identify one factor that accounts for the decline in capital punishment globally.
 - ii. Identify one factor that presents a challenge to abolition of the death penalty.
 - iii. Explain to what extent the Enlightenment shifted views on capital punishment
- **Step Three:** After answering the questions have students share their answers as a class. Ask students what they think Beccaria would say about the status of capital punishment today and share their assumptions.
- **Activity Two (20 minutes): Graph Analysis**
 - **Step One:** Ask students to brainstorm where the United States stands in relation to other countries, do they believe that the United States has a higher or lower execution rate than other democracies? Have students share out their estimation.
 - **Step Two:** Share with students that they will now compare the United States' execution rates to that of the international community. In pairs, have students open the following graphs on their computers (you may also do this as a whole class or print and skip the interactive component if computer availability is limited).
[U.S. Execution rate](#)
[International Number of Executions Rank List](#)
 - **Step Three:** Begin with the U.S. Execution rate graph and have students use the interactive feature to scroll through by year. Ask students to identify two factors that contributed to the decline in the U.S. execution rate. Remind students to recall their studies from the previous day's lesson to help support their answers.
 - **Step Four:** Have students move to the International Number of Executions Rank List and direct them to use the interactive tool on the rank list to identify, year over year, the changes in executions. Ask students to discuss the following questions:
 - i. After interpreting the graph, did the ranking of the United States surprise you?
 - ii. Examine the types of governments of the countries in the top 10 from 2004–2017. How many are democracies?
 - iii. Compare the execution rates of the top 10 countries. What is one factor that may account for the discrepancy of United States remaining in the top 10 on the list with a large gap in the number of executions compared the other countries?
 - iv. Choose one other country in the top 10 to compare to the United States. Use the calculator table to compare the executions and research the other country's governing document to identify its policy on capital punishment. Identify if it has a governing document that addresses this; explain what the document says; and then compare the policy to the United States Constitution.

- **Activity Three (15 minutes)**

Prompt students with the following questions to discuss in pairs and then have them engage in a Socratic seminar to share their answers as a class. Remind students to use their knowledge from the articles they have read and the graph analysis they have conducted.

Explain one way in which capital punishment in some of the world's countries has led to new political, economic, or social changes.

To what extent do policies from other countries influence your thinking on capital punishment from the previous lesson?

- **Extension**

Ask students to use the Human Progress International Number of Executions Rank List to compare two countries with different types of governments, other than the ones they chose in the lesson. Have students investigate what the governing documents of those countries say about capital punishment. Encourage students to consider if there are protections available for due process. Have students write a short essay analyzing the differences or create a slideshow in Google Slides to display their findings.