

**DEPARTMENT OF POLITICAL SCIENCE
AND
INTERNATIONAL RELATIONS
Posc 150**

THE JUDICIAL SYSTEM

I. CONTENTS:

- A. The judicial system.
- B. Film: "The Case for Innocence"

II. JUSTICE AND THE LAW:

- A. ✱It seems unassailable to claim that law is built on a mixture of principles or beliefs about justice and morality *and* tradition or history *and* political and social **power**.
 - 1. What's deemed "lawful" and "unlawful" often reflect the interests of powerful segments of society, not an abstract conception of justice.
 - 2. The law is often legitimized or justified in the name of some moral principle.
 - 3. But in fact it (the legal system) represents to a huge extent the arbitrary and selective application of such principles.
- B. Case study
 - 1. Illegal drugs versus alcohol: these substances are treated differently under American national, state, and local laws.
 - 2. To what extent are the differences based on rationally intelligible scientific and economic grounds and on considerations of fairness and justice?

III. THE JUDICIAL SYSTEM:

- A. ✱The courts play at least two important roles in society.
 - 1. ○Provide a forum for resolution of disputes—disputes between citizens and disputes between citizens and their government.
 - 2. ○Policy making and interpretation.
- B. The court battles over the 2000 and 2002 elections reflect the former.
 - 1. So too do many death penalty cases: they represent arguments in which one side (the defense) argues that existing laws and constitutional principles have not been properly followed and in which the other side, the state, claims that the "rules of the game" have been followed.
 - 2. A lot of judicial work involves settling disputes by acting as "impartial" referees.
- C. On the other hand, the courts some times (intentionally and unintentionally) act as law makers and administrators.
 - 1. Judicial review
 - 2. Interpretations of constitutionality lead to policy making.
 - i. ✓Roe v Wade and abortion.

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3. Courts have taken over state functions to protect rights, for instance.
- i. ✓Delaware's school desegregation program was found to be ineffective in the 1970s so a federal judge essentially mandate new school districts and busing.
 - ii. ✓Operation of prisons.

IV. THE DEATH PENALTY:

- A. *Capital punishment as law.
1. Two crucial questions:
 - i. What are appropriate punishments?
 - ii. Can the death penalty be fairly administered?
 2. Familiar complaints
 - i. Social-economic biases and injustices
 - 1) Charges
 - 2) Quality of representation
 - ii. Fair and reasonable application
 - 1) Mental capacity, age, motherhood
 - iii. Federalism
 - 1) The death penalty depends on the location of the crime.
 - iv. Cost
 - 1) What's cheaper for the state: keep a young person in prison for life or sentence him or her to death?
- B. Capital punishment as politics
1. Since the death penalty is so widely accepted and is emotionally laden, it has become a *valence* issue. (See previous notes.)
 2. Hence on the campaign trail capital punishment is hardly ever debate on its merits. Claims and counter-claims, for example, are not subjected to verification but are just exchanged as self-evident truths.
 3. One can reasonably argue that politicians and candidates advocate the death penalty to protect themselves politically rather than to protect citizens against crime.

V. "THE CASE FOR INNOCENCE"

- A. The film discusses a couple of cases..
1. I doubt that we have nearly enough information in the film to decide whether the accused were innocent or guilty or even whether or not they received a fair trial.
 2. But these case studies show that law and judicial procedure are not as simple as they seem.
 - i. Like all aspects of government the judicial system
- B. What to look for:
1. Who are Roy Crinner, Deanna Ogg, Joseph Roger Odell? What happened to them?
 2. What were the defense lawyers seeking in these cases?

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3. Habeas corpus: “an order issued to determine if a person being held in custody is being unlawfully detained or imprisoned” (Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America*, 2nd edition (Washington, D.C.: Congressional Quarterly Press, 1995) page 81.
- i. What did the “Anti-Terrorism and Effective Death Penalty” act do?
4. What objections did Judge Keller have to giving Crinner a new trial even though the DNA evidence seemed to suggest he might be innocent

VI. NEXT TIME:

A. Budget Politics

B. Reading:

1. Finish *May God Have Mercy*
 - i. It would be good to read this in one sitting so that the main characters, events, and outcomes are fresh in your mind.
2. Recommended: Casey Carmical, “The Death Penalty: Morally Defensible?” at <http://www.carmical.net/articles/deathpenalty.html>.
 - i. A case *for* capital punishment.
3. Recommended: Hugo Adam Bedau, “The Case Against The Death Penalty,” at <http://www.dnai.com/~mwood/deathpen.html>.
4. Recommended: “Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty,” in the Cyber Reserve Room.