

Topic:

The Final Question -- The Eighth Amendment

Time:

1 week

Historical Period:**Core:**

US I 6120 - 0202
6120 - 0603
US II 6250 - 0102
Gov. 6210 - 0201
6210 - 0402

Objectives: Students will:

1. Develop opinions on a controversial issue.
2. View and appreciate both sides of a controversial issue.
3. Understand the Eighth Amendment.
4. Understand the effects of the death penalty.
5. Demonstrate symbols and what they represent.
6. Learn to work in groups.
7. Understand how to read a chart and apply the information.
8. Know the historical development of the death penalty in the United States.

Procedure:**Activity 1: Personal Journal**

1. Before students can proceed to investigate, analyze and summarize the concept of capital punishment and understand the current status of capital punishment in America today, they must first consider their own feelings and opinions about the death penalty. This particular activity may seem simplistic, but it will help students sort out their attitudes toward the issues of capital punishment. Give copies of Handout 1: Personal Journal, to students and have each person answer questions 1-4. After students have completed Handout 1, move to the Brainstorming stage.
2. Brainstorming: Ask students to share the lists they made in question 1 of Handout 1 out loud and write them on a chalkboard. Discuss any patterns or repetitive answers. Next, ask students to share their answers from question 2. Again, note any common threads and/or parallel ideas. Opinions will start to vary. Try to engage the students in a debate. Finally, ask students to read their opinions out loud and explain their reasoning. Before anyone states his/her opinion, remind the students that everyone is entitled to his/her own opinion and to be courteous of others. This may help reduce the urge to enter into a debate as this is a very controversial topic.

Handouts/Worksheets:

1. Handout 1: Personal Journal
2. Handout 2: Vocabulary
3. Handout 3: The Final Question
4. Handout 4: Cruel and Unusual?
5. Handout 5: Constitutionally Cruel and Unusual?
6. Handout 6: Weighing the Death Penalty
7. Handout 7: You Decide

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Procedure continued

Activity 2: Vocabulary

- Since many of the terms used in this unit may be new to students, a vocabulary list will be helpful for reference. Distribute a copy of Handout 2: Vocabulary, to each student to complete and refer to in the next lesson ahead.

Activity 3: The Final Question

- Hand out copies of Handout 3: The Final Question. Have students read individually, in small groups, or as a class. Discuss the information in the reading. Have students keep this handout close by throughout the unit because the future activities refer to information found in the article.

Activity 4: Cruel and Unusual?

1. Give each student a copy of Handout 4: Cruel and Unusual?
2. After students have completed Handout 4, have them form small groups of 3-4. Each group will be asked to decide which five punishments are most cruel. (Number one will represent the most cruel.) Then ask each group to decide, from the list, which five punishments are least cruel. (Number 24 will represent the least cruel.)
3. The lists of the most and least severe punishments will be shared with the whole class, with one person from each group acting as a spokesperson for their group.
4. Write the groups' decisions on the board. Discuss the patterns and common answers, if any.
5. Finally, develop a definition of *cruel and unusual* from the decisions made by each group. Have students add this class definition to their vocabulary list (Handout 2).

Activity 5: Constitutionally Cruel and Unusual?

1. Give each student a copy of Handout 5: Constitutionally Cruel and Unusual?
2. After students have completed Handout 5, have them form small groups of 3-4. Each group should be asked to decide which punishments would be constitutional, giving their reasons. Keep in mind the words of the Eighth Amendment. (You may want to distribute copies of Handout: Eighth Amendment or copies of the U. S. Constitution and Bill of Rights.)
3. As a class, brainstorm and write on the chalkboard the punishments that would be acceptable in our society today in accordance with our Constitution.

Activity 6: Weighing the Death Penalty

Capital punishment is a very controversial issue. Some people are in complete favor of it, while others completely oppose it. There is another group of people who are unsure of their feelings on this issue, and a group that would favor capital punishment in only specific cases.

Whatever each person's opinion, it is to his/her advantage to look at and consider the many sides of the issue.

Procedure continued

1. Distribute Handout 8: Weighing the Death Penalty. This activity asks students to form small groups of 3-4. The students are asked to come up with 4-5 pros and cons regarding the death penalty.
2. After the students have a list of arguments, these should be shared with the whole class and discussed so that all sides of the issue can be presented and appreciated.

Activity 7: You Decide

This activity puts the students in the role of sentencing a person found guilty of some type of murder or murders.

1. Distribute Handout 7: You Decide. In small groups, have the students decide the fate of each of the accused criminals.
2. Have the students share and discuss their decisions when everyone has completed all 10 cases. As a class, note the different opinions in sentencing. As a class, try to identify the characteristics that establish the differences between the decision to sentence a person to the death penalty as opposed to sentencing a person to life imprisonment. Ask students to explain their reasoning and state the alternative opinions they designed.

HANDOUT 2

VOCABULARY

Define the following terms according to their legal use.

Death Penalty

Capital Punishment

Lethal Injection

Gassing

Hanging

Firing Squad

Appeal

Habeas Corpus

Death Row

Electrocution

Crucifixion

Castration

Ducking Stool

Stocks

Pillory

Banishment

Mitigating Circumstances

Aggravating Circumstances

Victim

Verdict

Sentence

Cruel

Unusual

Retribution

Exile

Deterrence

Excessive

THE FINAL QUESTION

It has been over 25 years since the decision was made. It has been years of continual debate between supporters and opponent. It has been years of wrestling between whether it's right or it's wrong. It has been years of legal arguments, mental anguish, anger, heartache, frustration, and confusion. It has been over 25 years since the Supreme Court reinstated the death penalty in America. Notice the key word in the previous sentence, *reinstated*. The decision made by the Supreme Court in 1976 to allow the death penalty to be implemented by the states, at their discretion, was not the first time the death penalty was found constitutional in the United States.

Before we can address the death penalty, we must first consider the amendment to the Constitution allowing this action. The Eighth Amendment to our federal Constitution states:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

It is this amendment which deals with and helps regulate the sentencing of criminals in the United States today and has done so since the Eighth Amendment was adopted through the Bill of Right in 1791.

Before our country had a federal constitution, the citizens of this land had to deal with the issue of punishment of criminals. In the Puritan era, the people had to deal with such crimes as gambling, swearing, robbery, lying and spouse beating. The punishments inflicted for such crimes ranged from fines to whippings to ducking. Ducking was, essentially, the dipping of a person into water. The person in question would sit in a chair built on the end of a long horizontal pole. The chair was then lowered into the water with the person sitting in the chair. The Puritan's also used public humiliation as a means of punishment. Some criminals were placed in stocks or the pillory. Additional humiliation tactics used were to make the criminal wear a letter signifying the crime he/she had committed.

When the question of criminal execution was presented to the Puritans, hanging was the answer. Some states in the United States still have hanging as an option for the death penalty. Another earlier death penalty practice, which is still an option in a limited number of states, was the firing squad. Since these primitive means of capital punishment were used, many new ones have been invented. Death by electrocution was introduced in 1890. Thirty-four years later, in 1924, the gas chamber became an option in the death penalty, and in 1977, lethal injection was introduced.

In 1972, our Supreme Court stopped just short of saying that the death penalty was cruel

and unusual in the case of *Croker v. Georgia*. Then, in 1976, the Supreme Court authorized the death penalty in the case of *Gregg v. California*. Today, there are many sentenced to death but few executed. Why is this so? The answer lies in the appeals process. When the judicial personnel are dealing with taking someone's life, they are very careful that there is no miscarriage of justice. Some people facing the death penalty were later found not guilty by a higher court. Randall Dale Adams is probably the most publicized person to be found innocent of his crime. Adams had spent 12 years on death row in Texas for murdering a police officer. While making the movie, *The Thin Blue Line*, a film maker found evidence which proved Adams' innocence.

The process before the death penalty is carried out is long. Again, this is due to our appeals process. The average length of the appeals process is eight years. These are a very expensive eight years. When the costs of legal fees, housing, hiring an executioner, upkeep, etc., are considered, it costs tax payers between 1.6 - 3.2 million dollars to carry out ONE death penalty. On the other hand, it costs roughly \$38,000 per year for each person in our prison system. A 1991 Supreme Court decision limited the number of appeals in federal criminal cases. Many states are also limiting their number of appeals to help deal with the court's backlog and to quiet society's anger while still providing for the rights of the accused.

In 1972, 52 percent of our American population favored the death penalty. In 1990, that figure had grown to 75 percent. Many people believe, however, that there is still not enough political will to initiate a series of executions. There seems to be a growing trend of anger across the United States. People are tired of the court's hesitancy to use the death penalty. They see more violent crimes being committed and reported, and they feel that justice is not being done. Proponents of the death penalty view capital punishment as a deterrent to crime. If the death penalty does not deter the criminal before he/she acts, he/she won't ever do it again! The death penalty, here, is seen as a permanent deterrent and as just.

Opponents to the death penalty do not view it as deterrent. People against the death penalty cite Portugal, Denmark, New Zealand, and Romania as all abolishing the death penalty since 1976, leaving the U. S. as the only county in the Western world to execute its citizens. In many countries, the death penalty, here, is seen as a violation of human rights. In 1989, the Supreme Court ruled in *Penry v. Lynaugh* that the sentencing of a mentally retarded person to death due to a murder conviction does not violate the Eighth Amendment. We are one of the few countries that allows for the execution of juveniles as well.

The death penalty conjures up scary pictures of electric chairs, dark gas chambers, and needles filled with lethal drugs. Capital punishment also brings up two opposite views. One, "*Justice cannot be served as long as we practice and okay the death sentence.*" Two, "*Justice has been served because this criminal has been eliminated from society.*"

Where do you fall in the spectrum dealing with **The Final Question?**

HANDOUT 4

CRUEL AND UNUSUAL?

The following is a partial list of punishments imposed on American society since the pre-Puritan times. Many of the punishments listed are no longer used today. Some of the punishments listed have never been imposed but could potentially be implemented.

The attitude of the American people seems to be changing. Currently, more than 75 percent of the United State population supports the death penalty. This figure compares to 57 percent in 1972. The support for the death penalty is increasing.

Assuming your state allowed for the death penalty You Decide

Which of the following punishments do you find *cruel and unusual*? If you would support the punishment in certain cases, identify your conditions.

Next, number the punishments from 1-20 in order of **most cruel (1)** to **least cruel (20)** using only the punishments listed below.

	Number	Cruel & Unusual	Not Cruel & Unusual	Undecided	Support in specific cases
Crucifixion					
Burned at stake					
Cut off limbs					
40 lashes with whip					
Ducking stool					
Public shaming					
Stocks					
Pillory					
Imprisonment					
Cut out tongue					
Breaking bones					

Cruel and Unusual? cont.

	Number	Cruel & Unusual	Not Cruel & Unusual	Undecided	Support in specific cases
Electrocution					
Cut off ears					
Pierce tongue with hot iron					
Wear sign stating crime committed					
Branding					
Hanging					
Banishment					
Exile					
Stoning					

HANDOUT 5

CONSTITUTIONALLY CRUEL AND UNUSUAL?

Check which punishments our federal constitution would deem as *cruel and unusual*.

Punishment	Cruel & Unusual (Constitutionally unacceptable)	Not Cruel & Unusual (Constitutionally acceptable)
Crucifixion		
Burned at stake		
Cut off limbs		
40 lashes with whip		
Ducking stool		
Public shaming		
Stocks		
Pillory		
Imprisonment		
Cut out tongue		
Breaking bones		
Lethal Injection		
Gassing		
Firing squad		
Electrocution		
Pierce tongue with hot iron		
Wear sign stating crime committed		
Branding		
Hanging		
Banishment		
Exile		
Stoning		
Cut off ears		

WEIGHING THE DEATH PENALTY

Capital punishment is a very controversial issue. Some people support it fully while others completely oppose it. There is another group of people who are unsure of their feelings on this issue, and finally, a group that would favor capital punishment in only specific cases.

Whatever your opinion, it is to your advantage to look at and consider all sides of this issue.

Directions: In this activity, form a small group of 3-4 people. With the members of your group, come up with 4-5 reasons for supporting the death penalty. Then, come up with 4-5 reasons for opposing the death penalty.

Be prepared to present you ideas to the class.

PROS	CONS

ANSWER KEY: Weighing the Death Penalty

PROS	CONS
<p>Deterrence: Proponents believe that the death penalty keeps people from committing crimes.</p> <p>Retribution: Death may be the only sentence which is proportionate to some crimes.</p> <p>Risk Eliminated Permanently: The death penalty would keep our streets safer because violent criminals would be gone for good.</p> <p>Due Process Provided: Each person facing a sentence of death is guaranteed and provided with due process of law, thus no violations of the Fifth Amendment’s “life, liberty, or property without due process of law” exists.</p> <p>Economical: The death penalty would save \$38,000 per year per prisoner.</p>	<p>Human Rights Violation: The United States is the only country in the Western world which still allows for the death penalty.</p> <p>Not a Deterrent: Death penalty opponents state that criminals do not give prior thought to their action’s consequences.</p> <p>Immoral: Opponents cite the contradiction of a state outlawing murder but upholding its right to kill.</p> <p>Unfairly Applied: Opponents note the disproportionate number of poor and black people who are sentenced to death.</p> <p>Not Economical: Death penalty costs exceed imprisonment costs due to the appeals process (can cost a state \$1.6-3.2 million to carry out a death penalty).</p> <p>Risk of Miscarriage of Justice: An innocent person could be condemned to death.</p>

HANDOUT 7

YOU DECIDE

The following is a series of incidents in which the accused has been found guilty of the crime he/she committed. The decision is now yours. Your choices are to sentence the accused to life imprisonment or to death. Be prepared to defend your choice. If you strongly believe there are circumstances in a case which warrant other considerations, you must devise an argument to present to your classmates, fellow judges, explaining your refusal. Also, prepare an alternative sentence in question to meet his/her needs keeping in mind society's anger and response.

In your small group, come to an agreement as to the fate of each of the individuals facing sentencing. Remember that each one has already been found guilty. You do not have to consider their guilt or innocence nor do you have to deal with the technicalities of the trial. Just the facts (*indicates actual cases)

1. Dalto Prejan is a mentally challenged black man who shot a police officer when he was 17 years old. (*)
2. Pervis Tyrone Payne is a 20-year-old mentally challenged man who stabbed to death the mother and babysitter of Nicholas Christopher, a three-year-old Millington, TN boy, as young Nicholas watched. Nicholas was badly wounded as well. (*)
3. Six months after completing a 2 ½ year prison sentence for beating an old man to death, Bobby Harris, along with his brother, Danny, decided to rob a bank. In order to carry out the robbery, Harris needed a getaway vehicle. At a local Jack-in-the-Box, the brothers spotted two young boys in a parked car. Harris forced the boys to drive to a reservoir but assured them he would not hurt them. When they reached the reservoir, Harris killed both boys with repeated rounds. Danny stood back and watched. Later, Harris calmly ate the dead boys' unfinished burgers. (*)
4. A 30-year-old white male is found guilty of killing and dismembering 16 other male victims. He kept many of the remains in his home.
5. David Steffen, a young door-to-door salesman, asked to demonstrate his cleaning product in the home of 19-year-old Karen Range. Karen watched as Steffen scrubbed the tile under the sink. When he stood up, Steffen brushed against Karen's breast. She started to scream. Steffen warned her to stop, but she continued. Steffen beat her severely, ran into the kitchen, found a paring knife, and returned to the bathroom where he raped Karen and cut her throat. (*)
6. In April 1990, 17-year-old Ramond Rios was shot and killed in front of 15 passengers while riding a bus in Los Angeles. Rios had been wearing all blue which is the color worn by the "Crips." The "Crips" are a gang in East Los Angeles. Rios' killer was a 16-year-old member of the "Bloods", the arch rival of the "Crips." The 16-year-old "Blood"

assumed that Rios was a member of the “Crips”, only he was mistaken. Rios didn’t belong to any gang. (*)

7. Billy was due in court for committing an armed robbery. Out on the street one day, he and two of his teenage friends encountered a homeless woman. On the spur of the moment, they beat her with a pipe and raped her repeatedly. The police found evidence leading them to believe that Billy had murdered a woman in the same fashion a month before. In both cases, Billy was 12 years old. (*)
8. Ann Johnson, a 23-year-old unmarried mother of three, had a history of police visits to her house to investigate calls made by her neighbors claiming potential domestic/child abuse. The police never found reason to suspect abuse until the tragic day when they found Ann’s eight-month-old infant child dead. Ann was found guilty of shaking her child to death.
9. Convicted serial killer Alfred Mobey was found guilty of beating and raping 14 prostitutes in many different states.
10. Fran Nelson, an abused wife of 13 years, was found guilty of killing her abusive husband. Fran killed her husband by pouring gasoline around the bed in which he had passed out. Her husband, Ed, was in a drunken state during the time she poured the gasoline. Ed was so intoxicated he did not wake up while Fran tied him to the bed so he would not escape. Fran started the bed on fire and left Ed to burn to death.