

The Effect of Biased Information on the Malleability of Death
Penalty Opinion

by

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Abstract

The Effect of Biased Information on the Malleability of Death Penalty Opinion

by

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In *Furman v. Georgia* (1972), Justice Thurgood Marshall hypothesized that people who support the death penalty would change their minds if they had more information about capital punishment. This contrasts with the hypothesis of biased assimilation. Biased assimilation is the idea that people's attitudes are resistant to change because they discount or disregard information that contradicts a belief, while they attend to and integrate information that confirms or supports that belief. Past research into the effect of information on death penalty opinion has only examined change in opinion in the direction of "favor to oppose." In order to examine the malleability of death penalty opinion in general, this study presented two groups with information that supported either the retention or abolition of capital punishment, and measured change in opinion in both the "favor to oppose" direction and the "oppose to favor" direction.

Subjects were 187 undergraduates enrolled in ten sections of "Introduction to Criminal Justice" at John Jay College of Criminal Justice in the fall 2006 semester. Subjects were divided into two groups and asked to complete a survey regarding their opinions about the death penalty. One group was presented with a lecture comprised of facts and information in favor of the retention of capital punishment and the other was presented with a lecture comprised of facts and information opposed to capital punishment. Upon completion of the lectures, subjects were asked again to complete a

survey about their opinions on the death penalty. Pre and post-test surveys were compared to assess change in opinion.

Both groups demonstrated a significant increase in support for the death penalty. This change was driven by significant average increases in support by those who opposed capital punishment at the outset. A significant increase in support for the death penalty was found among those opposed to capital punishment on the pretest regardless of whether they were exposed to facts supporting or opposing capital punishment, but no significant change in opinion was observed among subjects who favored capital punishment on the pretest, regardless on which lecture they heard. The increase in support among opponents was largely attributed to those subjects who held retributive beliefs and who believed that the death penalty serves utilitarian functions.

These results contradict Marshall's hypothesis. Supporters of the death penalty did not change their minds, even when they were presented solely with arguments against it, and opponents lessened in their opposition, even when presented with arguments that supported their position. A majority of supporters indicated retributive reasons for their favorability towards the death penalty. It seems that Marshall underestimated the importance of retributive values in maintaining support for capital punishment. The results offered some support for the theory of biased assimilation, but alternative theories of attitude change and resistance may provide more dynamic avenues for future research.

Table of Contents

Chapter 1 – Introduction.....	1
Chapter 2 – Literature Review.....	6
The Marshall Hypothesis	12
Biased Assimilation	14
Tests of the Marshall Hypothesis	19
The Present Study	32
Chapter 3 – Methodology.....	37
Study Procedures	37
Subjects	51
Analysis Procedures	54
Chapter 4 – Results.....	61
Part 1 Analysis	61
Part 2 Analysis	66
The Pro Lecture Group	67
The Con Lecture Group	75
Chapter 5 – Discussion.....	85
Appendices	106
Appendix A – Survey Instrument	107
Appendix B – Informed Consent Form	109
Appendix C – Retention (Pro) Lecture Presentation	111
Appendix D – Abolition (Con) Lecture Presentation	127
Appendix E – Debriefing Handouts	142
Works Cited.....	145

Figures and Tables

Figure 1 – Part 1 Analysis Procedure55

Figure 2 – Part 1 Agreement levels56

Table 3-1 – Age of Subjects51

Table 3-2 – Gender of Subjects52

Table 3-3 – Race/Ethnicity of Subjects53

Table 3-4 – Subjects’ Major53

Table 3-5 – Subjects’ Religion53

Table 4-1 – t-test analyses for Part 1 agreement among
Pro and Con full groups61

Table 4-2 – t-test analyses of Part 1 scores for pros and cons63
each condition

Table 4-3 – Summary of noteworthy Part 2 changes67
among subgroups in each condition

Table 4-4(a) – Changes in Part 1 scores among con-Pros68
according to pretest agreement with retribution

Table 4-4(b) – Changes in Part 1 scores among con-Pros69
according to pretest agreement with utilitarian ideas

Table 4-4(d) – Changes in Part 1 scores among con-Pros71
according to pretest agreement with cost statements

Table 4-4(e) – Changes in Part 1 scores among con-Pros72
according to pretest agreement with administrative fairness

Table 4-5 – Changes in Part 1 scores among pro-Pros73
in relation to pretest agreement with retribution

Table 4-6(a) – Changes in Part 1 scores among con-Cons76
according to pretest agreement with retribution

Table 4-6(b) – Changes in Part 1 scores among con-Cons according to pretest agreement with utilitarian ideas	77
Table 4-6(c) – Changes in Part 1 scores among con-Cons in relation to pretest agreement with religious statements	78
Table 4-6(d) – Changes in Part 1 scores among con-Cons in relation to pretest agreement with cost statements	78
Table 4-6(e) – Changes in Part 1 scores among con-Cons in relation to pretest agreement with administrative fairness	79
Table 4-7 – Changes in Part 1 scores among pro-Cons in relation to pretest agreement with administrative fairness	83

Chapter 1

Introduction

In his concurring opinion in the 1972 Supreme Court decision *Furman v. Georgia* (408 U.S. 238), Justice Thurgood Marshall expressed his opinion that while the public tends to support the death penalty¹, it is generally uninformed about it. He hypothesized that if people had adequate information about capital punishment's true effects and the realities of the capital sentencing system, most "would conclude...that the death penalty is immoral and therefore unconstitutional" (408 U.S. 238 at pg. 363). Marshall stated, "Assuming knowledge of all the facts presently available regarding capital punishment, the average citizen would, in my opinion, find it shocking to his conscience and sense of justice." (408 U.S. 238 at pg. 369) This statement suggests that Marshall believed support for capital punishment is the result of rational thought. Specifically, he believed that information about the risk of error in capital cases and the absence of a deterrent effect would cause death penalty proponents to change their minds. Marshall felt, however, that information about the death penalty would not persuade proponents who support capital punishment on retributive grounds (408 U.S. 238 at pg. 363).

Marshall's hypothesis assumes that there is some knowable, objective "truth" about the death penalty. It further assumes that if people were to become aware of this truth, they would embrace it and oppose capital punishment. This hypothesis, however, contrasts with a theory about the way in which people

¹ For example: Gallup Poll responses to the question "Are you in favor of the death penalty for a person convicted of murder?" have shown consistently high support. Between February 2000 and May 2004, the percentage in favor ranged from 64% to 74%. (see www.pollingreport.com/crime.htm)

assimilate information. Though it was not the main purpose of their research, several authors have suggested that the presentation of information about the death penalty may lead people to become more entrenched in their opinions, rather than to change their minds.² The reasoning for this is that people tend to assimilate such information in a biased fashion.

“Biased assimilation” is the idea that people resist attitudinal change on matters of political ideology or belief. People tend to discount or disregard information that contradicts their beliefs while they attend to and integrate information that confirms or supports those beliefs.³ This makes their opinions resistant to change, regardless of the information presented to them. Lord, Ross, and Lepper (1979) have stated, “the result of exposing contending factions in a social dispute to an identical body of relevant empirical evidence may not be a narrowing of disagreement, but rather an increase in polarization” (pg. 2098). That is, when faced with information from both sides of a debate, people will actually become more convinced of their position on the topic, rather than change their minds.

Numerous studies have demonstrated the phenomenon of biased assimilation in areas other than capital punishment. Researchers have found evidence of biased assimilation of information in connection to the interpretation of historical information (McHoskey, 1995), the assessment of guilt in accounts of rape (Weiner, et al, 1989), the acceptance of stereotype-confirming material

² See, for example: Lord, Ross, and Lepper (1979); Ellsworth and Ross (1983); Bohm, et al (1990, 1991, 1993, and 1994) and; Munro, et al (2002).

³ See, for example, Munro, et al, 2002.

(Munro and Ditto, 1997), and the evaluation of a political debate (Munro, et al, 2002).

Research that has investigated Marshall's hypothesis has tended to offer support both for Marshall's notion of opinion malleability and for biased assimilation. However, these studies have attempted to test Marshall's hypothesis directly, by testing whether information about the death penalty causes those who support it at the outset to change their minds. The authors of these studies have assumed, like Marshall, that some knowable truth about the death penalty exists, and that this truth should convince someone to cease their support of capital punishment. Previous studies have presented subjects with balanced, objective information in an effort to test whether support for the death penalty would change. None of the studies looked at the effect of information that supported the retention of the death penalty on opinions that were opposed to it at the outset, and none specifically attempted to persuade subjects by offering information supportive of only one side of the debate. This unidirectional approach ignores the question of whether death penalty opinions are open to change in the first place.

The results from past research suggest that people tend to be largely inflexible in their opinions about the death penalty. However, the research has been successful in demonstrating that some change in opinion can and does occur when people are presented with conflicting information about capital punishment. It appears that two cognitive processes may have affected the past results. On the one hand, there is evidence that people analyze opposing

viewpoints in a rational fashion and alter their opinions in light of available information, as would be expected by Marshall's hypothesis. On the other hand, there is evidence that people maintain their opinions by assimilating information in a biased manner. What the research leaves unclear, however, is which type of person is likely to demonstrate greater flexibility and the type of information to which they are most likely to respond. This is because these studies have only focused upon change among death penalty proponents after researchers presented them with information from both sides of the capital punishment debate.

The present study differs from past research by examining the effect of biased information on death penalty opinion in a bidirectional manner. It presented two groups with information that supported either the retentionist or the abolitionist point of view, but not both, and measured change in opinion among proponents and opponents in both groups. That is, this study examined whether subjects who supported the death penalty would oppose it after learning information that supports the abolition of capital punishment. At the same time, this study examined whether subjects who opposed the death penalty would support it after learning information that supports the retention of capital punishment. By doing so, this study examined the malleability of death penalty opinion, regardless of one's original position. In addition, it examined which factors may influence malleability. By looking at changes among supporters and opponents in response to Pro and Con arguments one can determine if information has an effect on death penalty opinion, what type of information is

most likely to have an effect and, which type of person is most likely to be influenced.

Chapter 2

Literature Review

In the decade leading up to the Supreme Court decision in *Furman v. Georgia* (408 U.S. 238, 1972) there existed a growing abolitionist movement regarding the death penalty in American courts. Previous movements to outlaw capital punishment had focused on attempts to have death penalty statutes repealed by state legislatures. These efforts met with some success, but never achieved their goal of complete, national abolition.

In the late nineteenth and early twentieth centuries, debate raged about the appropriateness and effectiveness of capital punishment. Philosophers, legal scholars, and church leaders spoke out against the death penalty as an immoral and barbaric practice (Banner, 2002). Many in the public grew discontented with the perceived economic and racial unfairness of the system (Banner, 2002). Several state legislatures responded by eliminating their death penalty statutes and many more amended their laws to curtail its use to specific circumstances. Nevertheless, capital punishment still enjoyed large public support (Bedau, 1997, pg. 7). Abolitionists were unable to maintain majorities in state legislatures and many states that had repealed their statutes reinstated them.

Despite the fact that capital punishment remained the law of the land, the country witnessed a sharp decline in the number of executions during the period between the mid-1930's and the 1960's. Abolitionists again took up their fight

against the death penalty, only this time they turned their efforts to the courts, rather than the legislatures.

The era following World War I saw an important change in death penalty jurisprudence. This period saw an increasing role of appellate court review of capital cases. Prior to this time, it was unusual for capital offenders to have their convictions or sentences reviewed by a higher court, and especially by a federal court. This changed in the wake of landmark cases such as *Powell v. Alabama* (287 U.S. 45, 1932), which stated that capital defendants must be given access to counsel prior to trial. *Powell* was one of several cases in which the federal Supreme Court used the Fourteenth Amendment's due process clause in order to apply the federal Bill of Rights to state cases. This development moved the issue of capital punishment to the federal courts and opened the door for abolitionists to challenge the constitutionality of the death penalty itself.

This change breathed new life into the abolitionist movement in the years following World War II. The new attention being paid to capital litigation in appellate courts had a dual effect of decreasing the number of executions performed and increasing the amount of time served on death row throughout the 1950's and 1960's. During the 1960's abolitionists turned their efforts away from legislative repeal and towards legal challenges to the constitutionality of capital punishment. These efforts culminated in the 1972 Supreme Court decision in *Furman v. Georgia* (408 U.S. 238), which had the effect of ceasing executions nationwide while states reworked their death penalty statutes to meet the demands of the decision.

During the 1960's, the Court decided several cases pertaining to the constitutionality of the death penalty under the Eighth Amendment's prohibition of cruel and unusual punishment and the Fourteenth Amendment's due process clause. Historically, legal scholars did not consider the practice of capital punishment to qualify as cruel and unusual. Some people called certain execution practices into question over the years, but they did not apply the notion of cruel and unusual punishment to the punishment of death, in and of itself (Banner, 2002).

The opening to challenge capital punishment as cruel and unusual came in the 1958 Supreme Court decision in *Trop v. Dulles* (356 U.S. 86). In *Trop*, which was not a case pertaining to capital punishment, the Court adopted a view of cruel and unusual punishment that was fluid and changeable, according to "evolving standards of decency that mark the progress of a maturing society" (356 U.S. 86 at pg. 101). Under *Trop*, a punishment is cruel and unusual if society as a whole views it as such.

Since earlier cases had used the Fourteenth Amendment to apply the Federal Bill of Rights to state proceedings, the stage was set for the United States Supreme Court to effectively "set death penalty policy for the nation" (Banner, pg. 238). Defense attorneys and civil rights groups seized the opportunity to challenge the death penalty in court amid growing national and international sentiment against it, and a declining execution rate within the United States (Banner, 2002). The Gallup Organization began polling Americans

regarding their approval for the death penalty for convicted murderers in 1936. In 1966, it recorded an all-time low approval rating of 42% (Gallup, 2007).

The first challenge to the constitutionality of capital punishment to reach the Court came in 1968, in *United States v. Jackson* (390 U.S. 570). In *Jackson*, the Court addressed a federal kidnapping statute that allowed for a sentence of death only if recommended by a jury. The Court held this practice unconstitutional as it created a situation in which a defendant would be likely to give up his right to a jury trial in order to avoid the possibility of receiving a death sentence. The case influenced the death penalty laws in several states, because they had similar requirements in their sentencing systems (Banner, 2002).

Also in 1968, the Court addressed the issue of juror selection in capital cases. In *Witherspoon v. Illinois* (391 U.S. 510) the Court ruled that potential jurors who expressed any doubt about the appropriateness of the death penalty could not be excluded solely for that reason. To do so would create a biased jury that would be more likely to impose a sentence of death and would thus not be representative of a community in which many people oppose capital punishment. A prosecutor could only exclude jurors who claimed that they would automatically reject the possibility of a death sentence. Across the country, this ruling overturned many existing death sentences because juries that excluded people generally opposed to the death penalty decided them.

Abolitionists faced a setback in attempting Constitutional challenges to the death penalty in the cases of *McGautha v. California* and *Crampton v. Illinois* (compiled in 402 U.S. 183) in 1971. Both cases attempted to claim that the lack

of bifurcation in capital trials and the lack of guidance in juror discretion to impose death sentences were a violation of due process under the Fourteenth Amendment. The Court disagreed on both counts, and affirmed those sentences.

The Court once again took up the challenge of the constitutionality of the death penalty in 1972. This time, the petitioner argued that the death penalty amounted to cruel and unusual punishment and was therefore unconstitutional under the Eighth Amendment. Several cases were considered, but all were decided under the umbrella of *Furman v. Georgia* (408 U.S. 238).

Furman held that the death penalty, as practiced, was unconstitutional because courts applied it in an arbitrary and capricious manner. The law gave jurors no guidelines as to whom they should sentence to death and whom they should grant leniency. Legislators in 35 states drafted new death penalty statutes that attempted to conform to *Furman*. Among these states was Georgia, which introduced new sentencing procedures that directed jurors to consider and weigh mitigating factors against aggravating factors of the crime. These sentencing procedures instructed jurors to identify the presence of at least one aggravating circumstance in the crime before they imposed a death sentence. *Gregg v. Georgia* (428 U.S. 153) tested this new law in 1976.

In *Gregg*, the Court declared that capital punishment was not unconstitutional per se, and found that the sentencing procedures in Georgia's law were sufficient to satisfy the demands of *Furman*. The primary issue addressed in *Furman* was the unfair application of the death penalty. It was the arbitrariness of the punishment's implementation that rendered it cruel and

unusual, not the sentence itself. In *Gregg*, the Court stated that capital punishment is constitutionally proportionate for the crime of murder and does not violate community standards of decency. In addition, the Court held that retribution is a permissible “consideration for a legislature to weigh in determining whether the death penalty should be imposed.” (428 U.S. 153 at pg. 183) A sentencing procedure that requires a bifurcated trial in which jurors are required to consider the issues of guilt and punishment separately, combined with the statutory requirement that jurors identify specific aggravating factors present in the offense, ensures that the punishment is imposed fairly as well as affording individual defendants with the opportunity for mercy (428 U.S. 153).

Subsequent decisions that followed in the wake of *Gregg* limited the scope of the death penalty’s application. These cases gave an indication of the way in which future Courts would address the issue of capital punishment. It seems unlikely at present that the Court will take up the issue of the constitutionality of the death penalty per se any time soon, but it continues to address specific issues regarding its administration. Two recent cases illustrate this point. *Atkins v. Virginia* (536 U.S. 304, 2002) declared the execution of the mentally retarded to be an unconstitutional violation of the Eighth Amendment, and *Roper v. Simmons* (543 U.S. 551, 2005) ruled that it is unconstitutional to impose the death penalty for crimes committed while the offender was under the age of 18.

At the present time, capital punishment enjoys such widespread public support that a politician who speaks against it will find himself unelectable in many parts of the country. A poll conducted by the Gallup organization in

October 2006 found that 67% of a national sample favored the death penalty for a person convicted of murder (Gallup, 2007). Gallup has not recorded a favorability percentage below 60% since 1972.

The Marshall Hypothesis

In his concurring opinion in *Furman v. Georgia*, Justice Thurgood Marshall argued that the death penalty did not serve any legitimate legal purpose and was therefore excessive under the Eighth Amendment. Furthermore, he stated that even if it were not a legally excessive punishment it would still violate the Eighth Amendment “because it is morally unacceptable to the people of the United States at this time in their history” (408 U.S. 238 at pg. 360). Marshall was referencing the Court’s decision in *Trop* that cruel and unusual punishment reflects the “evolving standards of decency that mark the progress of a maturing society” (356 U.S. 86 at pg. 101) and he stated that a punishment would “be invalid if popular sentiment abhors it” (408 U.S. 238 at pg. 332). He argued that American society had reached that point in regards to capital punishment.

At the time, public opinion polls indicated that a great number of Americans continued to support the death penalty,⁴ but Marshall specifically rejected the use of such polls in determining if the popular morality did indeed abhor the death penalty. According to Marshall, public opinion polls about the death penalty reflected the opinion of a populace that was not “fully informed as to the purpose of the penalty and its liabilities” (pg. 361), and if they were so

⁴ A Gallup poll in November 1972 indicated that 50% of respondents favored the death penalty for persons convicted of murder. (Gallup, 2007)

informed the majority would find it to be “shocking, unjust, and unacceptable” (pg. 361).

It was Marshall’s contention that the public is generally uninformed about the death penalty. He hypothesized that if people had adequate information about capital punishment’s true effects and the realities of the capital sentencing system, most “would conclude...that the death penalty is immoral and therefore unconstitutional” (408 U.S. 238 at pg. 363). Marshall stated, “Assuming knowledge of all the facts presently available regarding capital punishment, the average citizen would, in my opinion, find it shocking to his conscience and sense of justice.” (408 U.S. 238 at pg. 369) This statement suggests that Marshall believed support for capital punishment is the result of rational thought and information could thus influence attitudes about it. Specifically, he believed that information about the risk of error in capital cases and the absence of a deterrent effect would cause death penalty proponents to change their minds.

Marshall acknowledged that proponents who support capital punishment on retributive grounds might be unlikely to alter their view about the morality of the death penalty (408 U.S. 238 at pg. 363). However, he felt that such people would be in the minority and the “great mass” of “American people would (never) knowingly support purposeless vengeance” (408 U.S. 238 at pg. 363) if they knew capital punishment served no other purpose.

In *Gregg*, Marshall reiterated his assertion that popular sentiment is an unreliable determinant for the constitutionality of the death penalty. In the four years between *Furman* and *Gregg*, 35 states and the Federal Government

enacted new death penalty statutes. This was driven, in large part, by popular demand among U.S. citizens. In his dissenting opinion in *Gregg*, Marshall acknowledged that those changes reflected the “moral acceptability of the death penalty to the American people.” (428 U.S. 153 at 232) However, he continued to insist that the majority of Americans were uninformed about capital punishment and he continued to insist that they would reject it if they knew more about its effects and outcomes.

Biased Assimilation

Marshall’s hypothesis is dependent upon the notion that people form and maintain opinions rationally. That is, it suggests that people form an opinion based upon a rational consideration of a body of knowledge available to them at any given time, and that opinion should be malleable in the face of disconfirming facts. However, research examining the phenomenon of biased assimilation suggests that human cognitive processes are often less than rational.

Biased assimilation refers to the idea that people’s attitudes resist change when it comes to matters of ideology or belief. People tend to discount or disregard information that contradicts their beliefs while they attend to and integrate information that confirms or supports those beliefs. For example, imagine that a person who is opposed to abortion is presented with two conflicting studies about the long-term psychological effects of abortion on women who undergo the procedure. One study suggests that women who have abortions are not likely to suffer long-term effects, and the other suggests that

women who have abortions suffer from psychological problems for a long time after the procedure. The concept of biased assimilation suggests that an abortion opponent would ignore or down play the importance of the study that indicated that women who have abortions are likely to suffer no serious long-term side-effects but accept or give more weight to the study that indicated that women who have abortions are likely to suffer from psychological problems after the procedure. This would make the opponent's opinion resistant to change, and perhaps make him even more certain of his original position. Lord, Ross, and Lepper (1979) have stated, "the result of exposing contending factions in a social dispute to an identical body of relevant empirical evidence may not be a narrowing of disagreement, but rather an increase in polarization." (pg. 2098) That is, when faced with information from both sides of a debate, people may actually become more convinced of their position on the topic, rather than change their minds.

Contrary to Marshall's hypothesis, it may be the case that presenting people with information about the death penalty will not lead them to change their minds. If they assimilate information in a biased fashion, their opinions may resist change. They may even become more entrenched in their original position. Studies of biased assimilation have demonstrated the phenomenon at work in numerous circumstances, including the maintenance of opinions about capital punishment.

A 1989 study conducted by Weiner, et al found that when presented with rape trial transcripts subjects who were acquainted with a rape victim assessed a

greater degree of culpability to alleged rapists than those who had no personal experience with rape. Subjects were presented with victim and defense testimony culled from the transcript of an actual rape trial and asked to rate the extent of the defendant's culpability. Subjects who were personally acquainted with a rape victim were significantly more likely to judge the defendant guilty and assigned greater degrees of responsibility to the defendant than those who had no personal acquaintance with a rape victim. All subjects reported an impression of guilt after reading the victim's testimony, but acquainted subjects maintained that impression after reading defense testimony while unacquainted subjects altered their opinions after reading the same testimony. The authors suggested that personal experience might have contributed to a biased assimilation of the trial evidence.

McHoskey (1995) examined the role of biased assimilation in the persistence of the debate surrounding the assassination of John F. Kennedy. A pre-test survey measured the subjects' initial support for either the theory that Kennedy's death was the result of a conspiracy or the theory that Lee Harvey Oswald acted alone. He then presented subjects with identical information summarizing the conflicting theories. The author then surveyed subjects again regarding their support for either theory. He found significant attitude polarization among subjects who indicated initial agreement with either point of view and concluded that the subjects' initial position affected their assimilation of the information presented to them. Both groups felt that the same evidence bolstered their own position. McHoskey concluded that "subjects' position on the

assassination (served) as a strong guiding hypothesis in their processing of the available evidence.” (pg. 405)

Munro and Ditto (1997) looked at biased assimilation in subjects' assessment of scientific research in the maintenance of social stereotypes. In this study, the authors presented subjects with fictitious research studies that either confirmed or contradicted stereotypical beliefs about homosexuality. They found evidence of biased assimilation in that subjects rated research that confirmed their existing beliefs as being more convincing. That is, subjects with an initial prejudice against homosexuals rated a study that confirmed their stereotypes as being methodologically better and more convincing than a study that contradicted their beliefs about homosexuality. Subjects with little initial prejudice against homosexuals rated a study that contradicted traditional stereotypes about homosexuality as being methodologically superior and more convincing than a study that confirmed those stereotypes.

Munro and Ditto also found that the subjects' emotional reactions to information played an important part in how that information was processed and in the polarization of their preexisting attitudes. Investigators asked subjects to report the extent to which each study made them feel anxious and upset or happy and pleased. Prejudiced subjects reported higher levels of anxiety after reading the study that contradicted their stereotypical beliefs while non-prejudiced subjects reported an increase in anxiety after reading the study that confirmed stereotypes. The reverse was also true. Prejudiced subjects reported feeling happy after reading the study that conformed to their existing attitude

while non-prejudiced subjects felt happier after reading the study that did not support stereotypical attitudes about homosexuality. Attitude polarization was associated with strong negative or positive affective responses to belief-contradicting or affirming information.

A subsequent study conducted by Munro, et al (2002) examined biased assimilation, attitude polarization, and affective responses in a more naturalistic setting. The authors measured pre and post attitudes towards presidential candidates before and after the 1996 Presidential debates between Bill Clinton and Robert Dole. They found that a subject's pre-debate favorability for a particular candidate affected his or her assessment of the candidates' arguments. In addition, the authors found that the subjects' emotional response to the candidate influenced their assessment of his arguments. Those with negative feelings regarding a specific candidate perceived his arguments negatively and "attitude-disconfirming arguments produced increased negative and decreased positive affect" leading to "negative overall evaluations of the arguments" (pg. 25).

A 2004 study by Hulsizer, et al found that people would even assimilate historical information in a biased fashion. The authors predicted that students at Kent State University would hold attitudes and opinions about the Vietnam-era shooting of four students by the National Guard that occurred on that campus in 1970 that would be consistent with their political ideologies. On the twenty-fifth anniversary of the shooting at Kent State, the authors conducted a survey of current Kent State students designed to assess their opinions about the various

participants' culpability in the shooting and the events leading up to it⁵. They found that students who described themselves as politically liberal assigned a greater degree of culpability to the National Guard than students who described themselves as politically conservative.

Several researchers, in attempting to understand the research findings resulting from attempts to validate Marshall's hypothesis, have applied the concept of biased assimilation to people's responses to information about the death penalty.

Tests of Marshall's Hypothesis

Research that has attempted to assess the validity of Marshall's hypothesis has focused on three major areas of concern. First is the question of whether a change in a favorable (overall) opinion will occur following the presentation of information. Second is the long-term stability of any such change, and third is the question of whether a change will occur in a subject's reasoning regarding his or her opinion about the death penalty.

In 1976, Sarat and Vidmar found empirical support for Marshall's hypothesis. The authors presented subjects with information regarding deterrence, incapacitation, and administration of the death penalty in the form of two 1500-word essays they had asked the subjects to read.

The first essay consisted primarily of information about the deterrent effect of capital punishment. It included summaries of empirical studies in which no

⁵ The survey asked questions such as "Did the Guard give a warning before shooting?", "Do you feel at the time of the shooting the National Guard was being provoked?", and "Do you believe the Guard was guilty of murder?" (Hulsizer, et al, 2004, pg. 1053)

deterrent effect was found, anecdotes that suggested that some potential murderers were deterred by the possibility of death while others were not, a summary of psychological theory suggesting that most murderers act impulsively and would not be deterred by the possibility of receiving a death sentence, and data regarding the low rate of recidivism among convicted murderers. The second essay included statistical information pointing to racial and socioeconomic bias in the capital sentencing system, information about the psychological problems exhibited by death row inmates, and, the realities of the execution methods of hanging, electrocution, and lethal gas (this was prior to the widespread adoption of lethal injection as the preferred method of execution in the United States.) The information presented in both essays was decidedly abolitionist in nature and did not offer any retentionist counter-arguments.

The authors noted that a significant percentage of subjects changed their minds following this presentation. The post-test revealed that the percentage who expressed support for capital punishment significantly decreased from the pre-test level. This appears to support the idea that death penalty opinions are malleable in the face of conflicting information. This change, however, was not sufficient to produce a majority that opposed the death penalty. This result may largely be because those who favored capital punishment on retributive grounds at the outset were resistant to change regardless of what information the authors presented to them. It is possible to interpret this finding to mean that people who favored the death penalty for retributive reasons assimilated information in a biased manner to disregard those parts of the essays that did not support their

position. This is conjecture, however, since the authors did not specifically examine a biased assimilation line of inquiry. Instead, the authors hypothesized that some subjects, because of being generally mistrustful of science, “may have been suspicious of and resistant to both the information and the interview setting in which it was presented” (Sarat and Vidmar, pg.192), while others may have “found the information irrelevant in judging the propriety of capital punishment.” (pg. 192)

In a 1981 study of Canadians, Vidmar and Dittenhoffer also found that the presentation of death penalty information produced a decrease in the number of subjects who said they favored capital punishment. In this study, the authors asked student volunteers at a Canadian University to read a variety of materials pertaining to the death penalty over a two-week period. The reading materials consisted of two essays and a list of supplementary readings. The essays contained similar (but updated) information as the essays used in the earlier study by Sarat and Vidmar (1976). The supplementary readings consisted of articles that were “representative of...the material referred to in the essays” (Vidmar and Dittenhoffer, pg. 47), as well as the texts Capital Punishment by Thorsten Sellin and The Death Penalty in America by Hugo Bedau. All of the reading materials presented information that was generally in opposition to capital punishment.

The authors did produce a majority who opposed the death penalty on the post-test. However, the pre-test percentage in favor was relatively small (47.6%) and the number of “undecideds” was relatively large (19.1%) (Vidmar and

Dittenhoffer, pg. 50). It may be that the presentation of information in this study had a greater effect on convincing “undecideds” to choose items indicative of opposition to the death penalty on the post-test than it did on convincing those in favor of capital punishment at the outset to change their minds. In addition, the generalizability of these findings is questionable as the sample was very small (n=21) and it required subjects to be quite dedicated in maintaining a substantial level of interest over a significant period. One must question how many subjects did indeed read all of the supplementary materials, and whether those who did were any more or less inclined to alter their opinions.

Robert Bohm, et al, has conducted a series of studies on the effect of classroom instruction on death penalty attitudes. Bohm, et al has criticized the brevity of exposure to death penalty information in the Vidmar studies of the Marshall hypothesis (see, for example, Bohm, Clark, and Aveni, 1990). The use of a classroom instruction methodology allowed investigators to present more information over a greater length of time. The results of these studies have been consistent in showing some “Marshall effect,” but only in the short-term.

Bohm based all of the studies in his series upon data collected during the course of a class that he taught at a university in Alabama from 1985 to 1988. The class was a month-long special topics course entitled “An Examination of the Death Penalty in America.” The course materials consisted of assigned readings from The Death Penalty in America by Hugo Bedau, class lectures and discussions, and guest speakers.

The course curriculum included the following topics⁶:

1. *A history of the death penalty in the United States in the pre-Furman era (1608-1972)*. This sections included a discussion of Colonial laws, practice, and abolition efforts; nineteenth and early twentieth century developments and; an overview of events from 1950 to 1972.
2. *Capital punishment and the Supreme Court*. This section examined specific cases that challenged the constitutionality of capital punishment.
3. *The death penalty at the federal level and in the military*. This section reviewed federal and military capital crimes, procedures, and executions.
4. *Methods of execution*. This section involved a discussion of the evolving meaning of “cruel and unusual punishment” and the development of execution procedures.
5. *General deterrence and the death penalty*. This section presented arguments and counterarguments for general deterrence including empirical studies of the deterrence effect of the death penalty, assumptions of and problems with deterrence theory, and studies that illustrate a brutalization effect.
6. *Incapacitation and costs of capital punishment*. This section included an overview of the principle of incapacitation and a discussion of whether executions are necessary to incapacitate murderers. This also included a discussion of costs associated with capital punishment.

⁶ In a personal communication on September 22, 2007, Dr. Bohm informed me that the material covered in his text Deathquest: An Introduction to the Theory and Practice of Capital Punishment in the United States (1st edition, 1999) reflects the course curriculum used in his studies and was compiled from notes that he used for the course. I have therefore based the information on course curriculum presented here upon an examination and summary of the material presented in that text.

7. *Miscarriages of justice and the death penalty.* This section included a discussion of why wrongful convictions may occur.
8. *Arbitrariness and discrimination in the administration of the death penalty.*
The discussion of arbitrariness involved a review of research showing that only a small percentage of eligible offenders are executed, the inconsistent application of the death penalty across time and place, and the use of plea-bargaining as a tool to avoid a capital charge. The discussion of discrimination focused on sentencing disparities according to race, social class, gender, age. A brief discussion of counterarguments was also included.
9. *Retribution, religion, and capital punishment.* This section included a discussion of the meaning of retribution and counterarguments against retribution as a justification for capital punishment. The discussion of religion focused upon capital punishment in the Judeo-Christian perspective. It also included a discussion of the New Testament's view of capital punishment and the abolitionist position of the modern Catholic Church.
10. *Public opinion on the death penalty.* This section addressed why public opinion is important; a history of public opinion on the death penalty; demographic differences in opinion; a discussion of the Marshall hypothesis and studies of the malleability of opinion.

In a 1989 study, Bohm utilized data from the class he conducted in the spring of 1987. At the time of the pre-test 82% of the students enrolled in the class favored capital punishment. At the end of the class, that number decreased to 56%.

In 1993, Bohm, Vogel, and Maisto did a follow up on the subjects of this study. In it, the authors found that though a significant number of subjects changed their opinion from favor to oppose immediately after taking the class, most of these subjects “rebounded” to their original pre-test position in the two to three years following the study (Bohm, et al, 1993, pg. 29). They found this “rebound effect” not just for overall opinion, but for the specific reasons given for that opinion as well. For example, the number of people who endorsed the idea that the quality of a defendant’s lawyer affects whether the defendant will receive a death sentence increased between the original pre and post-tests. That number decreased to pre-test levels upon the follow-up. A ten-year follow up revealed small increases in support for the death penalty from the initial follow up and overall support that surpassed the pre-test levels (Bohm and Vogel, 2004, pg. 312). In other words, not only did the people who had originally changed from favor to oppose revert to their initial position, but also some of the subjects who were either undecided or opposed had come to favor of the death penalty in the intervening years. This change from oppose to favor was not examined empirically by the authors. Instead, they offered some suggestions that intervening life experiences or career choices had caused opinions to alter over time.

Another study by Bohm (1990) utilized data gathered during his death penalty course conducted in May 1988. The focus of this study was to assess whether public commitment to an opinion would affect the likelihood of change. The author publicly asked students in his death penalty class whether they favored capital punishment for some people convicted of first-degree murder. The results indicated a decrease in favorability from 62% at the beginning of the course to 57% at the conclusion of the course. Similar results were observed in a control group consisting of students in a non-death penalty course given at the same time. The author concluded that the death penalty course had little effect on opinion change. As this was quite different from the results observed in his previous study, Bohm suggested that the fact that he had asked students to commit publicly to their original opinion might have prevented them from altering that opinion (Bohm, 1990, pg. 295).

In this study, Bohm also asked subjects to explain why they favored or opposed the death penalty and why they did not change their opinion about it. Those who opposed the death penalty tended to cite moral or religious objections, or stated that the system was inexcusably arbitrary. Supporters of capital punishment tended to offer retributive reasons (i.e. that the death penalty is a just punishment, or that murderers do not deserve to live, etc.) or utilitarian ones such as deterrence or incapacitation.

Wright, Bohm, and Jamieson conducted a study in 1995 that also utilized a classroom presentation methodology to assess change in death penalty opinion. In this study, the authors sought to expand on previous research by

examining changes in pre and post-test responses to specific questions about support for the death penalty, rather than general favorability.

In this study, students enrolled in a death penalty course at a North Carolina university in the fall of 1994 were asked to complete a questionnaire at the beginning and end of the semester regarding their opinions about capital punishment. Subjects' responses were compared to a control group consisting of students enrolled in an introduction to criminal justice class in the same semester. Course work for the death penalty class included "lectures, videos, and classroom discussions representing both sides of the death penalty (debate)." (pg. 63) In addition, the author assigned students readings from three texts: The Death Penalty in America (1982 edition) by Hugo Bedau; The Death Penalty in America: Current Research (1991) by Robert Bohm; and Challenging Capital Punishment: Legal and Social Science Approaches (1988), by Haas and Inciardi. These materials covered the following topics: "the history of the death penalty in America; capital punishment and the Supreme Court; methods of execution; current statistics; general deterrence; incapacitation and costs; miscarriages of justice; arbitrariness and discrimination; retribution; religious arguments; and public opinion." (pg. 63)

The authors examined changes in opinion from pre-test to post-test for each of six questions. The first and second questions asked subjects to indicate their support for the death penalty in general.⁷ There was a decrease in

⁷ Question 1 was "Are you in favor of the death penalty for persons convicted of murder?" (pg. 68), and question 2 asked subjects to indicate whether they favored, opposed, or were undecided in response to the question "Which of the following statements best describes your position toward the death penalty for people convicted of first-degree murder?" (pg. 68)

favorability between the pre and post-tests for these questions in the experimental group, but that decrease was not statistically significant. The third and fourth questions assessed subjects' personal willingness to be a part of the capital punishment process.⁸ There were no significant changes in responses for these questions between the pre and post-tests. The fifth and sixth questions measured subjects' approval of alternative sentences for convicted murderers.⁹ For these questions, there was significant increase in support between the pre and post-tests. The authors concluded that while an increase in knowledge about the death penalty did not result in a significant weakening of general support for it, it did serve to make alternatives to capital punishment "more palatable" (pg. 78).

In 2005, Cochran and Chamlin conducted another study that employed a classroom lecture design. The authors attempted to address what they perceived as methodological flaws in previous tests of Marshall's hypothesis. Specifically, the authors attempted to measure an actual change in knowledge levels and its effects on death penalty attitudes.

Subjects in this study were students enrolled in a course on the death penalty at a Florida university in the summer of 2003. Similar to the Bohm studies, this course presented death penalty information through required

⁸ Question 3 was "If you served on a jury in a trial where the defendant, if found guilty, would automatically be sentenced to death, could you convict the defendant?"(pg. 71) and question 4 asked, "If asked to do it, could you pull the lever that would result in the death of an individual convicted of first-degree murder?" (pg. 73)

⁹ Question 5 asked, "Would you support an alternative to the death penalty where a convicted first-degree murderer is sentenced to life in prison with no possibility of parole ever?" (pg. 75) Question 6 was "Would you support an alternative to the death penalty where a convicted first-degree murderer is sentenced to life in prison, with no possibility of parole ever, and have him/her work in a prison industry where his/her earnings would go to the victim's family?" (pg. 75)

readings, class lectures and discussions, and guest speakers. The reading material consisted of the text Deathquest II (2003), by Robert Bohm, empirical studies relating to capital punishment, and the Supreme Court decisions in *Furman v. Georgia*, *Gregg v. Georgia*, *Witherspoon v. Illinois*, and *McClesky v. Kemp*. Topics covered included the history of the death penalty, public opinion, religious and philosophical issues, retribution, deterrence and incapacitation, innocence and miscarriages of justice, arbitrariness, sentencing disparities, and the economic costs of the death penalty. The authors presented “all sides of an argument...without preference for any position.” (pg. 576)

Cochran and Chamlin used a multiple-choice questionnaire to measure knowledge about specific capital punishment related issues at the beginning and end of the class. They found that the course did increase subjects’ knowledge about the death penalty. This increase in knowledge was associated with a decrease in support for the death penalty. Cochran and Chamlin report the unexpected result that several subjects increased their support for capital punishment and several others “weakened their opposition” (pg. 579) to the death penalty after taking the course. To explain this they suggested that hardening of attitudes may have been due to a biased assimilation of information. They pointed out that those whose support increased had lower grade point averages than those whose support decreased and suggested, “perhaps brighter students assimilate information differently than do lesser students.” (pg. 580) They did not discuss these results further.

Bohm, et al, also conducted studies that explored the issue in terms of the effect of knowledge on the specific reasons given for an opinion. Ellsworth and Ross (1983) and Bohm, et al (1993) have suggested that the reasons people give for their opinions about the death penalty are, in actuality, post hoc justifications of an emotional or value based position. As such, they would endorse reasons that support the position and discount reasons that did not. However, when Bohm, et al examined specific reasoning or beliefs about the death penalty, they found that some reasons tend to be more malleable than others are.

A 1990 study by Bohm, Clark, and Aveni used data collected during Bohm's death penalty course conducted in the spring of 1985. Questionnaires administered to subjects at the beginning and end of the course included 35 items designed to measure a subject's endorsement of six reasons commonly given for supporting or opposing capital punishment. Subjects were asked to indicate whether they agreed or disagreed with statements that reflected retribution, general deterrence, incapacitation, religious concerns, administrative concerns, and support for law enforcement. Subjects were given an index score for each reason based upon their responses to corresponding items in each reason category. For example, a subject was given a retribution score based upon his level of agreement with eight items that reflected retributive beliefs such as "Those who take a life should forfeit their own in return" and "Society has a right to get revenge when...murder has been committed" (pg. 186).

The authors found that information about the death penalty did not alter the endorsement of ideas that reflected beliefs in retribution, incapacitation, religion, support for law enforcement, or general deterrence as the bases for support for capital punishment. The authors did find a change, however, in the endorsement of items that reflected administrative concerns (i.e. race, cost, innocence, poverty, and arbitrariness) as reasons to support the death penalty. They concluded that “reasons provided for death penalty opinions appear to be primarily rationalizations or justifications for emotionally based opinions” and are not susceptible to “reasoned persuasion” (pg. 184).

Another study by Bohm, Clark, and Aveni (1991) combined data from Bohm’s death penalty classes conducted in 1985 and 1988. Subjects were identified as “high” or “low” on retribution based upon their level of agreement with questionnaire items that reflected a belief in retribution such as “Those who take a life should forfeit their own in return” and “Society has a right to get revenge when...murder has been committed” (pg. 382). Pre and post-test death penalty opinion was generally immutable for subjects who scored “high” on retribution (81% in favor on the pre-test, and 80% in favor on the post-test). Subjects “low” on retribution were more flexible; 23% favored the death penalty on the pre-test while 7% favored it on the post-test.

A 1994 study (and an expansion of it done in 1995) further explored the “factors associated with informed and uninformed death penalty opinion” (Bohm and Vogel, 1994, pg. 125). Bohm and Vogel found that people informed about the death penalty were less likely to agree with survey items that reflected a

belief in general deterrence, incapacitation, and the high cost of imprisonment than people who were uninformed. The informed subjects were also more likely to agree with survey items about the effect of lawyer quality, jury make-up, and poverty on the outcome of capital sentencing decisions. However, a majority of the informed subjects still favored the death penalty. Once again, information did not affect agreement with retributive or religious statements.

This research seems to offer further support for the biased assimilation hypothesis. People are unlikely to alter their opinions when the reasons they give for it are emotional or value based (i.e. retribution or religion), regardless of information to the contrary. However, this research also suggests that the endorsement of some reasons for support will change in response to knowledge, specifically those premised upon notions of basic fairness (i.e. racial bias, cost, innocence, poverty). Though one's overall position (favor or oppose the death penalty) does not seem to change, the reasons people give for it do appear to be malleable. None of these studies specifically examined whether subjects who opposed capital punishment at the outset altered their opinions because of the presentation of information.

The present study

The previous research has offered somewhat mixed support for Marshall's hypothesis. Most have found that presenting capital punishment proponents with information about the functioning of the capital sentencing system or its effects does not lead to a majority opposing the death penalty, as was predicted by

Marshall. Some studies showed a decrease in support, but none have indicated the sort of wholesale rejection of capital punishment that Marshall seems to have anticipated. Some authors (e.g. Ellsworth and Ross (1983) and Bohm, et al (1990)) have interpreted this to mean that people form their opinions about the death penalty for emotional reasons and maintain them irrationally, through biased assimilation.

While the research suggests that though people are not very flexible in their opinions, some change can and does occur in response to conflicting information. It seems two things may be at work. On the one hand is a rational consideration of opposing viewpoints accompanied by a reasoned change in opinion, as Marshall's hypothesis would suggest. On the other hand is a biased assimilation of information that is ideologically similar to one's pre-existing attitude. This study attempted to address both issues by examining the malleability of death penalty opinion in a bidirectional, and non-objective manner.

Marshall's hypothesis, and previous studies of it, have all operated under the assumption that there is one set of objectively true facts about the death penalty, and these facts, when known, can only lead to a rejection of capital punishment. In fact, there are two sides to the death penalty debate, and both sides can offer valid facts, information, and arguments. Marshall assumed that retributive supporters would be resistant to persuasion, but he may have underestimated the strength of retributive convictions. At the same time, he failed to consider the possibility that opponents might alter their opinions under any circumstances. It seems that Marshall felt there was only one correct position

that a person could take on the issue and perhaps overestimated the strength of death penalty opposition as a result.

None of the previous studies considered the possibility that presenting someone with a set of facts that support the retention of capital punishment may cause someone who is opposed to the death penalty to change their minds. In this way, they failed to consider the more fundamental question of whether death penalty opinions are open to change, at all. The present study sought to address this fundamental question by presenting two groups of subjects with biased information and assessing change in opinion among both supporters and opponents of capital punishment. It presented groups with information that supported either the retentionist or abolitionist point of view, but not both, thereby determining whether the presentation of information affected a change in opinion both from support to opposition as well as from opposition to support.

The information presented in this study was similar in many respects to that used in the Bohm studies, though the investigator presented it to two different groups in a much shorter period. Though Bohm, et al criticized the brevity of prior studies, the results of his studies do not seem to indicate that length of time of exposure is any more likely to affect opinion change.

The information for the present study was divided into retentionist (Pro) arguments and abolitionist (Con) arguments. Each group was presented with facts, information, and arguments about the death penalty in seven topic areas: deterrence, religion, retribution, incapacitation, cost, innocence, and race. The retentionist presentation included both empirical evidence and philosophical

arguments in regards to each of these subjects that supported the death penalty. The abolitionist presentation contained empirical evidence and philosophical arguments in each of the topic areas that opposed the death penalty. The bulk of the information presented in the study was culled from Mandery's (2005) text, "Capital Punishment: A Balanced Examination."

The design of the present study allows for a test of death penalty opinion malleability as well as an examination of which factors may influence that malleability. By looking at changes among supporters and opponents in response to Pro and Con arguments one can determine if information has an effect on death penalty opinion, what type of information is most likely to have an effect and, which type of person is most likely to be influenced.

If a person's opinion about capital punishment were malleable in response to information, one would expect to observe an increase in support among opponents who heard pro death penalty information and a decrease in support among proponents who heard anti-death penalty information. If opinion were not malleable due to biased assimilation, one would expect to observe no change in support among opponents who heard pro death penalty information and no change in support among proponents who heard anti-death penalty information. If it were also true, as Lord, Ross, and Lepper (1979) have suggested, that the presentation of information may polarize opinions, one would also expect to observe an increase in opposition among opponents who heard anti-death penalty information and an increase in support among proponents who heard pro death penalty information.

The results of this study will not speak to the issue of the death penalty opinion alone. Death penalty opinion serves as an example of a strongly held opinion on an emotionally and value laden subject. What we learn about the malleability of opinion on this issue may also be applicable to opinions about any number of comparable sociopolitical issues.

Chapter 3

Methodology

Study Procedures

Data collection took place at John Jay College of Criminal Justice during the fall semester of 2006. John Jay College is an urban college located in New York City and is one of the senior colleges in the City University of New York system. It is a liberal arts college with a curriculum focus on criminal justice and related fields.

Subjects consisted of undergraduate students who were enrolled in sections of Introduction to Criminal Justice (CRJ 101). Subjects were selected for inclusion in the study based upon their presence in one of the selected sections of CRJ 101. Criminal Justice 101 best suited the needs of this study, as it is a required course for most majors, and thus often consists of large numbers of students. CRJ 101 is an introduction to the criminal justice system in the United States. The curriculum includes a discussion of basic concepts related to the law, the court system, policing, corrections, and juvenile justice. Most students take CRJ 101 during their freshman or sophomore years, which for the purpose of this study minimized the likelihood that the students chosen for the study had previously been exposed to the material presented.

Sections of the course were selected based upon study eligibility and agreement of the section's instructor. Eligible sections included sections of CRJ 101 that were scheduled to meet two days per week (either Monday/Wednesday

or Tuesday/Thursday). In order to ensure that study procedures were uniform for all subjects, classes that met on Friday or Saturday only, or classes that were web-based were excluded. In the fall of 2006, John Jay offered 23 sections of CRJ 101 that met criteria for inclusion.

The principle investigator contacted each of the instructors for each eligible section and asked if they would allow their class to be used for data collection. The instructors were asked to relinquish two consecutive class periods (or two and one half hours of class time), within the same week, to allow the author to present the class with information about capital punishment¹⁰. The instructors were apprised of the study's procedures and the nature of the information that was to be presented to their class. Initial contact was made through an email sent to all instructors of eligible sections. Those who did not respond were sent a second email, as well as given a letter in their department mailboxes. Remaining non-responders were contacted either in person or by telephone. In total, eight instructors, who were responsible for ten sections, agreed to allow the investigator access to their classes for the study.¹¹

Of the sections used, four met on Monday and Wednesday and six met on Tuesday and Thursday. Only one section, which convened at 6:25 P.M., qualified as a night class.

¹⁰ There was not enough time to cover all of the material in a single class period, so the lectures carried over into a second class. Requesting classes that met within the same week allowed for a uniform amount of time to pass between sessions for all subjects. No group had more than one day in between sessions.

¹¹ The original proposal called for sections to be chosen using a proportionate stratified random sampling technique in which the sampling frame would be stratified according to the time, day or night, that the class is offered. Sections were to be randomly selected from each stratum according to their percentage of the total number of sections. However, due to an unanticipated number of refusals and non-responses it was deemed necessary to abandon that sampling plan.

With the instructor's approval, the investigator arrived at the normally scheduled class time, introduced herself, informed the students she would be conducting a lecture about capital punishment, and asked the students who were present to participate in a survey regarding their opinions about the death penalty.

The survey instrument was designed to measure attitudes about the death penalty and the reasons for those attitudes (see Appendix A). The survey consisted of two parts. The first part of the survey instrument measured subjects' level of agreement with capital punishment in general through seven items which asked subjects to indicate their level of agreement with statements regarding the use of the death penalty in various circumstances. These items contained Likert-style ordinal response categories. For each item, subjects were instructed to mark off whether they strongly agreed (SA), agreed (A), disagreed (D), or strongly disagreed (SA) with the statement. Part 1 of the survey consisted of the following seven items:

1. The death penalty is an appropriate punishment for first-degree murder.
2. The death penalty is an appropriate punishment for forcible rape.
3. The death penalty should be mandatory for some crimes.
4. Offenders who commit murder while under the age of 18 should be eligible to receive the death penalty.

5. A mentally retarded person should be eligible to receive the death penalty if he commits murder.
6. A murderer who has been sentenced to death should be executed, even if he is mentally ill.
7. Life in prison, without the possibility of parole, is **not** an appropriate punishment for first-degree murder.

The second part of the survey instrument measured subjects' agreement with specific reasons for favoring or opposing the death penalty. Part 2 items measured the subject's agreement with specific reasons for support or opposition to the death penalty. Subjects were asked to signify their agreement by indicating whether they strongly agreed (SA), agreed (A), neither agreed nor disagreed (N), disagreed (D), or strongly disagreed (SD) with each specific statement.

These items were worded so that specific responses would reflect endorsement of the "reason" the item represented. Part 2 was made up of seventeen items. Agreement with items 1, 2, and 3 reflected an endorsement of retribution and included the following items:

1. People who commit murder deserve to give up their lives in return.
2. Society has the right to demand that killers forfeit their lives for the crime of murder.
3. Death is the appropriate punishment for murder because it represents "an eye for an eye."

Agreement with items 4, 5 and 6 reflected a belief in deterrence and consisted of the following statements:

4. The death penalty is necessary so possible killers will think twice before murdering someone.
5. If executions were televised, fewer people would commit murder.
6. The threat of the death penalty is more likely to stop someone from committing murder than the threat of life in prison.

Agreement with items 7, 8 and 9 indicated agreement with incapacitation and included the following statements:

7. The death penalty is necessary to prevent murderers from ever killing again.
8. Life in prison is not enough of a guarantee that a murderer will never kill again because he could get out on parole, or escape.
9. Some murderers can't be changed and will remain dangerous for the rest of their lives.

Agreement with items 10 and 11 reflected a religious opposition to the death penalty and consisted of the following statements:

10. The death penalty violates my religious beliefs.
11. Only God should take a life.

Agreement with items 12 and 13 demonstrated a belief that the death penalty is less costly than life in prison and included the following statements

12. The death penalty is a better punishment than life in prison, because it costs less in the long run.
13. Taxpayers' money should not be spent on keeping murderers alive in prison for the rest of their lives.

Agreement with items 14 and 15 reflected acceptance of the idea that the death penalty is racially arbitrary and included the following statements:

14. The death penalty is unacceptable because the system is racially biased.

15. Black defendants are more likely to receive the death penalty than whites are.

Finally, agreement with items 16 and 17 reflected a belief that an innocent person may be wrongfully convicted and executed and consisted of the following statements:

16. There is a real possibility that an innocent person can be wrongfully convicted and sentenced to death.

17. It is likely that an innocent person has been executed in recent years.

Some instructors opted to remain for all or part of the lectures. Others simply introduced the investigator and then left, and others were not present at all. The presence of the instructor did not appear to have a demonstrable effect on the students' attentiveness or willingness to participate.

As these were normally scheduled classes, students were not permitted to leave the lecture. However, they were informed that their participation in the survey was voluntary. Those who chose to participate were asked to sign an informed consent document (see Appendix B) indicating their agreement to participate and their understanding of the voluntary nature of their participation.

Once the informed consent documents were signed and collected, the subjects were given the pre-test. In order to guarantee confidentiality, students were asked to identify their surveys using only the last four digits of their school identification number. Pre and post-tests were matched according to this number. The pre-tests were collected upon completion, which generally took about ten to fifteen minutes.

Following the administration of the pre-test, each section was presented with a scripted lecture, accompanied by a Power Point slide presentation, detailing some of the major facts and arguments generally offered in support of or opposition to the death penalty in the areas of retribution, deterrence, incapacitation, religion, cost, race, and innocence. Most of the information included in the lecture was culled from Mandery's (2005) text entitled Capital Punishment: A Balanced Examination.

The sections were randomly assigned to one of the experimental conditions. Five sections were presented with the lecture that presented facts and information used in support of the retention of the death penalty. These sections became the "Pro" group. The other five sections were presented with the lecture that presented facts and information used to support the abolition of the death penalty. These sections became the "Con" group.

The Pro-Lecture group was presented with facts and information that support the retention of the death penalty (see Appendix C)¹². The lecture began with a discussion of the concept of deterrence. Subjects were instructed on the concept of free will and the difference between general and specific deterrence.

¹² Appendix C contains the full "Retention" script and accompanying Power Point slides.

They were presented with an example regarding the role deterrence would theoretically play in the decision by a student to cheat on an exam and presented with the argument that capital punishment will serve as a general deterrent to murder. The 1975 study by Ehrlich and the 2003 study by Hashem Dezhbakhsh (as discussed in Mandery, 2005) were offered as empirical support for the notion that the death penalty does deter potential murderers. The fact that some studies have failed to show a deterrent effect for capital punishment was acknowledged, but the counter-argument regarding the necessity of certain and swift punishment for effective deterrence was made to contend with that fact.

Next, subjects were presented with passages from the Old Testament and from the Koran that explicitly support the use of capital punishment. Passages from the Old Testament included Genesis 9:6, which states: "Whoever sheds man's blood by man his blood shall be shed, for in the image of God, He made man." Passages from the Koran included Qur'an 6:151 which states "...Take not life, which God has made sacred, *except by way of justice and law*. Thus does He command you, so that you may learn wisdom."

This was followed by a discussion of the concept of retribution as the idea that a punishment should be given because it is deserved. The instructor discussed several notions of retributive justification for punishment. First was the idea that society has a right to retaliation for harm. Next was that the victim has a right to vindication. Third was the Kantian notion that retributive punishment respects the autonomy of the offender. Finally was the idea that the American

justice system allows for proportionate retribution in which murder, as the most severe crime, deserves the harshest penalty, death.

The next topic involved the necessity of the death penalty for incapacitation. Subjects were introduced to the theory of incapacitation. The application of incapacitation to the death penalty discussion centered around answering two questions: "How likely are convicted murderers to kill again if they are released?" and "If they are not released, how much of a threat do they pose to others in prison?" Subjects were presented with empirical and statistical information that indicated convicted murderers are likely to kill again both within prison and without. This included a 2002 Bureau of Justice Statistics study that 53 convicted killers released from prison in 1994 were rearrested for another homicide within three years and a study by Delisi and Munoz (2003) which indicated that death row inmates were responsible for more serious acts of violence than other prisoners.

In presenting the issue of the costs associated with the death penalty, subjects were shown figures that indicated that the costs of prosecuting capital cases are only slightly higher than the costs of prosecuting non-capital cases. For example, one study done in North Carolina found that if every person who received a sentence of death were executed, the additional cost, per case, would only be 216,000 dollars. In addition, the instructor made the argument that much of the costs associated with capital cases result from the lengthy appeals process and suggested that if appeals were limited, costs would decrease.

In regards to the issue of the possible wrongful conviction and execution of an innocent person, the difference between factual innocence and disproportionate sentencing was highlighted. The instructor stressed the fact that no conclusive evidence exists that a factually innocent person has been executed. The instructor also interpreted studies such as Liebman's (2002), that show a high rate of appellate reversals in death penalty cases, as being evidence that the system works to catch mistakes.

Finally, the issue of racial disparity in capital sentencing was addressed. Subjects were presented with the concept of adjusted disparities as the attempt take into consideration differences that exist between racial groups when trying to determine if race has an effect on punishment decisions. The instructor presented the subjects with statistical and empirical evidence that suggested that race does not have an effect on sentencing when other factors (such as the presence of aggravating factors) are taken into account. The fact that blacks account for more than half of all detected murderers was used to discount the argument that black are unfairly sentenced, and Joseph Katz's reanalysis of Baldus' race-of-victim data was used to illustrate that differences in the presence of aggravating circumstances exist in interracial murders and discount the notion that killers of whites are unfairly sentenced.

The Con-Lecture group was presented with information and arguments that favor the abolition of the death penalty (see Appendix D)¹³. This lecture also began with a discussion of the concept of deterrence. As with the subjects in the

¹³ Appendix D contains the full "Abolition" script and accompanying Power Point slides.

Pro-Lecture group, these subjects were instructed on the concept of free will and the difference between general and specific deterrence. They were presented with the same example regarding the role deterrence would theoretically play in the decision by a student to cheat on an exam and were also presented with the argument that capital punishment will serve as a general deterrent to murder. However, unlike the Pro-Lecture group, subjects in the Con-Lecture group were shown empirical evidence that indicated that the death penalty does *not* effectively deter homicide. Thorsten Sellin's study of murder rates in contiguous states, and other comparative studies, was used to illustrate the fact that states with the death penalty do not have lower murder rates. These subjects were also presented with evidence supporting the existence of a brutalization effect to capital punishment. Studies by Bowers and Pierce and Cochran and Chamlin were presented to support this argument.

On the topic of religion, the Con-Lecture group's lecture highlighted religious opposition to the death penalty and included passages from the New Testament that tend to be used to condemn the practice. For example, "Let him without sin cast the first stone." Many theologians believe this is a condemnation of capital punishment, as it is not the place for sinful humans to make such life-and-death judgments.

The discussion of retribution in this group focused upon the notion that the American justice system is not a purely retributive one and that to demand life-for-a-life retribution for murder alone is illogical. That is, since people do not expect the state to reward people for the good things they do, it is illogical to

expect the state to ensure they mete out just deserts for the bad things they do. In addition, since we view imprisonment as sufficient retribution for other offenses, we should consider it sufficient retribution for murder, as well. That is, it is not logical to demand “equivalent” retribution for only one crime.

In regards to incapacitation, subjects in the Con-Lecture group were also introduced to the theory of incapacitation as a justification for punishment and the instructor acknowledged that the death penalty serves to incapacitate offenders permanently. The question of whether the death penalty is necessary to incapacitate murderers was addressed in answering two questions: “How likely are convicted murderers to kill again if they are released?” and “If they are not released, how much of a threat do they pose to others in prison?” This group was shown statistical and empirical evidence that indicated that convicted killers are unlikely to kill again and that life in prison serves just as well as the death penalty to incapacitate offenders. The same Bureau of Justice study that was shown to the Pro-Lecture group was shown to this group as well. However, instead of presenting re-offense rates of convicted killers in absolute terms, the instructor presented them to the Con-Lecture group as a percentage. The 53 people released from prison in 1994 and rearrested for another homicide within three years only amounted to 1.2 percent of the population of released murderers. In addition, the instructor presented the Marquart and Sorenson study of *Furman* commuttees which showed that of 239 former death row inmates, only one was returned to prison for another homicide over a 15 year period. In addressing the question of whether convicted killers pose a threat to others

within prison, the instructor referred to studies that indicate that long-term prisoners are less likely to be responsible for acts of violence in prison than “short-timers.”

Next, the Con-Lecture group was presented with evidence that highlighted the high costs of the death penalty at each stage of the trial process. This included the costs associated with pre-trial, trial, and appellate procedures, as well as the costs of maintaining a prisoner on death row. They were also shown statistics detailing the high costs of capital prosecutions in various states.

When discussing the possibility of an innocent person being wrongfully convicted and executed, the Con-Lecture group was also informed of the difference between factual innocence and disproportionate sentencing. However, for these subjects, the injustice of executing either the factually innocent or the disproportionately sentenced was stressed. These subjects were presented with the findings of the Liebman study that revealed that 68% of death sentences were reversed on appeal due to an error that occurred at trial. Of the cases that were reversed and retried, 7% were found not guilty upon retrial.

Finally, when discussing the issue of racial disparity in capital punishment the instructor discussed several ways in which it is possible to introduce bias into the system, highlighting the many individuals who act with personal discretion throughout the process. Baldus’ study on the race-of-victim effect in capital sentencing in Georgia was used to show that defendants who killed whites were 4.3 times more likely to receive the death penalty than defendants whose victims were black. A black defendant who killed a white victim was 21 times more likely

to receive a death sentence than a black defendant whose victim was black.

Additional statistics showing that since 1976, 80% of executions were for murdering a white victim, and 14% were for murdering a black victim.

Following the presentation of the scripts, subjects in all sections were then asked to complete a post-test instrument, which contained the same items as the pre-test. Pre and post-tests were compared for each subject in order to assess any change in attitude. Several subjects asked if the post-test survey was the same as the pre-test. These subjects were told there were “some differences.” In truth, the items were the same, only rearranged.

Upon completion of the post-test, subjects were informed that they had only been presented with a single side of the death penalty debate. Handouts detailing the information and arguments of the side not presented were given to each subject (see Appendix E), and a short discussion of these items took place. The handout given to the Pro-Lecture group contained the counter arguments and evidence of the information with which they were presented in their lecture. It included statistical and empirical evidence that suggested that the death penalty does not deter murder, that retribution can be illogical, that death is not necessary to incapacitate murderers, that capital punishment is costly, that an innocent person may be executed, and that the system may be racially discriminatory. The handout given to the Con-Lecture group contained the counter arguments and evidence of the information with which they were presented in their lecture. It included arguments and evidence that suggested

that the death penalty may deter murder, that retribution may be a valid reason for punishment, that death is the only certain way to incapacitate murderers, that it is not entirely clear that the death penalty is costlier than life in prison, that there is no evidence that an innocent person has been wrongfully executed, and that the effect of race on capital sentencing is also unclear.

Subjects were also given the author's phone number and email address in order to invite subjects to contact the author and provide feedback regarding their experience during the course of the study, specifically focusing on their reasons for either changing their minds or retaining their original position. No subject chose to do so. Three instructors (responsible for four sections) requested that the investigator take part in a subsequent class discussion on capital punishment.

Subjects

As shown in Table 1, Subjects were 187 undergraduates ranging in age from 18-35, with a mean age of 19.7.

Table 3-1 – Age of Subjects

	All subjects (n=187)	Pro (n=94)	Con (n=93)
18 – 20	79.6 %	78.5 %	80.6 %
21 – 25	15.5 %	16.1 %	15.1 %
26 – 30	2.7 %	3.3 %	2.2 %
31 – 35	2.1 %	2.2 %	2.2 %

Males accounted for about 43% of all subjects and females for about 44%. As such, gender is unknown for about 13% of the total sample. In the general population of undergraduates at John Jay, males account for about 41% of the

student body while females account for about 59%, so males were somewhat overrepresented in the sample and females somewhat underrepresented in the sample. However, this is in light of the fact that, for reasons that are unknown, several subjects in the Con-Lecture group did not indicate their gender. Why this occurred in the Con-Lecture group and not the Pro-Lecture group is also unknown. For this reason, it is impossible to judge whether the sample was truly representative of the population in terms of gender. In all, 24 subjects in the Con-Lecture group left the gender question blank. Again, the reason for this is unknown, but there is nothing to indicate that either men or women were more likely to leave it blank.

Table 3-2 – Gender of Subjects

	All subjects (n=187)	Pro (n=94)	Con (n=93)
Male	43.3 %	52.1 %	34.4 %
Female	43.9 %	47.9 %	39.8 %
No answer	12.8 %	0 %	25.8 %

As illustrated in Table 3, Whites made up about 34% of the total sample, Hispanics 34%, African-Americans 17%, and Asians 6%. Whites were overrepresented in the sample and blacks were underrepresented. In the general undergraduate population in the fall of 2006, whites accounted for about 27% and blacks for about 26%. The sample was also under-representative of Hispanics compared to the general undergraduate population. In the general school population, Hispanics account for approximately 40% of undergraduate students.

Table 3-3 - Race/Ethnicity of Subjects

	All subjects (n=187)	Pro (n=94)	Con (n=93)
White	33.7 %	33.0 %	34.4 %
African-American	16.6 %	16.0 %	17.2 %
Hispanic	34.2 %	37.2 %	31.2 %
Asian	5.9 %	5.3 %	6.5 %
Other	8.6 %	7.4 %	9.7 %
No answer	1.1 %	1.1 %	1.1 %

As shown in Tables 4 and 5, the vast majority of the sample (83%) was Criminal Justice majors, and most of the subjects indicated that they were Christians (66%).

Table 3-4 – Subjects’ Major

	All subjects (n=187)	Pro (n=94)	Con (n=93)
Criminal justice	83.4 %	84 %	82.8 %
Police studies	2.7 %	3.2 %	2.2 %
Forensic psychology	3.7 %	2.1 %	5.4 %
Criminology	2.1 %	2.1 %	2.2 %
Legal/justice studies	2.7 %	3.2 %	2.2 %
Other	5.3 %	5.3 %	5.4 %

Table 3-5 – Subjects’ Religion

	All subjects (n=187)	Pro (n=94)	Con (n=93)
Christian	65.8 %	64.9 %	66.7 %
Jewish	4.3 %	5.3 %	3.2 %
Muslim	3.7 %	5.3 %	2.2 %
Atheist/Agnostic	5.9 %	6.4 %	5.4 %
Other	13.4 %	11.7 %	15.1 %
No answer	7.0 %	1.1 %	7.5 %

Subjects were divided into two experimental conditions. As Tables 1 – 5 indicate, the experimental groups were similar to each other in terms of their key demographic characteristics. However, because some subjects in the Con-Lecture group did not indicate their gender, one can not assess group differences in terms of gender.

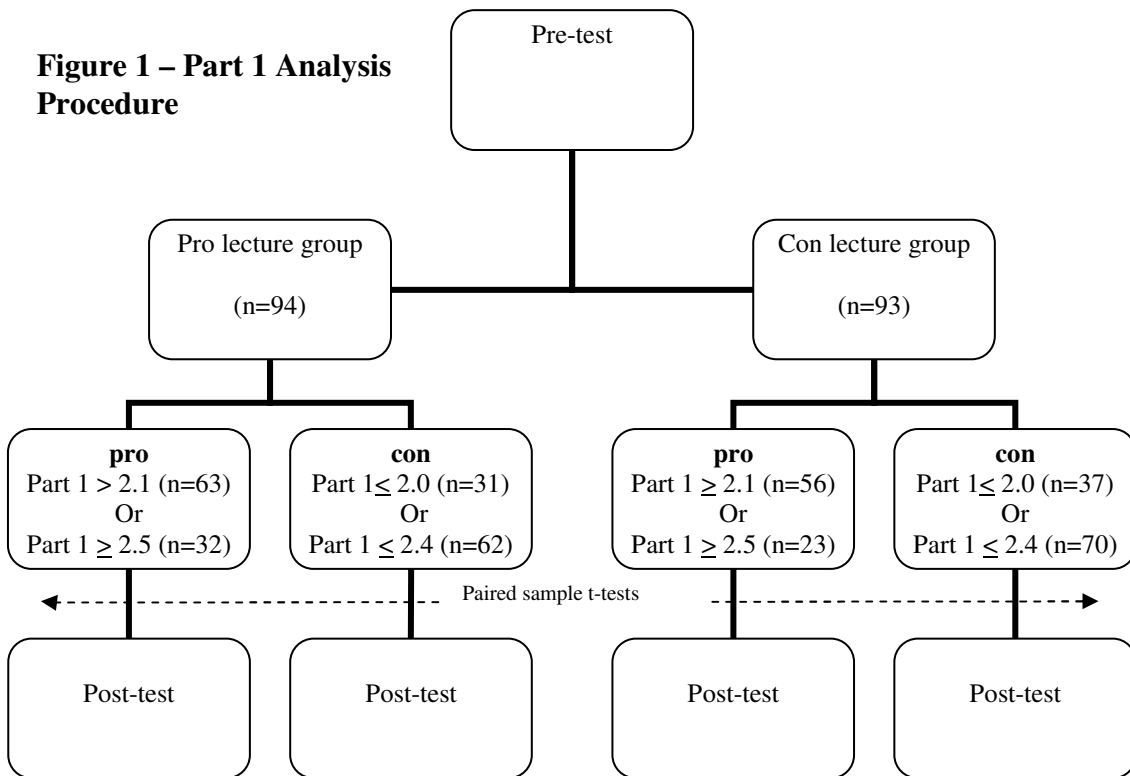
Analysis procedures

Part 1 Analysis

Part 1 consisted of seven items that asked subjects to indicate their level of agreement with statements regarding the use of the death penalty in various circumstances. These items contained Likert-style ordinal response categories. For each item, subjects were instructed to mark off whether they strongly agreed (SA), agreed (A), disagreed (D), or strongly disagreed (SA) with the statement. Responses were coded numerically as follows: SA=4, A=3, D=2 and SD=1. Each subject's responses to the Part 1 items were added together and an average Part 1 score was calculated for each subject. An average score of 4 would indicate that the subject strongly agreed with each statement and an average score of 1 would indicate that the subject strongly disagreed with each statement. Average Part 1 scores were calculated for both the pre-test and the post-test.

Based upon each subject's Part 1 average score, subjects in each condition (i.e. the Pro-Lecture group and the Con-Lecture group) were separated into two categories: those who favored the death penalty (pro) and those who did not favor the death penalty (con). This created four comparison groups (designated according to existing position and comparison group): pro-Pro (subjects in the Pro-Lecture group who favored the death penalty), con-Pro (subjects in the Pro-Lecture group who opposed the death penalty), pro-Con (subjects in the Con-Lecture group who favored the death penalty), and con-Con (subjects in the Con-Lecture group who opposed the death penalty). Part 1 average scores were also calculated for each condition (Pro average and Con

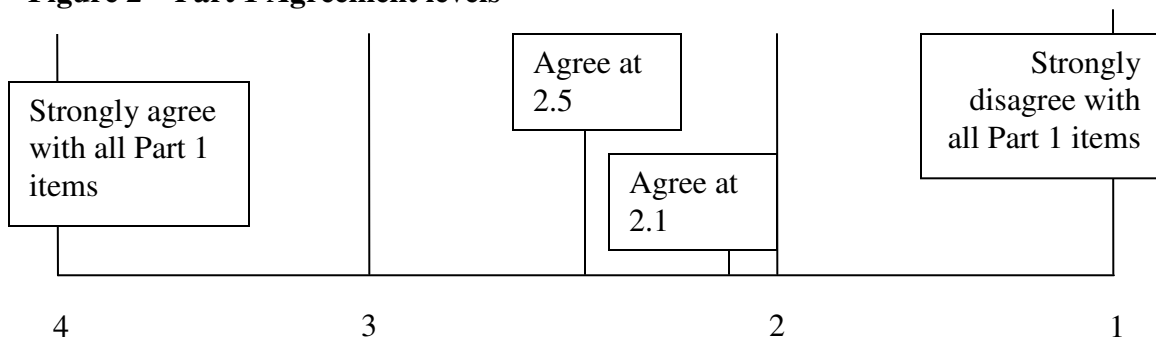
average). Paired sample t-tests were used to ascertain any significant changes in opinion between the pre and post-tests. For example, average pre-test scores for the pro-Pro group were compared to their paired average post-test scores and average pre-test scores for the pro-Con group were compared with their paired average post-test scores. The paired-sample t-test compares mean scores for pre and post-tests to determine if any change in the scores is greater than would be expected by chance. Figure 1 is an illustration of these analyses.



Analyses were conducted with the agreement level set at two different values. The first defined “agreement” with an average score of ≥ 2.5 (i.e. subjects were placed in a pro group if their average Part 1 score on the pre-test was 2.5 or higher and placed in a con group if their average Part I score was 2.4 or lower). This cut-off point was chosen because it represented the mathematical

center point of possible Part 1 averages¹⁴. The second defined “agreement” with an average score of ≥ 2.1 (i.e. subjects were placed in a pro group if their average Part 1 score was 2.1 or higher and placed in a con group if their average Part I score was 2.0 or lower). This cut-off point was chosen because there was concern that the low N for proponents (pros) at the 2.5 level would affect the significance of the t-test results¹⁵. At the ≥ 2.5 agreement level there were 32 pros in the Pro-Lecture group and 23 in the Con-Lecture group. A lower level of agreement resulted in more subjects qualifying as pros, so one was able to determine if the degree of statistical significance was affected by the change in N for each analysis. Figure 2 is a graphical representation of the different agreement levels.

Figure 2 – Part 1 Agreement levels



Part 2 Analysis

¹⁴ 2.5 is the mathematical center point because there was no zero. No subject could have an average score less than one.

¹⁵ The primary investigator felt that setting “agreement” at ≥ 2.1 was valid because in order to achieve an average score of 2.1 or higher, the subject must have indicated at least some level of agreement with at least some of the Part 1 statements. A subject would need a total score of at least 14.7 to achieve an average of 2.1. A score greater than 14 is not possible if the subject “strongly disagreed” with more than one statement. For example, a subject may have agreed with the statement “The death penalty is an appropriate punishment for first-degree murder.”, but disagreed that it should be mandatory, applied in cases of rape, applied for the mentally retarded or ill, applied to juveniles, or that life in prison was not a better option.

Part 2 items were designed to be grouped together in order to measure the subject's agreement with specific reasons for support or opposition to the death penalty. These items were worded so that specific responses would reflect endorsement of the "reason" the item represented. Part 2 was made up of seventeen items. Items 1, 2 and 3 corresponded with retribution; items 4, 5 and 6 corresponded with deterrence; items 7, 8 and 9 corresponded with incapacitation; items 10 and 11 corresponded with religion; items 12 and 13 corresponded with cost; items 14 and 15 corresponded with racial arbitrariness; and items 16 and 17 corresponded with innocence. Subjects were asked to signify their agreement with by indicating whether they strongly agreed (SA), agreed (A), neither agreed nor disagreed (N), disagreed (D), or strongly disagreed (SD) with each specific statement.

A response that indicated agreement with the statement (strongly agree or agree) was coded numerically as a 1. All other responses were coded as a 0. For both the pre and post-tests, a number score for each "reason" category was calculated by adding the values for each item in that category. For example, a subject who agreed with items 1 and 2, but not with item 3, would have been given a retribution score of 2. Part 2 items were scored in this manner in order to allow for an examination of absolute change in agreement with each statement. In regards to the Part 2 items, the investigator was particularly concerned with whether a subject agreed with a specific statement on the post-test that he or she did not agree with on the pretest. Alternatively, the investigator was also

concerned with whether a subject did not agree with a specific statement on the post-test that he or she agreed with on the pretest.

Analyses of Part 2 responses involved an examination of the average change in Part 1 scores for several subsets of subjects. For each comparison group, subjects were separated into subgroups according to their pretest responses to Part 2 items in the areas of retribution, utilitarian concerns, religion, cost, and administrative fairness. The Part 2 subgroups consisted of the following¹⁶:

- * Retribution – subjects were placed into the “retributive” group if they agreed with two or more retribution statements (items 8, 9, and 10) on the pretest. Subjects were considered “non-retributive” if they agreed with one or none of those items. This division point was chosen because the investigator felt that agreement with two or more retribution statements was a greater indicator of retributive belief than agreement with just one statement. For example, an individual might agree that “society has a right to demand that killers forfeit their lives for the crime of murder” but disagree that

¹⁶ The division points for each subgroup were based upon the conviction that those divisions have face validity. It seems likely that subjects who agree with more than one statement in each reason category are more likely to feel more strongly about that reason and that reason is more likely to influence their general opinion about the death penalty. For example, an individual might agree that “society has a right to demand that killers forfeit their lives for the crime of murder” but disagree that killers “deserve to give up their lives in return” or that the death penalty is “appropriate because it represents an eye for an eye.” Agreement with two statements is indicative of a greater degree of “general” retributive thinking. In addition, subjects who did not agree with any of the statements in a reason category are probably less likely to be influenced by it in their general opinion. However, this resulted in subgroups that did not account for every subject. For example, some subjects may have agreed with two deterrence statements but only one incapacitation statement. Such subjects would not be considered utilitarian under the definition offered here, but it seems to lack face validity to refer to such subjects as “non-utilitarian” as they clearly agree with some degree of utilitarianism. While mutual exclusivity is ideal, the primary investigator felt that validity of categories was more important to the subsequent analysis.

killers “deserve to give up their lives in return” or that the death penalty is “appropriate because it represents an eye for an eye.” Agreement with two statements is indicative of a greater degree of “general” retributive thinking.

- * Utilitarian concerns – This subset combined responses for the deterrence items (11, 12, and 13) and the incapacitation items (14, 15, and 16). Subjects were placed into the “utilitarian” group if they agreed with two or more deterrence items *and* two or more incapacitation items. Subjects were considered “non-utilitarian” if they agreed with one or none of the deterrence items and 1 or none of the incapacitation items.
- * Religion – “Religious” subjects consisted of those who agreed with both religion items (items 17 and 18) on the pretest. “Non-religious” subjects were those who agreed with one or none of the religion items.
- * Cost – A response of “strongly agree” or “agree” with the items pertaining to cost (19 and 20) indicated agreement with the idea that the death penalty is less costly to taxpayers than life in prison. Subjects who agreed with both of the cost items on the pretest were separated from those who agreed with one or none of them.
- * Administrative fairness – This subset combined responses for the race items (21 and 22) and the innocence items (23 and 24). Subjects were considered to be concerned with issues of

administrative fairness if they agreed with at least one race item *and* one innocence item. These subjects were separated from those who did not agree with at least one statement in each set of items.

Chapter 4

Results

Part 1 Analysis

The analysis of Part 1 average scores indicated an increase in general support for the death penalty in all comparison groups, regardless of the information with which they were presented. The Pro-Lecture group had an average Part 1 pretest score of 2.26. That score increased to 2.38 on the posttest. This indicates an average score increase of .12. The Con-Lecture group had an average Part 1 pretest score of 2.21. That score increased to 2.30 on the posttest. This indicates an average score increase of .09. Paired sample t-tests indicated that these increases were significant (at $p > .004$ and $p > .012$, respectively). Table 4-1 is a summary of these results.

Table 4-1 - t-test analyses for Part 1 agreement among Pro and Con full groups

	N	Pretest part 1 average	Posttest part 1 average	Average change	t ¹⁷	SD	df	Signif.
Pro – full group	94	2.26	2.38	+.12	-2.966	.39747	93	.004
Con – full group	93	2.21	2.30	+.09	-2.551	.34843	92	.012

¹⁷ Intuitively, one would expect a negative t-value to signify a reduction in pre-test to post-test average score. However, the calculation subtracts the mean score for the post-test from the mean score from the pre-test. Consequently, if there is a reduction from pre-to post, the mean difference would be a positive value because the post-test score would be smaller than the pre-test score. It follows then that the t-value would also be positive since it is calculated by dividing mean difference by its standard error. Conversely, when there is an increase in the average score from pre to post-test, the t-value will be negative because the post-test scores are larger than the pre-test scores.

The increase in support demonstrated by the Pro-Lecture group was expected, as this group was exposed to information that favored the retention of the death penalty. The increase in support demonstrated by the Con-Lecture group, however, is counter-intuitive. If Marshall's hypothesis were correct, this group, which was exposed to anti-death penalty information, should have shown a decrease in support for capital punishment. A further analysis of Part 1 scores indicated that the increase in support in both groups was primarily driven by significant increases among people who opposed capital punishment at the outset.

Table 4-2 details the pre to post-test changes among pros and cons in each experimental condition.¹⁸ For these analyses the agreement level was set at two different values. The first defined "agreement" with an average score of ≥ 2.5 (i.e. subjects were placed in a pro group if their average Part 1 score on the pre-test was 2.5 or higher). This cut-off point was chosen because it represented the mathematical center point of possible Part 1 averages. The second defined "agreement" with an average score of ≥ 2.1 (i.e. subjects were placed in a pro group if their average Part 1 score was 2.1 or higher). This cut-off point was chosen because there was concern that the low N for proponents (pros) at the ≥ 2.5 level would affect the significance of the t-test results. A lower level of agreement resulted in more subjects qualifying as pros, so one was able to

¹⁸ To reiterate the subject labels for each group as designated by existing position and lecture group: pro-Pro (subjects in the Pro-Lecture group who favored the death penalty), con-Pro (subjects in the Pro-Lecture group who opposed the death penalty), pro-Con (subjects in the Con-Lecture group who favored the death penalty), and con-Con (subjects in the Con-Lecture group who opposed the death penalty).

determine if the degree of statistical significance was affected by the change in N for each analysis.

Table 4-2 - t-test analyses of Part 1 scores for pros and cons each condition

	Agree level	N	Pretest Part 1 average	Posttest Part 1 average	Average change	t	SD	df	signif
pro-Pros	≥ 2.5	32	2.83	2.82	-.01	.263	.38358	31	.794
con-Pros	≥ 2.5	62	1.96	2.16	+.20	-3.927	.38809	61	.000
pro-Cons	≥ 2.5	23	2.99	2.90	-.09	1.519	.29406	22	.143
con-Cons	≥ 2.5	69	1.95	2.08	+.13	-3.728	.29066	68	.000
		N	Pretest Part 1 average	Posttest Part 1 average		t	SD	df	
pro-Pros	≥ 2.1	63	2.56	2.62	+.06	-1.418	.35532	62	.161
con-Pros	≥ 2.1	31	1.65	1.89	+.24	-2.930	.45533	30	.006
pro-Cons	≥ 2.1	56	2.60	2.66	+.06	-1.161	.39464	55	.251
con-Cons	≥ 2.1	37	1.63	1.76	+.13	-3.229	.26188	36	.003

As Table 4-2 indicates, the point at which agreement was set had an effect on the number of subjects in each condition. The 2.1 level of agreement restricted the number of subjects who could be considered opponents (cons). This resulted in low Ns for the con-Pro group (31) and the con-Con group (37). The 2.5 level of agreement restricted the number of subjects who could be considered supporters (pros). This resulted in low Ns for the pro-Pro group (32) and the pro-Con group (23).

Low Ns are a cause for some concern in interpreting t-test results because it is unknown whether significant results would have been found with a greater

number of subjects. However, the change in the con-Pro group (at 2.1) was enough to be significant at $p > .006$, despite the low N. The significance of that increase was mirrored in the con-Pro group at 2.5.

It is not known if significant changes in the pro-Pro and pro-Con (at 2.5) groups would have been observed if the number of subjects was greater (both showed a slight decrease), but an examination of the absolute value of the averages for both groups makes this seem unlikely. The average score for pro-Pro group (at 2.5) decreased only slightly from 2.83 to 2.82, which indicates an average decrease of only .01. The average score for the pro-Con group (at 2.5) decreased from 2.99 to 2.90; an average decrease of .09. One should note, however, that even with the greater Ns evident at the lower agreement level, no significant change was observed in either of these groups.

Significant increases in general support were observed for cons in both conditions and at both agreement levels. At the 2.1 level of agreement, con-Pros showed an average increase in support of .24 between the pretest and the post-test (from 1.65 to 1.89). This increase was significant at $p > .006$. At the 2.1 level of agreement, con-Cons showed an average increase in support of .13 between the pretest and the post-test (from 1.63 to 1.76). This increase was significant at $p > .003$. At the 2.5 level of agreement, con-Pros demonstrated an average increase in support of .20 between the pretest and the post-test (from 1.96 to 2.16). This increase was significant at $p > .000$. At the 2.5 level of agreement, con-Cons demonstrated an average increase in support of .13 between the pretest and the post-test (from 1.95 to 2.08). This increase was significant at $p > .000$.

These results indicate that those who opposed the death penalty at the outset increased their level of general support for capital punishment and those who favored the death penalty did not illustrate any significant change in opinion, regardless of what information they heard. However, it should be noted that pros in the Con-Lecture group did demonstrate a small decrease in support, though this change was not statistically significant.

Marshall's hypothesis suggests that death penalty opinion is malleable, and the theory of biased assimilation proposes that people disregard information that contradicts an existing opinion and focus on information that confirms it. This suggests that presenting subjects with one-sided information should produce a change in the direction of the material presented *or* opinions should remain the same regardless of the material. In light of this, the following results should have been observed: pro-Pros would stay the same or increase support; con-Pros would stay the same or increase support; pro-Cons would stay the same or decrease support; and con-Cons would stay the same or decrease support. The results of this study indicate that pros were resistant to change, and their opinions showed no significant change, regardless of what material they heard. This contradicts Marshall's hypothesis, but supports the notion of biased assimilation. However, this study produced an unexpected result among the cons; in both conditions, cons increased their support. The implications of this are less clear.

Clearly, the significant increases observed in each condition can be attributed to significant average increases among the cons in each group. In

order to attempt to explain this change in opinion analyses of the reasons subjects gave for support or opposition were necessary. If subjects tended to increase or decrease agreement with specific reasons, that may shed light on the differences observed in Part 1.

Part 2 Analyses

Part 2 items were designed to measure the subject's agreement with specific reasons for support or opposition to the death penalty. Analyses of Part 2 responses involved an examination of average changes in Part 1 scores for subsets of subjects within each comparison group. As the level of agreement did not affect the findings of significance, the subsequent analyses of Part 2 responses were all done with agreement set at ≥ 2.5 . For each comparison group, subjects were separated into subgroups according to their pretest responses to Part 2 items in the areas of retribution, utilitarian concerns, religion, cost, and administrative fairness. Table 4-3 (on following page) summarizes the most noteworthy changes among subgroups in each condition. Specific changes in each group are detailed in the following sections.

Table 4-3 - summary of noteworthy Part 2 changes among subgroups in each condition

		Pretest average	Posttest average	change
Pro lecture group		2.26	2.38	+.12 (sig)
↳	pros	2.83	2.82	-.01 (ns)
	cons	1.96	2.16	+.20 (sig)
	↳ retributive	2.14	2.49	+.35
	non-retributive	1.86	1.96	+.10
	↳ utilitarian	2.12	2.40	+.28
	non-utilitarian	1.77	1.81	+.04
	religious	1.73	1.76	+.03
	non-religious	2.11	2.33	+.22
	Cost-effective	2.20	2.42	+.22
	Too expensive	1.79	1.82	+.03
Fair	2.04	2.18	+.14	
Unfair	1.74	2.09	+.35	
Con lecture group		2.21	2.30	+.09 (sig)
↳	pros	2.99	2.90	-.09 (ns)
	cons	1.95	2.08	+.13 (sig)
	↳ retributive	2.29	2.47	+.18
	non-retributive	1.83	1.95	+.12
	↳ utilitarian	2.24	2.44	+.20
	non-utilitarian	1.81	1.90	+.09
	Fair	2.01	2.08	+.07
	Unfair	1.89	2.09	+.20

The Pro-Lecture group

The Pro-Lecture group showed a significant average increase in Part 1 scores of .12 ($p > .004$). Within this group, supporters (pro-Pros) demonstrated an average Part 1 decrease of .01. This change was not significant. Opponents in this group (con-Pros) however demonstrated an average increase in Part 1 scores of .20. This was significant at $p > .000$. An examination of Part 2 responses illustrated which members of the con-Pro group appeared to be driving this change.

con-Pros (opponents in the Pro-Lecture group): $n = 62$

Twenty-three subjects in this group agreed with two or more retribution statements on the pretest, while thirty-nine agreed with one or no retribution

statements. Subjects that agreed with retributive ideas had higher average scores on both the pre and post-tests and showed a greater increase in support. Retributive subjects showed an average increase in Part 1 scores between the pre and post-test of .35 (from 2.14 to 2.49). The non-retributive subjects demonstrated a much smaller average increase of .10 (from 1.86 to 1.96). As Table 4-4(a) indicates, when exposed to material that supported retributive ideas, opponents who agreed with ideas of retribution demonstrated a much greater increase in general favorability for the death penalty than opponents who did not agree with those ideas.

Table 4-4(a) - Changes in Part 1 scores among con-Pros according to pretest agreement with retribution

	n	Avg. Part 1 pretest score	Avg. Part 1 post-test score	Avg. change
Agreed with 2 or more retributive items	23	2.14	2.49	+.35
Agreed with 1 or 0 retributive statements	39	1.86	1.96	+.10

One might wonder why a person who agrees with retributive values would oppose the death penalty. Upon closer inspection of these retributive cons, it was found that 30% of them demonstrated a decrease in their agreement with statements concerning the possibility of innocent people being executed on the post-test. Many of these subjects, while having retributive beliefs, may have felt that the system was unacceptably unreliable and risked executing innocent people. If that is the case, then these subjects may have had those concerns assuaged by the Pro lecture, leading to an increase in general support.

Thirteen con-Pros agreed with two or more deterrence statements *and* two or more incapacitation statements. These subjects were considered to agree with utilitarian concerns. Non-utilitarian subjects were those who agreed with one or no deterrence statements *and* one or no incapacitation statements. There were 22 non-utilitarian cons in the group. (The total number of subjects in each subset does not match the n of the whole group because there were several subjects who did not fit the criteria for inclusion. i.e. Subjects who may have agreed with 2 or more deterrence statements, but no incapacitation statements, or three incapacitation statements and no deterrence statements, etc.) The utilitarian subjects showed an average increase of .28 (from 2.12 to 2.40), while the non-utilitarian subjects showed an average increase of only .04 (from 1.77 to 1.81). Table 4-4(b) indicates that, when exposed to material that confirmed the idea that the death penalty serves as a deterrent and is necessary to incapacitate offenders, opponents who agreed with those concepts showed a greater increase in overall favorability than those who did not agree with such notions.

Table 4-4(b) - Changes in Part 1 scores among con-Pros according to pretest agreement with utilitarian ideas

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Utilitarian	13	2.12	2.40	+.28
Non-utilitarian	22	1.77	1.81	+.04

Twelve con-Pros agreed with both of the religion statements. These subjects were labeled “religious” cons. Non-religious cons (n=30) were those who

did not agree with any of the religion statements. The religious subjects in this group demonstrated an average increase in Part 1 scores of .03 (from 1.73 to 1.76). The non-religious subjects demonstrated a much greater average increase of .22 (from 2.11 to 2.33). Table 4-4(c) indicates that subjects who opposed the death penalty for religious reasons were less likely to show an increase in their general favorability for capital punishment than subjects who opposed the death penalty for non-religious reasons.

Table 4-4(c) - Changes in Part 1 scores among con-Pros according to pretest agreement with religious statements

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Religious	12	1.73	1.76	+.03
Non-religious	30	2.11	2.33	+.22

Twelve con-Pros agreed with both cost statements, indicating their agreement with the idea that the death penalty is more cost-effective than life in prison and that taxpayers should not bear the burden of housing convicted murderers for life. 28 of the con-Pros did not agree with either of these statements. Those who agreed with both statements showed an average Part 1 increase of .22 (from 2.20 to 2.42) while those who did not agree with either statement showed an increase of only .03 (from 1.79 to 1.82). Table 4-4(d) details the changes in con-Pros according to their pretest agreement with cost concerns and indicates that opponents who felt that the death penalty is cost-effective were more likely to increase their general support when exposed to material that reinforced that notion.

Table 4-4(d) - Changes in Part 1 scores among con-Pros according to pretest agreement with cost statements

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Agreed with both cost items	12	2.20	2.42	+.22
Agreed with neither cost item	28	1.79	1.82	+.03

Four Part 2 statements addressed the issue of administrative fairness in relation to whether the subject agreed that the system discriminates against blacks and whether an innocent person is likely to be wrongfully convicted and executed. Sixteen con-Pros agreed with at least one statement in each category. These subjects showed an average Part 1 increase of .35 (from 1.74 to 2.09) after hearing information that contradicted these ideas. 46 con-Pros did not agree with at least one statement in each fairness category. These subjects showed an average increase in Part 1 scores of .14 (from 2.04 to 2.18). This group heard information that supported the idea that the system is *not* racially biased and is *not* likely to result in a wrongful execution. However, it does not appear likely that a change of opinion regarding these notions is what was driving the increase in Part 1 support. Most subjects either increased their agreement with these statements or showed no change at all. Only 15 subjects decreased their agreement with the idea that the system is unfair. These results suggest that concerns about administrative fairness may be less important factors in forming one's overall opinion about the death penalty, because while opponents may agree that the system is biased and unreliable their level of general favorability still increased. Table 4-4(e) illustrates the changes in this group.

Table 4-4(e) - Changes in Part 1 scores among con-Pros according to pretest agreement with administrative fairness

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Agreed with at least 1 race statement and 1 innocence statement	16	1.74	2.09	+.35
Did not agree with at least 1 race statement and 1 innocence statement	46	2.04	2.18	+.14

The examination of the changes among the con-Pros reveals that opponents who were retributive, utilitarian, non-religious, and concerned with cost were somewhat “weaker” death penalty opponents. In the face of information that supported capital punishment, these opponents showed a greater increase in favorability in their general death penalty opinion than opponents who were non-retributive, non-utilitarian, religious, and unconcerned with cost. The less committed, or weaker, cons appear to be more malleable in their general opinion. It appears likely that the significant increase in support among Pro-cons was driven by these subjects.

pro-Pros (supporters in the Pro-Lecture group): n= 32

The decrease in support shown by subjects in this group was not significant. This was expected, as this group was presented with information that would tend to support their initial opinions. An examination of Part 2 responses reveals that the lack of change among pro-Pros was reflected in a general lack of change among subsets within the group. It should be noted however, that because the number of subjects who qualified as pro-Pros at the 2.5 agreement level was low, analyzing movement among subgroups was problematic. Several

subgroups did not have enough qualifying subjects in order to allow for a meaningful analysis. The conclusions that can be drawn from these analyses are therefore limited.

78% of the pro-Pros agreed with two or more retributive statements (n=25). These subjects demonstrated a slight average decrease in Part 1 scores of .02 (from 2.84 to 2.82). Only seven subjects qualified as non-retributive in this group, which limits the usefulness of analyzing an average change among them. However, it is interesting to note that these subjects demonstrated *no* change in average Part 1 scores. Table 4-5(a) details the Part 1 changes among pro-Pros according to their pretest agreement with retribution.

Table 4-5 - Changes in Part 1 scores among pro-Pros in relation to pretest agreement with retribution

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Agreed with 2 or more retributive items	25	2.84	2.82	-.02
Agreed with 1 or 0 retributive statements	7	2.79	2.79	0

69% of the pro-Pros qualified as utilitarian as they agreed with two or more deterrence items and two or more incapacitation items (n=22). These subjects increased on average of .04 on Part 1 (from 2.86 to 2.90). Only three subjects in this group qualified as non-utilitarian, so an analysis of average change among them was not useful. However, as their numbers were so low, the influence of this subset on overall change among pro-Pros is likely minimal. Whether they contributed to the small average decrease in the group is unknown.

24 pro-Pros did not agree with either of the religion statements. This group showed an average Part 1 increase of .06 (from 2.84 to 2.90). Only three pro-Pros agreed with both religion statements. The Pro-Lecture group heard information that offered religious support for the death penalty. As the majority of the subjects did not agree with the statements indicating that “only God should take a life” or that “the death penalty violates my religious beliefs”, and they did not significantly alter their general support for capital punishment on the post-test, it appears unlikely that the religious arguments offered in favor of the death penalty affected the small decrease demonstrated by the group.

On the issue of cost, sixteen pro-Pros agreed with the ideas that the death penalty costs less than life in prison and that taxpayers should not pay for murderers to be incarcerated for life. These subjects heard information that confirmed these opinions. They demonstrated no change in Part 1 scores. Only five subjects did not agree with either of the cost statements. It does not appear that cost concerns affected the overall decrease demonstrated by the Pro-Lecture group.

Seven pro-Pros agreed with at least one statement that the death penalty system is racially biased and one statement that an innocent person may be executed erroneously. This subset showed an average Part 1 decrease of .23 (from 2.82 to 2.59) despite hearing information that contradicted the idea that the system is administratively unfair, but the effect of this change on the decrease demonstrated by the group as a whole is unclear as the number of subjects is so small. 25 subjects did not agree with at least one race statement and at least one

innocence statement. This subset showed an average Part 1 increase of .04 (from 2.84 to 2.88).

It is clear that the majority of the pro-Pros were retributive, utilitarian, non-religious, and unconcerned with issues of administrative fairness. These subjects demonstrated little change when presented with information that supported their existing position. Very few of these subjects qualified as “weak” proponents (i.e. non-retributive, non-utilitarian, religious, or concerned with administrative fairness). This does not allow one to draw meaningful conclusions about the extent of their contribution to the non-significant decrease in general support shown by the whole group. The behavior of pro-Pros indicates subjects who favor the death penalty will tend to maintain their position when presented with information that supports their position. This result was expected.

The Con-Lecture group

The Con-Lecture group showed a significant average increase in Part 1 scores of .09 ($p > .012$). This result was unanticipated as this group heard information that opposed the death penalty. Within this group, supporters (pro-Cons) demonstrated an average Part 1 decrease of .09. This result was predicted by Marshall’s hypothesis, but the decrease was not significant. Opponents in this group (con-Cons) however, demonstrated an average increase in Part 1 scores of .13. This result contradicted both Marshall’s hypothesis and the notion of biased assimilation, which would predict that this group should show no change. This increase was significant at $p > .000$. An examination of Part 2

responses illustrated which members of the con-Con group appeared to be driving this change.

con-Cons (opponents in the Con-Lecture group): n= 69

The Con-Lecture group heard arguments that discounted the idea of retribution as a valid reason to support for the death penalty. Retributive con-Cons agreed with two or more retribution statements on the pretest (n=18). This subset demonstrated an average Part 1 increase of .18 (from 2.29 to 2.47). Non-retributive con-Cons agreed with one or no retribution statements. They showed an average increase of .12 (from 1.83 to 1.95). Most of the con-Cons (70%) did not alter their Part 2 responses to retribution statements specifically between the pre and post-test, so it does not appear that a change in retributive reasoning was a factor in the overall average increase seen in this group.

Table 4-6(a) - Changes in Part 1 scores among con-Cons according to pretest agreement with retribution

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Agreed with 2 or more retributive items	18	2.29	2.47	+.18
Agreed with 1 or 0 retributive statements	51	1.83	1.95	+.12

A number of con-Cons qualified as utilitarian. 23 subjects agreed with two or more deterrence and two or more incapacitation statements on the pretest. This subset showed an average increase in Part 1 scores of .20 (from 2.24 to 2.44). 46 con-Cons were non-utilitarian and agreed with one or no deterrence and one or no incapacitation statements on the pretest. These subjects also demonstrated an increase in Part 1 scores, but it was much smaller (.09). While,

overall, most con-Cons either did not alter their agreement or decreased in their agreement with utilitarian concepts on the post-test, a large percentage (23%) increased their agreement with these concepts. This may be evidence of biased assimilation, in that some subjects may have rejected the anti-utilitarian information in the lectures that contradicted their existing utilitarian beliefs. However, this result may have been due to a methodological flaw. The Con lecture included brief overviews of what deterrence and incapacitation mean. Both of these concepts tend to be intuitively attractive and the possibility that subjects focused upon the general concepts and ignored or paid less attention to the subsequent presentation of studies that discounted them in the context of capital punishment must be considered. It may be that simply introducing these concepts is enough, in and of itself, to induce people to think along these lines.

Table 4-6(b) - Changes in Part 1 scores among con-Cons according to pretest agreement with utilitarian ideas

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Utilitarian	23	2.24	2.44	+.20
Non-utilitarian	46	1.81	1.90	+.09

Fifteen con-Cons qualified as religious, in that they agreed with both religion statements. 31 subjects did not agree with either religion statement. The religious con-Cons demonstrated an average Part 1 increase of .15 (from 1.60 to 1.75). The non-religious subjects showed a similar average increase in Part 1 scores of .12 (from 2.18 to 2.30). The large majority of subjects (73%) did not alter their agreement with religion statements specifically on the post-test. In light

of that, and the fact that religious and non-religious subjects showed similar Part 1 average increases, it seems unlikely that a change in religious reasoning was causing the increase in general favorability observed among the con-Cons.

Table 4-6(c) - Changes in Part 1 scores among con-Cons in relation to pretest agreement with religious statements

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Religious	15	1.60	1.75	+.15
Non-religious	31	2.18	2.30	+.12

On the issue of cost, fifteen con-Cons agreed with both cost statements, indicating that they believed that the death penalty is cost-effective. This subset showed an average Part 1 increase of .10 (from 2.12 to 2.22). 33 subjects did not agree with either cost statement. They showed an average increase in Part 1 scores of .13 (from 2.13 to 2.26). As very few con-Cons (6%) increased their agreement with cost statements from the pre to post-test it is unlikely that altered attitudes about cost were driving the overall Part 1 increase of the con-Con group.

Table 4-6(d) - Changes in Part 1 scores among con-Cons in relation to pretest agreement with cost statements

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Agreed with both cost items	15	2.12	2.22	+.10
Agreed with neither cost item	33	2.13	2.26	+.13

33 con-Cons agreed with a least one statement that the capital system is racially biased and at least one statement that it may produce wrongful executions. These subjects increased their general agreement with the death

penalty on average of .20 (from 1.89 to 2.09). On the other hand, those that did not agree with at least one statement regarding racial bias or innocence showed a much smaller average Part 1 increase of .07 (from 2.01 to 2.08). This is perplexing in light of the fact that these subjects heard information that would support these notions. It seems that some subjects believe that the system is unfair, yet still increase their support for capital punishment. However, when examining movement in this group between pre and post-test, it is revealed that most of the con-Cons (69%) did not alter their agreement with these statements specifically on the post-test. So, it is unlikely that subjects increased general support because they rejected information on these subjects. Perhaps, for “weak” opponents issues of retributive or utilitarianism supersede concerns about administrative fairness.

Table 4-6(e) - Changes in Part 1 scores among con-Cons in relation to pretest agreement with administrative fairness

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Agreed with at least 1 race statement and 1 innocence statement	33	1.89	2.09	+.20
Did not agree with at least 1 race statement and 1 innocence statement	36	2.01	2.08	+.07

All of the subsets of con-Cons demonstrated increases in Part 1 scores but the increase was most noticeable among the retributive and utilitarian subjects. As previously stated, this may indicate a biased assimilation of information regarding retribution, deterrence, and incapacitation, with subjects with existing retributive or utilitarian beliefs rejecting information that contradicts

those ideas. Overall, in the con-Con group a greater degree of variation was observed in utilitarian reasons such as incapacitation and deterrence than in value based reasons such as religion. Value based reasons for opposing the death penalty seem to be the most resistant to change, and least likely to be driving the Part 1 increase demonstrated by the entire group.

pro-Cons (supporters in the Con-Lecture group) n=23

As was the case with the pro-Pros, the number of subjects who qualified as pro-Cons at the 2.5 agreement level was low. This made analyzing movement among subgroups difficult. Several subgroups did not have enough qualifying subjects in order to allow for a meaningful analysis. The conclusions that can be drawn from these analyses are therefore limited.

Most of the pro-Cons were retributive. 78% (n=18) agreed with two or more retributive statements on the pretest. These subjects demonstrated an average Part 1 decrease of .06 (from 2.96 to 2.90). Only five subjects qualified as non-retributive pros. Those subjects also showed a decrease in Part 1 scores between the pre and post-tests, but since there were so few of them, their contribution to the non-significant general decrease among pro-Cons is unclear. It is noteworthy, however that only three pro-Cons decreased their agreement with retribution statements specifically between the pre and post-tests. All of the other pro-Cons either maintained or increased their retributive position. This seems to indicate that the anti-death penalty lecture did not cause the majority to reject retribution as a reason to support capital punishment, and makes it appear

likely that a change in retributive thinking was not what was driving the small decrease in general support in this group.

In regards to utilitarian concerns, 74% (n=17) of the pro-Cons were considered utilitarian. They agreed with two or more deterrence statements and two or more incapacitation statements on the pretest. This group showed an average Part 1 decrease in support of .14 (from 3.03 to 2.89). None of the subjects in this group qualified as non-utilitarian, however. That is, none of the pro-Cons agreed with one or no deterrence statements and one or no incapacitation statements. However, an examination in changes in Part 2 responses between the pre and post-tests revealed that 35% (n=8) of the pro-Cons agreed with more utilitarian statements on the post-test and another 35% (n=8) agreed with fewer utilitarian statements on the post-test. These groups likely cancelled each other out, so this indicates that a change in utilitarian thinking is not likely to have driven the overall decrease demonstrated by this group.

Only two of the pro-Cons were religious (i.e. they agreed with both religion statements) while 17 were non-religious (agreed with neither religion statement). As there were so few religious subjects in this group, no analysis of Part 1 average change was performed. The non-religious, however, demonstrated an average Part 1 decrease in support for the death penalty of .15 (from 2.96 to 2.81). However, only two subjects in the entire pro-Con group showed a change between pre and post Part 2 responses in the religion category. Most subjects did not change their religious responses, so, again a change in religious

reasoning does not appear to have driven the general decrease in support among the pro-Cons.

Twelve pro-Cons agreed with both statements relating to cost concerns. These subjects agreed that the death penalty is cost-effective. They showed an average Part 1 decrease of .05 (from 2.98 to 2.93). Five subjects did not agree with either cost statement, signifying that they did not accept the idea that the death penalty costs less than life in prison. These few subjects demonstrated an *increase* in general Part 1 support. Overall, only four pro-Cons decreased in their agreement with Part 2 cost statements, specifically, on the post-test. For this reason, it does not appear that changes in cost concerns were driving the change in the pro-Con group overall.

Table 4-7(a) indicates that ten of the pro-Cons agreed with one or more statement pertaining to racial arbitrariness and one or more statement pertaining to the possibility of an innocent person being executed on the pretest. These subjects showed an average Part 1 decrease of .05 (from 3.04 to 2.99). Thirteen pro-Cons did not agree with one or more race statement and one or more innocence statement on the pretest. These subjects decreased in Part 1 support on average of .12 (from 2.96 to 2.84). As this group heard information that suggested that the death penalty is administered in a racially biased fashion and that there is a possibility that an innocent person may be convicted and executed, these results suggest that the Part 1 decrease in support demonstrated by the pro-Cons was in part due to some subjects accepting this

information and changing their minds regarding the general fairness of the capital sentencing system.

Table 4-7 - Changes in Part 1 scores among pro-Cons in relation to pretest agreement with administrative fairness

	n	Avg. Part 1 pretest score	Avg. Part 2 post-test score	Avg. change
Agreed with at least 1 race statement and 1 innocence statement	10	3.04	2.99	-.05
Did not agree with at least 1 race statement and 1 innocence statement	13	2.96	2.84	-.12

Most of the subsets in the pro-Con group demonstrated a decrease in Part 1 scores between the pre and post-tests. This trend was especially noticeable among those subjects who did not agree with issues pertaining to administrative fairness on the pre-test. This may be an indication that these subjects were persuaded by information showing that the death penalty is administered in a racially biased fashion and that innocent people may risk erroneous execution. However, as the decrease shown by the pro-Cons was non-significant, it seems that this information was not enough to cause proponents to reject capital punishment. The importance of these issues may be superseded by retributive or utilitarian concerns. The slight decrease observed among supporters in the pro-Con group may indicate that they were somewhat malleable in their opinion and may have been persuaded by some of the anti-death penalty information that they heard. However, it is clear that it was not enough to make them oppose capital punishment.

The significant increase in support in the Con-Lecture group was clearly driven by the increase in support demonstrated by the con-Cons. It is interesting to note that cons with utilitarian beliefs increased their support for the death penalty despite hearing information that contradicted those notions, while pros with utilitarian beliefs decreased support in light of the same information. However, neither group demonstrated enough of a change to have changed sides. That is, cons remained generally opposed (average Part 1 score of 2.08) while pros remained generally in favor (average Part 1 score of 2.90). This may indicate that utilitarian concerns may be open to malleability but one's position on those issues has little effect on one's overall opinion about the acceptability of the death penalty.

Chapter 5

Discussion

In his concurring opinion in *Furman v. Georgia* (408 U.S. 238), Justice Thurgood Marshall insisted that if the average citizen had “knowledge of all of the facts presently available regarding capital punishment” he would “find it shocking to his conscience and sense of justice” (pg. 369) and “would conclude...that the death penalty is immoral and therefore unconstitutional” (pg. 363). Marshall hypothesized that information about the risk of error in capital cases and knowledge of the absence of a demonstrable deterrent effect would influence those who favor the death penalty to reject it. Justice Marshall also speculated that those who favor capital punishment for retributive reasons would not be amenable to change, despite any information given them.

The results of the present study do not lend support to Marshall’s hypothesis that the average person would reject capital punishment if they were more knowledgeable about it. Those who favored the death penalty at the outset continued to do so at the post-test, regardless of whether they heard arguments and information that supported capital punishment or opposed it. Instead, this study presents evidence that contradicts Marshall’s view. Those who opposed the death penalty at the outset were likely to increase their level of support at the post-test. Both the Pro-Lecture group and the Con-Lecture group showed significant average increases in support. Further, these average increases were driven by significant average increases in support among the opponents in each group, rather than significant increases among supporters. No significant change

in support was observed among supporters (pros), regardless of what information they were exposed to, while significant increases in support were observed for opponents (cons) in both information groups.

Most of the supporters in each condition were retributive, non-religious, and indicated agreement with utilitarian concepts. On the pretest, most of the supporters in each group also indicated that they felt capital punishment is fairly administered, reliable, and cost-effective. A minority of supporters disagreed with these notions. The information presented did not have an effect on subjects' positions on these issues. Supporters did not reject capital punishment, even when presented only with information that contradicted all of these ideas.

It is interesting to note however, that supporters who felt the capital sentencing system was administratively fair on the pretest demonstrated a decrease in general support on the post-test when they heard information that showed the system to be biased and unreliable. This decrease was not significant though. This suggests that subjects may accept that information but it is not enough to cause them to reject the death penalty. It may be the case that other concerns supersede these issues. The area least associated with Part 1 change among supporters in both conditions was retribution. This may indicate that retributive beliefs outweigh beliefs that the system is unfair. That is, the belief that capital punishment is just in response to murder may be a more important contributing factor in support for the death penalty than even other moral concerns such as fairness.

These results lend support to Marshall's notion that those who support the death penalty on retributive grounds will be unlikely to be swayed by information. In the current study 78% of those who favored capital punishment on the pre-test indicated agreement with retributive statements¹⁹. However, Marshall may have underestimated the influence of retributive belief as a basis for death penalty support. He was convinced that the "great mass (of) American people would (never) knowingly support purposeless vengeance" (*Furman*, pg. 363) if they knew capital punishment served no other purpose. The results of this study indicate that this may be untrue. In the present study, supporters of the death penalty did not reject it, even when they had ideological reasons to oppose the death penalty (i.e. religion, the belief that it is unfair, and the belief that it serves no utilitarian purpose) and when given information that would justify a change of opinion.

The finding that those who favor capital punishment are unlikely to change their minds about their support for it is in line with much of the past research that has attempted to assess the validity of Marshall's hypothesis. Sarat and Vidmar's 1976 study, while finding a significant decrease in overall support, also found that those who supported the death penalty for retributive reasons were resistant to change. The studies conducted by Bohm, et al, which examined the effect of classroom instruction on death penalty attitudes, showed some lessening of favorability, but only in the short term. Cochran and Chamlin (2005), who also used a classroom instruction methodology, found that some degree of "softening"

¹⁹ When agreement level was set at ≥ 2.1 , 63% of all pros agreed with 2 or more Part 2 retribution statements. When agreement level was set at ≥ 2.5 , 78% of all pros agreed with 2 or more Part 2 retribution statements.

of attitudes (i.e. a decrease in support) towards the death penalty was accompanied by a gain in knowledge about it, but also found that many subjects' views were "hardened" (i.e. increase in support) by it.

The results of this study indicate that some subjects' opinions about the death penalty are malleable, but perhaps not in the way that Marshall hypothesized. Marshall was correct in feeling that retributivists were unlikely to change their minds. The results of this study, as well as others (i.e. Bohm, et al 1990 and 1991; Bohm and Vogel, 1994; Cochran and Chamlin, 2005), bear this out. However, Marshall did not address the possibility of whether information would cause those who opposed the death penalty to change their minds about it and offered no speculation as to who among them may be the most susceptible. The results of this study indicate that some cons are indeed flexible in their opinions while others are resistant.

Opponents in both experimental conditions demonstrated an average increase in general support for capital punishment, but opponents who heard pro-death penalty arguments (con-Pros) exhibited a greater average increase. Within that group, some subjects were more likely to alter their opinion than others were. Those subjects who were retributive, utilitarian, non-religious, and who viewed the death penalty as cost-effective showed greater average increases in general support than those who were not. This indicates that some opponents may be "weaker" or less committed in their opposition. "Weak" opponents seem to be the opponents who do not oppose the death penalty for

moral or religious reasons and who hold many of the same beliefs as supporters do.

Interestingly, opponents who heard anti-death penalty arguments also showed an increase in their general support. The increase among the con-Cons appears to have been driven primarily by subjects in that group who opposed the death penalty in general, but who also held retributive and utilitarian beliefs. This was contrary to what was expected, as these subjects heard arguments against retribution as a valid reason to support capital punishment as well as information that illustrated that capital punishment does not serve as a deterrent or a necessary incapacitation. This may be an indication that these subjects were “weaker” opponents who rejected the information that contradicted their existing views on retribution and utilitarianism. However, it may also be possible that this was the result of a flaw in the methodology of the study. Both the Pro and Con lectures included overviews of the meaning of deterrence and incapacitation. The discussion on deterrence included examples of how deterrence is supposed to affect behavior and the discussion of incapacitation highlighted the fact that death is not necessary to incapacitate, but it is impossible to show that it does not do so. Both of these concepts tend to be intuitively attractive and the possibility exists that subjects, especially subjects already given to utilitarian thinking, focused upon the general concepts and ignored or paid less attention to the subsequent presentation of studies that discounted them in the context of capital punishment.

It seems, then, that some people hold stronger opinions regarding the death penalty than others, and these strong opinions tend to be based upon an existing moral ideology. Strong opinions are less likely to be swayed by the presentation of information. Marshall's hypothesis did not take this into account and seemed to suggest that all opinions are equally malleable.

The finding that those who opposed capital punishment were likely to exhibit a lessening of opposition in response to information pertaining to the death penalty is a novel one. Past research has not examined opinion changes among those that oppose capital punishment²⁰. In the present study it did not matter whether the cons were presented with information that favored capital punishment or opposed it; both groups showed increases in support. The type of information presented to them did not seem to matter.

Past researchers (i.e. Bohm, et al, 1990, 1991; Bohm and Vogel, 1994) have theorized that the lack of change in opinion following the presentation of death penalty information may be attributable to the biased assimilation of that information. Biased assimilation refers to a cognitive process whereby people discount or disregard information that contradicts an existing belief while attending to and integrating information that confirms that belief. This cognitive process may be responsible for the lack of a demonstrable "Marshall effect". That

²⁰ Cochran and Chamlin (2005) noted that some of their subjects shifted from an opposing position to a favoring position, and some "weakened their opposition" (pg. 579) but they did not explore these changes beyond suggesting that it may have been due to the instructor's objective presentation. They do note that "hardeners" (those whose support increased) had lower GPA's than "softeners" (those whose support decreased), and suggested that perhaps brighter students were likely to assimilate information differently (pg. 580).

is, that when presented with information about the death penalty, people will focus on that information that supports their view and disregard that information that contradicts their view. In past research, it was suggested that this process accounted for not only the lack of change from favor to oppose but also for the tendency for existing opinions to become polarized. The present study attempted to address this issue directly by presenting subjects with only one side of the debate. The expectation was that this would produce no change or an increase in support among subjects who opposed the death penalty when they were exposed to retentionist arguments and information and no change or a decrease in support among subjects who favored the death penalty when they were exposed to abolitionist arguments and information. This was not what was observed, however. Instead we saw no significant change among pros in both groups and a lessening of opposition among cons in both groups.

Evidence of biased assimilation may be evident in the present study, though it does not appear to be as straight forward as a simple rejection of conflicting information or embrace of confirming information. Rather, it seems that people may be more apt to reject certain types of information while being more amenable to other types, and their tendency to do so may be premised upon the foundation of the existing opinion. Specifically, facts and arguments pertaining to value based or emotional reasoning seem to be more likely to be ignored while facts and information regarding utilitarian or administrative reasoning may be more readily accepted.

This is evident when one examines the movement among several subsets of subjects within each experimental condition. For example, among the pro-Pros were several subjects who decreased their level of support for capital punishment despite hearing information that reinforced their general support for the death penalty. Religious pro-Pros exhibited a relatively large average decrease in general support for the death penalty. These subjects expressed agreement with religious opposition to the death penalty, yet still generally favored it. This group heard information that offered religious support for the death penalty, but it does not seem to have swayed the religious subjects. In fact, this small subset seems to have responded negatively to such information and showed enough of a Part 1 decrease to qualify as opponents on the post-test. This may indicate a rejection of information that did not conform to their existing religious beliefs. Non-utilitarian pro-Pros also demonstrated a decrease in general support for the death penalty. While this group favored the death penalty in general, they did not accept that it serves as a deterrent or that it is necessary to incapacitate murderers. Their decrease in favorability may also be indicative of a biased assimilation of information and a rejection of information that did not conform to their existing ideas about the utilitarian value of capital punishment. Another subset of pro-Pros who decreased in their support were those who believed that the capital system is administratively unfair. They decreased support despite hearing information that contradicted this idea. This may be evidence of a biased assimilation of information regarding race and innocence, with subjects who believed that the system is unfair rejecting information that it is

not. Similarly, utilitarian subjects within the con-Con group increased their support for capital punishment despite hearing information that contradicted utilitarian ideas. Some subjects may have rejected the anti-utilitarian information in the lectures that contradicted their existing utilitarian beliefs.

The subjects who were least likely to exhibit a change in opinion in the direction of the material presented were those subjects who held retributive or religious beliefs that contradicted that material. That is, religious subjects were least likely to increase support in the Pro-Lecture group, even when they favored capital punishment and retributive subjects were least likely to decrease support in the Con-Lecture group, even when they opposed capital punishment.

It seems that the factor that plays the largest role in determining the receptiveness to change among death penalty opponents is the individual's moral stance. This finding is in line with past research. Bohm, Clark, and Aveni (1990) examined the specific reasons subjects gave for their opinions regarding the death penalty and found that ideas about retribution, religion, and incapacitation were most resistant to change, while ideas about administrative issues were malleable. In 1994, a study by Bohm and Vogel also concluded that retributive and religious reasoning was unaffected by information about the death penalty.

Ellsworth and Ross (1983) and Bohm, et al (1993) have suggested that the reasons people give for their opinions regarding capital punishment are, in reality, post-hoc justifications for what is, at its' base, and emotional or value-based belief. The present study bears this out. Those who were least likely to

exhibit a change in opinion (whether it was a favorable or unfavorable one) were those who indicated agreement with either religious or retributive reasoning. Regardless of what other reasons they indicated agreement with, and regardless of whether that agreement changed, subjects who cited value-based reasons were resistant to change.

This may explain why no significant change was observed among the death penalty proponents in this sample. A larger percentage of that group cited value based reasons for their support. Specifically, a large portion of the pros in this sample indicated agreement with retributive notions (78%), while a much smaller percentage of the cons cited religious reasons for opposition (54%). Perhaps if the sample contained fewer retributive pros, a change in opinion would have been demonstrated for this group as well.

Past researchers (i.e. Lord, Ross, and Lepper (1979), Ellsworth and Ross (1983), Bohm, et al (1990, 1991, 1993, and 1994), and Munro, et al (2002)) have also suggested that the process of biased assimilation may also be accountable for the fact that presenting subjects with objective information about the death penalty often not only results in a lack of change in opinion, but a further polarization of that opinion. An interesting finding of the present study was that there was no indication of attitude polarization among supporters in the Pro-Lecture group or opponents in the Con-Lecture group.

Lord, Ross, and Lepper (1979) have suggested that, "the result of exposing contending factions in a social dispute to an identical body of relevant

empirical evidence may not be a narrowing of disagreement, but rather an increase in polarization.” (pg. 2098). That is, when faced with information from both sides of a debate, people will actually become more convinced of their position on the topic, rather than change their minds. If this is the case, one would have expected to see pros in the Retention group and cons in the Abolition group strengthen their original position. That was not seen here. Pro-Pros showed no significant increases and con-Cons increased support rather than decreased. This suggests that more may be at work in the process of opinion polarization than simply maintaining an opinion by focusing on attitude-confirming information.

Perhaps being presented with a single side of a debate does not contribute to attitude polarization, but merely attitude confirmation. It may be that, in order for polarization to occur one must be presented with conflicting information that one can compare and then reject, thus convincing oneself that the evidence for one’s own side is much stronger than the opposing side and therefore reinforcing the “rightness” of one’s original position.

Several authors (i.e. Aronson, 1992; Munro and Ditto, 1997; Munro, et al, 2002) have suggested that a negative emotional reaction to information that contradicts an opinion may contribute to the phenomenon of attitude polarization. When no such material is presented, the subject may lack the emotional motivation necessary for polarization. Instead, he simply feels justified in maintaining his original position. When one is lectured with one-sided information, one either accepts in or rejects it passively. However, when a person

is presented with conflicting information he is forced into the necessity of defending his position in the face of contradiction. This, perhaps, adds the element of emotional motivation. The more emotionally invested he is in a particular opinion (i.e. if it reflects his basic values and moral beliefs) the more resistant to change he may be.

This line of reasoning may help to explain why the opponents in this study were more likely to alter their opinions than the supporters were. More pros supported capital punishment for a value-based reason (i.e. retribution) than cons opposed it for value based reasons (i.e. religion). As was shown, the changes in the con groups were driven by the “weaker” opponents; that is, the subjects who opposed the death penalty for reasons that were not morally or value-based. The cons that were resistant were more likely to be the ones who opposed the death penalty for strong value-based reasons, such as religion. “Weak” cons were persuadable, even when they were given information that was not meant to persuade them.

As the results of the present study did not show evidence of polarization, as many authors have noted in biased assimilation, and some subjects changed opinion in unexpected directions, an alternative explanation may shed light on the behavior of these subjects. An examination of the theoretical literature on attitude formation and change suggests that opinion malleability and resistance is associated with a number of factors beyond simple information.

Cognitive and social psychologists define an attitude as “a psychological tendency that is expressed by evaluating a particular entity (the attitude object) with some degree of favor or disfavor.” (Eagly and Chaiken, 1993, pg. 1) Several theorists speculate that attitude is closely related to belief, or the mental conviction that something is true.

Fishbein and Azjen’s (1975) expectancy-value model of attitude theory proposes that one’s attitude about a specific attitude object is a function of one’s belief about the object and the evaluative responses to its attributes. That is, an attitude object is perceived as having multiple attributes and each attribute is associated with an evaluative response (i.e. whether the attribute is good or bad, supportive or unsupportive, etc.). One’s evaluative responses to the various attributes are associated with the attitude object itself. Those evaluative responses are summed together to form the attitude about the object. Attitudes are thus developed from the beliefs that one holds about the positive or negative value of the attitude object’s attributes. The value of each attribute contributes to the attitude in proportion to the strength of the belief.

According to this model, attitude should change if the value of the attributes changes. However, as attitude formation is a summative process, in order to effect a change in attitude the evaluative responses to several attributes would need to change. In addition, attitudes will be unlikely to change if persuasive information does not address underlying “primary beliefs” (Eagly and Chaiken, pg. 238) or if the subject does not believe the message content and alter his evaluative response in reaction to it (Eagly, and Chaiken, pg. 239).

In the case of the present study, then, we should not expect to see a change in a subject's attitude about the death penalty unless that subject accepted the information and altered his evaluative response to several attributes related to his opinion. That is, if a subject changed his mind about the effectiveness of the death penalty as a deterrent, but did not change his mind about its use as an incapacitation, *and* its retributive validity, *and* its cost-effectiveness as well, we should not expect the subject to change his mind about capital punishment in general. This is especially true if the attribute which saw the change is less valued or less important. So, a subject who favors the death penalty because he believes that it is retributively valid, serves a utilitarian purpose, is administratively fair, and is cost-effective can come to believe that it is not cost-effective, yet still favor the death penalty if he maintains his belief in the other attributes or does not view cost as very important.

In the present study, most subjects maintained their level of agreement with most of the attributes. Among con-Pros (opponents in the Pro-Lecture group), who exhibited a significant average increase in support, changes were associated with several areas: retribution, utilitarian concerns, cost, and administrative fairness. The con-Cons, who also exhibited a significant average increase in general favorability, saw changes associated with retribution, utilitarian concerns, and administrative fairness.

This may offer support for the expectancy-value model as a change in opinion was associated with several attributes, but further research is needed to determine the relative impact of changes related to specific attributes. Past

research on the expectancy-value model has tended to indicate that attempts to persuade have had little effect on the evaluation of attributes and thus “little effect on overall attitudes towards the attitude object” (Eagly and Chaiken, pg. 237).

An alternative theoretical approach to attitude formation and change is provided by the information integration theory proposed by Norman Anderson in 1971. According to this theory, people form and modify attitudes as a function of receiving and interpreting information according to an existing attitude.

People take in information and assign it a value (or meaning) and a weight (or importance). They form an attitude by combining the perceived value and weight of the information. The value of the information is determined by the person’s perception of whether it is favorable or unfavorable to the attitude object. The weight refers to the “importance (of the information) as a determinant of the individual’s attitude” (Eagly and Chaiken, pg. 241). People modify their attitudes when they interpret and integrate new information into an existing belief. They judge new information according to its value and weight. The weight assigned to new information will depend upon a number of factors, such as the credibility of the informant, the subject’s “degree of involvement with the issue” (pg. 242), and the subject’s level of previous knowledge about the issue. An attitude will be unlikely to change if one gives little weight to information because it will not be an important determinant in the maintenance of that attitude, even if the information is accepted and believed.

According to information integration theory, subjects in the present study would have responded to information about the death penalty by assigning it a

value (i.e. whether it was favorable or unfavorable towards capital punishment) and a weight (according to how important the individual perceived that information to be). For example, the investigator informed the Con-Lecture group that the death penalty costs more money to administer than the alternative of life in prison. These subjects should have perceived that as unfavorable towards the death penalty. However, we would not expect supporters to change their minds about the death penalty on the basis of this information if they did not assign that information much weight (i.e. if they did not view the lecturer as credible, or if the subject did not particularly care about the death penalty or its cost).

Since the present study did not attempt to measure the relative weight the subjects assigned to different information, it is only possible to speculate how this process may have been at work in the present study. The con-Cons and the con-Pros both demonstrated an increase in general support for capital punishment, while the pro-Cons and the pro-Pros showed no significant changes. Information integration theory would speculate that con subjects gave more weight to the information they heard than the pro subjects did. The pros were exposed to the same information, but it was given little weight because it was viewed as a less important determinant for their opinion than existing beliefs such as retribution. The cons, who were less likely to hold strong pre-existing beliefs in opposition to the death penalty (such as religion), gave the information more weight, thus making it a more important determinant for their opinion. Future research may be able to study this supposition more fully.

Related to the notion of the importance of information is Sciarini and Kriesi's more recent (2003) work on "opinion crystallization". The authors refer to opinion crystallization as the strength of one's opinion and the degree to which it is "integrated in a larger set of beliefs" (Sciarini and Kriesi, 2003, pg. 433). They argue that an opinion will be less malleable if it is "crystallized" and the individual has little incentive to change it (i.e. they do not consider the issue important).

The authors studied issue-specific opinion change in response to election campaign information in Switzerland in 1999. They contended that when choosing between candidates in an election, issue specific opinions that are considered more pressing or important and that are less crystallized are more likely to change in response to campaign information. They found that "crystallized" opinions, ones that were strongly held and that were a reflection of an existing belief system, were resistant to change regardless of the information the subject heard.

This may relate to the present study, in that "stronger" opponents (i.e. the religious and the non-utilitarian) were less likely to increase general support than the "weaker" opponents (i.e. those who were retributive and non-utilitarian). In addition, "weak" supporters (non-retributive and non-utilitarian) were more likely to decrease general support than "strong" supporters (retributive, nonreligious, and utilitarian). The opinion of "strong" opponents or supporters may be more crystallized or more "embedded in (the) individual's ideological structure" (pg. 451) than the opinion of "weak" opponents or supporters. For example, an opponent whose opinion about the death penalty is rooted in basic religious

beliefs about the sanctity of life will be less likely to alter his opinion than an opponent who holds no such beliefs but simply feels that it is too expensive. Without the basic ideological framework or religion, the latter would be more receptive to information that shows the death penalty as cost-effective. Alternatively, a supporter whose opinion about the death penalty is embedded in general beliefs about the justness of punishment will be less likely to change his mind than someone who lacks that ideological framework and simply feels that capital punishment is necessary to prevent crime. The latter would be more likely to alter his position if he learns that the death penalty is not an effective deterrent.

Whichever line of reasoning one applies, it does seem that a person's opinion about the death penalty is more than a simple collection of facts and data. Marshall's hypothesis that the presentation of information about capital punishment should lead to a rejection of it as a criminal justice policy lacks an understanding of the complex cognitive processes that contribute to opinion formation and maintenance. The present study has demonstrated that the presentation of information alone is not sufficient to produce a wholesale acceptance or rejection of capital punishment.

The present study was not without methodological shortcomings that may have affected the results. Firstly, a lower than anticipated N made a more detailed regression analysis of changes in relation to specific Part 2 responses impossible. Fewer instructors were willing to participate, and the rate of

absenteeism among students was higher, than was anticipated. For these reasons, the number of subjects was ultimately lower than was originally planned for.

In addition, the subjects were not randomly chosen. Inclusion in the study was based upon their presence in a class whose instructor had chosen to participate. It is not known if there was some discernible difference among students in classes whose professors chose not to participate, though it seems unlikely that that would be the case. Also, any study whose subjects are drawn solely from an undergraduate population may have trouble with generalizability. It may be the case that predominantly younger undergraduates are more open to new ideas and therefore more amenable to change than would be true in the population at large.

In other studies on the malleability of death penalty opinion, several authors mentioned that the personal opinion of the investigator might have been a possibly confounding variable. As the investigator in the present study was trying to persuade and not trying to present subjects with objectively balanced information such a concern was not considered a serious issue here. However, one should note that the investigator did not inform subjects of her personal feelings regarding the death penalty. The investigator's opinion on the matter is complex, and she neither supports nor opposes capital punishment.

Despite its possible shortcomings, the present study adds a new dimension to its field. As was previously stated, no other study has attempted to judge the effect of information on those who oppose the death penalty. As this

study has demonstrated that capital punishment opponents are malleable in their opposition, further research on this group of people in particular is called for. For example, research might explore whether the change is long lasting or if they rebound to their original position over time.

The present study also demonstrated that some subjects are more receptive to information than others, i.e. “weak” opponents and supporters. Future research may attempt to identify and separate “weak” and “strong” opponents and supporters in order to identify which specific information is likely to be most persuasive.

The present study has also added confirmation to the importance of retributive thinking on the maintenance of pro death penalty opinion. Marshall had noted, but underestimated, the importance of retribution among supporters of capital punishment. Several studies have confirmed the idea that retribution is an important factor in opinion resistance (i.e. Bohm, Clark, and Aveni, 1990 and 1991; Bohm and Vogel, 1994). This study adds to that understanding and suggests that religious belief may perform in a similar fashion in the persistence of opinion on the other side of the debate. It seems that future researchers may need to pay more attention to the moral factors that underlie death penalty opinion before we can reach a true understanding of what factors influence it.

Past research in this area has failed to explore theoretical explanations beyond the concept of biased assimilation, and then the authors offered it primarily as speculation to explain results that did not support Marshall’s hypothesis (i.e. Bohm and Vogel, 1994). Evidence of biased assimilation and

polarization was somewhat limited here. It may be the case that other theoretical avenues, such as the expectancy-value model or information integration theory, may prove more fruitful in explaining attitudinal resistance in this particular area. To date, no research on death penalty opinion has explored different theoretical perspectives. Future research may also explore the affective responses to information about the death penalty and the ways in which they may promote or hinder opinion change.

APPENDICES

Appendix A
Survey Instrument

Last 4 digits of your social security number	
What is your age (in years)?	
What is your gender?	
What is your college major?	

Check here

What year are you currently in?	
Freshman	
Sophomore	
Junior	
Senior	

Check here

What is your race/ ethnic group?	
White	
African-American	
Hispanic	
Asian	
Other	
Prefer not to answer	

Check here

What is your religion?	
Christianity	
Judaism	
Islam	
Atheism/Agnosticism	
Other	
Prefer not to answer	

<i>For each of the following statements, please indicate whether you strongly agree, agree, disagree, or strongly disagree.</i>	Strongly Agree	Agree	Disagree	Strongly Disagree
The death penalty is an appropriate punishment for first-degree murder.				
The death penalty is an appropriate punishment for forcible rape.				
The death penalty should be mandatory for some crimes.				
Offenders who commit murder while under the age of 18 should be eligible to receive the death penalty.				
A mentally retarded person should be eligible to receive the death penalty if he commits murder.				
A murderer who has been sentenced to death should be executed, even if he is mentally ill.				
Life in prison, without the possibility of parole, is not an appropriate punishment for first-degree murder.				

<i>For each of the following statements, please indicate whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree.</i>	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
People who commit murder deserve to give up their lives in return.					
Society has the right to demand that killers forfeit their lives for the crime of murder.					
Death is the appropriate punishment for murder because it represents "an eye for an eye".					
The death penalty is necessary so possible killers will think twice before murdering someone.					
If executions were televised, fewer people would commit murder.					
The threat of the death penalty is more likely to stop someone from committing murder than the threat of life in prison.					
The death penalty is necessary to prevent murderers from ever killing again.					
Life in prison is not enough of a guarantee that a murderer will never kill again because he could get out on parole, or escape.					
Some murderers can't be changed and will remain dangerous for the rest of their lives.					
The death penalty violates my religious beliefs.					
Only God should take a life.					
The death penalty is a better punishment than life in prison, because it costs less in the long run.					
Taxpayers' money should not be spent on keeping murderers alive in prison for the rest of their lives.					
The death penalty is unacceptable because the system is racially biased.					
Black defendants are more likely to receive the death penalty than whites are.					
There is a real possibility that an innocent person can be wrongfully convicted and sentenced to death.					
It is likely that an innocent person has been executed in recent years.					

Appendix B

Informed Consent Form

My name is Deniese Kennedy-Kollar and I am a student in the Criminal Justice Ph.D. Program at the Graduate Center of the City University of New York. I am also an Adjunct Professor here at John Jay College and at Adelphi University. I am conducting a research study on your opinions about the death penalty and would like to request your participation. In order to participate, however, you must be 18 years or older.

Your professor has agreed to allow me to use your class time to conduct my research. This will take two class sessions. I will start by asking you to complete a survey that asks about your opinion about the death penalty. Then, we will spend time discussing issues related to capital punishment in America. After that, I will ask you to fill out another survey.

I would like you to participate, but you do not have to. Your grade for the course will not be affected by whether or not you choose to participate in the survey. You will not be penalized in any way if you do not want to participate. If you do not wish to participate, an article will be provided for you to read while others take the survey.

I may publish results of this study, but neither your name nor any other identifying characteristic will be used in any publication. Your responses to the survey questions will be kept strictly confidential. To ensure this confidentiality, I will ask that you identify yourself on the survey using only the last four numbers of your student Identification number.

If you have any questions about this research, you can email me at kennedy-kollar@adelphi.edu or dkennedykollar@jjay.cuny.edu. Alternately, you can contact my advisor, Prof. Evan Mandery of the Law and Police Science Department at John Jay College, at (212) 237- 8389 or email him at emandery@jjay.cuny.edu. If you have questions about your rights as a participant in this study, you can contact Kay Powell,

IRB Administrator, The Graduate Center/CUNY, (212) 817- 7525 or
kpowell@gc.cuny.edu or Martin Wallenstein, IRB Chair for John Jay College, at (212)
237-8364 or mwallenstein@jjay.cuny.edu.

Thank you for your participation in this study.

Participant's signature

Date

Investigator's signature

Date

Appendix C

Retention (Pro) Lecture Script

Deterrence

- The main idea behind the concept of **deterrence** is that people act with **free will**. That is, all decisions that people make are the result of a rational consideration of all the risks and benefits that they might get from a specific course of action. Before acting, we consider all the good things that might happen and weigh them against all the bad things that might happen.
 - **For example**, suppose you have the opportunity to cheat on a test. Before deciding whether to do it, you would weigh the benefit of getting a good grade against the risks of being caught and getting into trouble. If you were unlikely to be caught, or if you were caught but would only receive a “slap on the wrist”, you might decide that the benefit outweighed the risks and decide to cheat. But, if you were likely to be caught and the punishment was severe (like failing, or expulsion) you would decide that the costs were too great and decide not to cheat.
- Under the idea of deterrence, the more severe a punishment is the less likely people will be to risk getting it.
- In theories of punishment, two forms of deterrence are possible.
 - The first is called **specific deterrence** – This means that a punishment will teach an offender a lesson, and he will not re-offend. For example, if a baby goes to touch a hot stove, you might slap his hand and say “No!” so that he will not try to touch the stove

again. He will learn that touching the stove is a bad thing to do, and he will be punished for it. In the criminal justice system, we put people in prison, in the hopes that it will be so unpleasant that when they get out, they will not commit any more crimes for fear of going back to prison.

- The second type of deterrence is **general deterrence** – this is the idea that punishing an offender serves as an example for others who might think of committing a crime. If you're thinking of cheating, but you see someone else get caught and expelled for cheating, you will be less likely to do it because you will fear being expelled too. In the criminal justice system, we put people in prison in the hopes that other people will decide not to commit the same crime because they will fear going to prison, too.
- Many people feel that the death penalty, which is the most severe punishment our culture can give, will act as a general deterrent for people who might think about killing someone. If you will die as the result of your actions, you will be unlikely to take the chance and kill someone.
- In fact, a number of studies have found that capital punishment does act as a deterrent for murder.
 - For example, in 1975 Prof. Isaac Ehrlich of the University of Chicago and National Bureau of Economic Research used a statistical analysis to show that, for the years 1933 and 1969, 7 or 8 murders could be prevented for each execution. The results of Prof. Ehrlich's research were even cited by the Supreme Court in their decision that reinstated the death penalty. Prof. Ehrlich's research

also lead to a series of other studies that used statistical analyses to find evidence of a general deterrent effect for capital punishment.

- Hashem Dezhbakhsh, et al in 2003, did one such recent study. In this study, the authors performed a statistical analysis on homicide data murder rates in 3,054 counties from 1977 to 1996. These authors found that the execution of one murderer could prevent as many as 18 additional murders.
- A few studies have failed to find a general deterrent effect for capital punishment. However, these studies fail to take into account that the death penalty is rarely used and often takes many years to carry out. Punishment best serves as a deterrent when it is certain, and swift. There is no evidence available that contradicts the conclusion that the death penalty would deter murder if it was used more quickly and certainly.

Religion

- The Old Testament of the Bible clearly supports the use of capital punishment. Several passages even specifically call for death as punishment for certain crimes, including murder.
 - For example in Genesis 9:6, it states: “Whoever sheds man’s blood by man his blood shall be shed, for in the image of God, He made man.”
 - In Exodus, God commanded capital punishment for premeditated murder, involvement in occult practices, and sexual crimes like rape and incest.

- Since God created man in His own image, that life is sacred, and demands the payment of a life in return.
- Passages in the Koran support capital punishment, as does Islamic law.
 - "If anyone kills a person - unless it be for murder or for spreading mischief in the land - it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people" (Qur'an 5:32).
 - "...Take not life, which God has made sacred, *except by way of justice and law*. Thus does He command you, so that you may learn wisdom" (Qur'an 6:151).
 - One may take life only "by way of justice and law" and the death penalty can be applied for to serious crimes that harm individuals or threaten to destabilize society ("spread mischief in the land")
 - Under Islamic law the murder victim's family is given a choice of insisting on the death penalty or pardoning the offender and asking for money as compensation (Qur'an 2:178)
 - "Spreading mischief in the land" has been interpreted to mean crimes that affect the whole community and destabilize society (such as treason, terrorism, piracy, rape, adultery, homosexual behavior).

Retribution

- Retribution is the idea that a punishment should be given because it is deserved. This is premised upon the idea that the offender has free will

and chooses to violate the rules of society. As such, it is just for society to punish him for it.

- The offender has caused harm and deserves to be harmed in return.
- Alternately, with his actions, the offender is sending a message that his desires are more important than the victim's rights. Punishment informs both the offender and the rest of society that this is not the case. One person does not have more worth than another does.
- The philosopher Immanuel Kant argued that retribution shows respect for the autonomy of the offender. That is, if society uses punishment in an attempt to prevent others from committing crime, the offender is not punished for what he did, but rather as a means to an end to produce some desired result for society. According to Kant, if a person is not punished as he deserves to be for the act that he committed, this denies the notion of his free will, and thus his personhood.
- If someone murders another person, the punishment they have earned, or the punishment they deserve, is death.
- Now, some people might argue that our system of justice does not follow a simple "eye for an eye" formula in response to other crimes. We do not rob from robbers or burn the possessions of arsonists, so why do we demand death for killers?
 - In response to this argument, retributivists have promoted the idea of ***proportionate retributivism*** – this is the idea that penalties can be ranked in order of harshness and offenses can be ranked in order of severity. The most severe crime deserves the harshest penalty; the second most severe crime deserves

the second harshest penalty, and so on. Murder is the most severe crime, and therefore deserves the harshest penalty, which in our society is death.

Incapacitation

- Incapacitation refers to the idea that punishment should prevent an individual from committing any more crime. The death penalty is definitely, permanently incapacitating. An executed murderer will never murder again. Capital punishment permanently removes people from society who continue to pose a threat – including the threat that they may kill a fellow prisoner or guard if imprisoned.
- Since the incapacitating effect of the death penalty can't be argued against, the question becomes whether a less severe punishment (like life in prison) would serve just as well to prevent murderers from killing again.
 - Some have said that LWOP is enough to ensure that a murderer is never released and will no longer pose a threat to society. But, without the death penalty, “lifers” are beyond deterrence. They would have no greater punishment to fear and would pose a threat to other prisoners and/or corrections officers.
 - So, you might now ask two questions: “How likely are convicted murderers to kill again if they are released?” and “If they are not released, how much of a threat do they pose to others in prison?”
 - A study by the Bureau of Justice Statistics examined the re-arrest records of more than 200,000 prisoners who were released from prison in 1994. They found that of the 4443

prisoners who had served time for homicide, 53 were rearrested for another homicide within 3 years.

- Another study found that of the 2129 prisoners on death row in 2000, 285 had a prior conviction for a homicide.
- A study by Thorsten Sellin of prison murders that occurred in 1965 found that convicted murderers were responsible for 27% of the 61 murders that occurred in prisons that year.
- Finally, a number of studies have found that inmates under a death sentence or those sentenced to LWOP are significantly more likely to be involved in acts of serious prison violence. One such study was done by DeLisi and Munoz in 2003. These authors found that death row inmates were much more likely to engage in acts of serious violence while in prison than any other kind of prisoner.

Cost

- Prosecuting death penalty cases and keeping condemned prisoners on death row for many years is very expensive. However, the actual costs seem to be somewhat in dispute. Many studies have tried to determine how much more death penalty cases cost than non-death cases. According to these studies, the cost of prosecuting death cases is staggering.
 - In North Carolina, death cases average 2.16 million more dollars than non-death cases. In Florida, it's 3.2 million. In Texas, 2.3 million, and in California, as much as 100 million.

- However, all of these studies look at the amount spent in relation to the number of executions actually carried out. The study done in North Carolina found that if every person who received a sentence of death was actually executed, the additional cost, per case, would only be 216,000 dollars.
- A Kansas study that looked at costs per case found a much smaller difference: 1.2 million for death cases and 740,000 for non-death cases.
- Once an execution is carried out, the state's financial obligation ends. Sentencing someone to life requires the state to support that person for the rest of his life.
- The higher costs of the death penalty are largely due to the lengthy appeals process that condemned prisoners are allowed to seek. This process can drag on for years as the appeals work through the system until they are exhausted. Many states are attempting to limit the number of appeals a death row inmate can seek. This would eliminate many of these extra costs. In addition, none of these studies has examined the financial benefits that stem from deterrence. If someone is deterred from committing murder, that saves the state all of the money involved in prosecution, incarceration, and execution.

Innocence

- In over 30 years of research there has never been any proof that any innocent person has been executed.

- Much has been made in recent years about the possibility of executing an innocent person. But, when discussing this subject, one needs to differentiate between those who are factually innocent and those who are not deserving of death. Many studies in this area look at overturned or reversed cases, without making a distinction between these two things.
 - Factual innocence means the person simply did not commit the crime for which he was convicted. Factual innocence, like factual guilt, can rarely be known to absolute certitude.
 - Whether a death sentence is undeserved or disproportionate often rests upon a consideration of aggravating and mitigating factors. At the time of sentencing, the jury considers mitigating factors (those things that might lessen an offender's culpability) and aggravating factors (those things that heighten an offender's culpability). The state must prove that certain, specified, aggravating factors were present at the crime's commission. The jury must decide if these factors were present, and if they were more important than the mitigating factors the defense presented. Whether aggravation outweighs mitigation can often be a matter of opinion. A case can be reversed on appeal for this reason, but it has nothing to do with the factual innocence of the offender.
- To date, no conclusive evidence exists that a factually innocent person has been executed. In addition, studies such as Liebman, et al's, that find a high rate of reversal of death penalty cases can be interpreted to

mean that the system works to catch errors and ensure the innocent are not executed.

Race

- The accusation that the death sentencing system is racially biased is not a new one. The argument is that minorities, especially blacks, bear the brunt of capital punishment and are systematically treated unfairly. Many people within the system act with broad discretion in making capital sentencing decisions. Prosecutors decide when to charge someone with a capital crime, juries decide whether to sentence an individual to death, and governors can grant clemency if they desire. At any time, any of these actors can make decisions based upon extra-legal factors, such as race, and it can be almost impossible to prove if they have done so in any particular case.
- The question then becomes how one would know if racism were playing a part in capital sentencing decision making. One way of answering that question is to look at all decisions to determine if a pattern suggestive of racism exists. However, before one can interpret any existing pattern, one must consider a concept called ***adjusted disparities***. Adjusted disparities looks for differences between groups, but take into consideration real differences between the groups, such as differences in aggravating and mitigating circumstances.
- Suppose, for example, a population consists of green people and blue people. A study finds that green people receive the death penalty 75% of the time, and blue people only receive the death penalty 25% of the time. This might lead you to believe that the system is biased against green

people. But, does it? Suppose that further research reveals that when green people commit murder, they are more likely to torture their victim than blue people are. If torture is an aggravating factor, this makes the fact that green people receive the death penalty more often less suggestive that the fact that the killer is green was a contributing factor in the decision to impose death. If the two groups committed the same kinds, however, that would suggest that “greenness” was a contributing factor.

- In discussing the effect of racism in American capital sentencing decisions, one must consider adjusted disparities and the real differences that exist between black and white murderers and among murders of black victims and white victims.
- There are two ways in which race may come into play in capital sentencing decisions. There may be discrimination against black defendants, making them more likely to receive a death sentence, or there may be bias towards white victims, making defendants who kill whites more likely to receive a death sentence.
 - Though blacks account for about 12% of the general population and 40% of the death row population, this is not necessarily evidence that the system discriminates against blacks. This statistic fails to account for the fact that black are responsible for more than half of all detected murders. If one group commits more murders, you would expect them to account for a greater number percentage of the death row population.
 - Many studies have indicated, however, that the *race of the victim* may influence sentencing decisions. For example, a 1980 study of

capital sentencing decisions in Georgia (by Baldus, et al) showed that defendants who were convicted of killing whites were 4.3 times more likely to receive the death penalty than defendants who had killed blacks. However, at least one author, Prof. Joseph Katz, has suggested that, rather than racism, these findings actually reflect real differences among killing of differing racial combinations.

- Katz analyzed the same data that Baldus collected and found that aggravating and mitigating factors differed in murders of different racial combinations. He found that cases with white victims had more aggravating factors than black victim cases and those cases with a black defendant and white victims had the most aggravated factors of all. For example of the 510 death-eligible, white victim cases studied victims were raped in 5.7% of them. In black victim cases, only 3% of them were raped. Most significantly, in 67% of the black-defendant/white victim cases the victim was killed during an armed robbery. This is compared to 20% of the white-defendant/white victim cases, 6% of the black defendant/black victim cases, and 22% of the white defendant/black victim cases.

	black victim	white victim
Black defendant	6%	67%
White defendant	22%	20%

So it may not be racism that is responsible for the disparity in sentencing decisions for black and white victims, but a rational consideration of the law.

- If it is true that killers of whites disproportionately receive the death penalty for extra-legal reasons, does that mean the death penalty should be abolished? Or, should the system be “fixed” to ensure that killers of black also “get their due”? If there is injustice in black victim cases does that mean there should be injustice in white victim cases, too? Or, should there be justice for all victims? What if we consider the fact that a “race-of-victim” effect in capital sentencing actually benefits black *defendants*, because most killers tend to kill within their own race? If we fixed the effect, more blacks might be sentenced to death.

Retention (Pro) Lecture Power Point slides

The Death Penalty

1

Deterrence
Free Will

2

Deterrence
Free Will
Specific deterrence

3

Deterrence
Free Will
Specific deterrence
General deterrence

4

Deterrence
Is the death penalty a general deterrent for murder?

5

Deterrence
Is the death penalty a general deterrent for murder?
■ *Isaac Ehrlich (1975)* – each execution can prevent 7 or 8 murders

6

Deterrence
Is the death penalty a general deterrent for murder?
■ *Isaac Ehrlich (1975)* – each execution can prevent 7 or 8 murders
■ *Dezhbakhsh, et al (2003)* – one execution can prevent as many as 18 murders

7

Deterrence
Is the death penalty a general deterrent for murder?
■ *punishment is most effective as a deterrent when it is **certain and swift***

8

Deterrence
Is the death penalty a general deterrent for murder?
■ *punishment is most effective as a deterrent when it is **certain and swift***
■ *Shepherd (2003)* – 1 less murder associated with every 3 year reduction in death row waits.

9

Deterrence
"If we execute murderers and there is in fact no deterrent effect, we have killed a bunch of murderers. If we fail to execute murderers, and doing so would in fact have deterred other murders, we have allowed the killing of a bunch of innocent victims. I would much rather risk the former. This, to me, is not a tough call."
John McAdams - Marquette University/Department of Political Science

10

Religion
Old Testament
■ Genesis 9:6 "Whoever sheds man's blood by man his blood shall be shed, for in the image of God, He made man."

11

Religion
The Koran
■ "...Take not life, which God has made sacred, *except by way of justice and law*. Thus does He command you, so that you may learn wisdom" (Qur'an 6:151)

12

Religion

The Koran

- "...Take not life, which God has made sacred, *except by way of justice and law*. Thus does He command you, so that you may learn wisdom" (Qur'an 6:151)
- "If anyone kills a person – *unless it be for murder or for spreading mischief in the land* – it would be as if he killed all people." (Qur'an 5:32)

13

Retribution

- Punishment should be given because it is deserved.

14

Retribution

- Punishment should be given because it is deserved.
- Immanuel Kant – autonomy of the offender

15

Retribution

- Punishment should be given because it is deserved.
- Immanuel Kant – autonomy of the offender
 - A murderer has earned the punishment of death.

16

Retribution

- proportionate retributivism

+	↓	Offense 1	Penalty 1	+	↓
severity		Offense 2	Penalty 2	harshness	
		Offense 3	Penalty 3		

17

Incapacitation

- An executed murderer will never kill again.

18

Incapacitation

- An executed murderer will never kill again.
- Is the death penalty necessary to incapacitate a murderer?

19

Incapacitation

- An executed murderer will never kill again.
- Is the death penalty necessary to incapacitate a murderer?
 - How likely is it that convicted murderers will kill again if they are released?
 - How much of a threat do convicted murderers pose in prison?

20

Incapacitation

How likely is it that convicted murderers will kill again if they are released?

- Of the 4443 prisoners released in 1994 who had been convicted of a homicide, 53 were rearrested for another homicide within 3 years (Bureau of Justice Statistics)

21

Incapacitation

How likely is it that convicted murderers will kill again if they are released?

- Of the 4443 prisoners released in 1994 who had been convicted of a homicide, 53 were rearrested for another homicide within 3 years (Bureau of Justice Statistics)
- Of the 2129 prisoners on death row in 2000, 285 had a prior homicide conviction.

22

Incapacitation

How much of a threat do convicted murderers pose in prison?

- convicted murderers were responsible for 27 of the prison murders that occurred in 1965.

23

Incapacitation

How much of a threat do convicted murderers pose in prison?

- convicted murderers were responsible for 27 of the prison murders that occurred in 1965.
- DeLisi & Munoz (2003) – prisoners sentence death significantly more likely to engage in prison violence than other prisoners.

24

Cost

- Is it more expensive to keep someone in prison for life than it is to execute them?

25

Innocence

- **Myth:** Innocent people have been executed

26

Innocence

- **Myth:** Innocent people have been executed
- factual innocence vs. a disproportionate death sentence

27

Innocence

- **Myth:** Innocent people have been executed
- factual innocence vs. a disproportionate death sentence
 - aggravating and mitigating factors

28

Innocence

- **Myth:** Innocent people have been executed
- factual innocence vs. a disproportionate death sentence
- Sentence reversals (Liebman, et al.)

29

Race

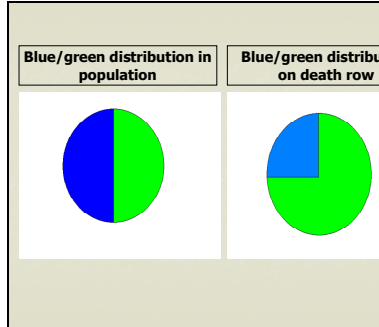
- Discretion in the capital sentencing system

30

Race

- Discretion in the capital sentencing system
- adjusted disparities

31



32

Race

- Discretion in the capital sentencing system
- adjusted disparities
- Are black defendants more likely to receive death sentence than white defendants?

33

Race

Common aggravating factors:

- multiple victims (at one time or serially)
- felony murder (i.e. during a robbery)
- prior felony conviction
- victim was a child
- murder involved torture
- murder was committed for money
- victim was a police officer, court officer, judge, witness, or member of other specific group

34

Race

- Discretion in the capital sentencing system
- adjusted disparities
- Are black defendants more likely to receive death sentence than white defendants?
- Race of victim effect?

35

Race

- Race of victim effect?

Race of defendant X race of victim with robbery as an aggravating factor:

	Black victim	White victim
Black defendant	6%	67%
White defendant	22%	20%

36

Appendix D

Abolition (Con) Lecture Script

Deterrence

- The main idea behind the concept of **deterrence** is that people act with **free will**. That is, all decisions that people make are the result of a rational consideration of all the risks and benefits that they might get from a specific course of action. Before acting, we consider all the good things that might happen and weigh them against all the bad things that might happen.
 - **For example**, suppose you have the opportunity to cheat on a test. Before deciding whether to do it, you would weigh the benefit of getting a good grade against the risks of being caught and getting into trouble. If you were unlikely to be caught, or if you were caught but would only receive a “slap on the wrist”, you might decide that the benefit outweighed the risks and decide to cheat. But, if you were likely to be caught and the punishment was severe (like failing, or expulsion) you would decide that the costs were too great and decide not to cheat.
- Under the idea of deterrence, the more severe a punishment is the less likely people will be to risk getting it.
- In theories of punishment, two forms of deterrence are possible.
 - The first is called **specific deterrence** – This means that a punishment will teach an offender a lesson, and he will not re-offend. For example, if a baby goes to touch a hot stove, you might slap his hand and say “No!” so that he will not try to touch the stove

again. He will learn that touching the stove is a bad thing to do, and he will be punished for it. In the criminal justice system, we put people in prison, in the hopes that it will be so unpleasant that when they get out, they will not commit any more crimes for fear of going back to prison.

- The second type of deterrence is **general deterrence** – this is the idea that punishing an offender serves as an example for others who might think of committing a crime. If you're thinking of cheating, but you see someone else get caught and expelled for cheating, you will be less likely to do it because you will fear being expelled too. In the criminal justice system, we put people in prison in the hopes that other people will decide not to commit the same crime because they will fear going to prison, too.
- Many people feel that the death penalty, which is the most severe punishment our culture can give, will act as a general deterrent for people who might think about killing someone. If you will die as the result of your actions, you will be unlikely to take the chance and kill someone.
- However, a number of studies have found that capital punishment does not act as a deterrent for murder.
- To be an effective deterrent, a punishment must be certain and swift. The death penalty is neither.
- One of the most famous studies on the issue of deterrence and the death penalty was done by Thorsten Sellin. Professor Sellin conducted a comparative analysis of murder rates in contiguous states with and without the death penalty for the years 1920 to 1963. He found that states that

had the death penalty and neighboring states that did not had similar murder rates.

- Similar comparative studies have also failed to find any evidence that capital punishment deters murder. States with the death penalty do not have lower rates of murder than neighboring states without it. Other studies have found no decline in murder rates after the death penalty was established in particular states, or following executions. Nor have increases in murder rates been observed after the abolition of the death penalty in particular states or in other countries.
- In 1989, the American Society of Criminology called for the abolition of the death penalty, in part because there is an absence of evidence that execution deters crime. Most experts in the field agree that there is little compelling evidence that capital punishment serves as a more effective deterrent than long prison sentences.
- Some people have argued that the death penalty may actually have the opposite effect than deterrence. That is, they theorize that instead of preventing murders, executions may actually encourage murders, instead. This is a phenomenon called **brutalization**. It means that acts of violence in our culture desensitize people to violence and makes them more likely to commit acts of violence themselves.
 - Professors William Bowers and Glenn Pierce studied homicide rates in NY for the years 1906 to 1963. During that time period there were 692 executions in the state. Bowers and Pierce noted

that murder rates would increase in the time period immediately following an execution. They theorized that each execution led to three additional murders in the months that followed an execution.

- Cochran and Chamlin theorized that executions would have different effects on different types of murders. They studied the murder rate in California following the well publicized execution of Robert Harris in 1992. It had been CA's first execution in 25 years. They found that following the execution there was a reduction in non-stranger murders but an increase in murders that occurred among strangers who got into arguments. The authors theorized that execution may have a hand in deterring more rationally-based murders, but will have a brutalizing effect on more emotionally-based murders.

Religion

- Only God should take a life. It is wrong for humans to take life, no matter what the reason. The sixth commandment states "Thou shall not kill". It does not specify that it's OK for the state to kill, but no one else.
- Most major religious groups officially oppose capital punishment for any reason.
- The Old Testament may call for death for murder, but it also call for death for a variety of other offenses that we would not execute for (i.e. rape and kidnapping) or that we would even consider crimes (i.e. adultery, homosexuality, fornication). The OT also prescribed procedural rules before any execution that our system does not follow. Many theologians

also feel that the OT is best regarded as a description of life as it was then, and not as a prescription for how we should live now.

- Passages in the New Testament can be interpreted as condemning the practice of capital punishment. For example, “Let him without sin cast the first stone.” Many theologians believe this is a condemnation of capital punishment, as it is not the place for sinful humans to make such life-and-death judgments.

Retribution

- Retribution is the idea that a punishment should be given because it is deserved. This is premised upon the idea that the offender has free will and chooses to violate the rules of society. As such, it is just for society to punish him for it.
- The offender has caused harm and deserves to be harmed in return.
- Alternately, with his actions, the offender is sending a message that his desires are more important than the victim’s rights. Punishment informs both the offender and the rest of society that this is not the case. One person does not have more worth than another does.
- If someone murders another person, the punishment they have earned, or the punishment they deserve, is death.
- However, there is no “baseline equality”. People do not always “get what they deserve” and it is not the state’s responsibility to ensure that they do. Does the state ensure that people who do good deeds or help others get rewarded for it?

- Within our system, retribution does not always make sense. Juries are required to consider mitigating factors, or factors that would tend to lessen their culpability in committing the offense. In other words, we consider that the offender may not be fully responsible, or acting with free will, for his crime. To assume free will and then demand a consideration of mitigation is contradictory.
- If prison sentences are retributively acceptable for other crimes, why is it insufficient retribution for murder? We do not demand that rapists be raped, or that arsonists have their property burned. Some crimes do not even have truly equivalent punishment. You can not rob a bank robber's bank in return. State execution is not even really equivalent to the murder that was committed, unless the murderer confined his victim for many years and told him the date and time he would be killed. It is not logical to demand "equivalent" retribution for only one crime.

Incapacitation

- Incapacitation refers to the idea that punishment should prevent an individual from committing any more crime. The death penalty is definitely, permanently incapacitating. An executed murderer will never murder again. Capital punishment permanently removes people from society who continue to pose a threat – including the threat that they may kill a fellow prisoner or guard if imprisoned.
- Since the incapacitating effect of the death penalty can't be argued against, the question becomes whether a less severe punishment (like life

in prison) would serve just as well to prevent murderers from killing again. So, you might now ask two questions: “How likely are convicted murderers to kill again if they are released?” and “If they are not released, how much of a threat do they pose to others in prison?”

- Murder has the lowest rate of recidivism, to begin with.
 - A study by the Bureau of Justice Statistics examined the re-arrest records of more than 200,000 prisoners who were released from prison in 1994. They found that of the 4443 prisoners who had served time for homicide, only 1.2% was rearrested for another homicide within 3 years. This is a comparatively low rate of recidivism when compared to robbers (70.2% were rearrested), burglars (74%), and car thieves (78.8%).
 - Other studies have found that capital murderers are no more likely to kill again than other murderers are. In 1972, the Supreme Court overturned the death penalty in a case called *Furman v. Georgia*. As a result of that case, all of the inmates on death row at that time had their death sentences commuted to life in prison. In a 1989 study, Marquart and Sorenson followed up on these prisoners for the proceeding 15 years. 239 of those inmates were released from prison, during that time. Of those prisoners, only one committed a new homicide while in free society.
 - One concern that many people often mention when discussing the need to incapacitate murderers by using the death penalty is that life in prison or LWOP will not stop inmates from committing murder in prison. After all, without the threat of death, what would LWOP

inmates have to fear? Though this may seem to make intuitive sense, research has not shown it to be a legitimate concern. Many studies have found that “lifers” are in fact the most well behaved prisoners. Short-term prisoners are more likely to commit more rule violations and are responsible for more acts of violence than long-term prisoners are (i.e. Flanagan, 1980; Sorenson and Wrinkle, 1996; Sorenson, et al, 1998). The reason for this has been theorized to be due to that fact that long-term prisoners tend to be older (younger inmates are responsible for the most infractions and violence), and are more assimilated to the prison environment.

- So, if murderers are not likely to kill again, either in prison or out of prison, and do not pose a great threat in prison, why would the death penalty be necessary to incapacitate murderers when life in prison would serve just as well?

Cost

- Capital punishment is very expensive. Prosecuting death penalty cases is much more expensive than prosecuting non-capital cases.
 - Pre-trial expenses are greater – Both the prosecution and the defense often hire private investigators and other experts to assist in their cases. There are more pre-trial motions. Jury selection tends to take longer and there is much less of a chance that the case will be settled with a plea bargain.
 - Capital trials are bifurcated (that is, there is a separate phase of the trial where sentencing is decided). This makes capital trials longer and more complicated, and thus more expensive. States are also

often paying for both the prosecution and the defense, since many defendants are poor and can not afford their own attorneys.

- Maintaining a prisoner on death row is also more costly than maintaining prisoners in the general population. This may last for many years.
- A great deal of the cost involved in capital cases comes from the costs of paying for the very lengthy and complicated appeals process. This can take many years as the case proceeds through both the state and federal courts. The whole time, the state is paying for both the prosecution and the defense.
- The cost of capital punishment can vary from state to state. Some authors have studied how much the death penalty ends up costing a state. Their results have varied, but it is always in the millions of dollars.
 - For example, New York State reinstated the death penalty in 1995. The state spent about 160 million on capital prosecutions between 1995 and 2003. Six people were sentenced to death, at a cost of 23 million per sentence. None of those people has been executed, nor will they be, because NY's death penalty law was declared unconstitutional.
 - PowerPoint list of costs in other states.

Innocence

- Much has been made in recent years about the possibility of executing an innocent person. When discussing this subject, one needs to

differentiate between those who are factually innocent and those who are not deserving of death.

- Factual innocence means the person simply did not commit the crime for which he was convicted.
- Whether a death sentence is undeserved or disproportionate often rests upon a consideration of aggravating and mitigating factors. At the time of sentencing, the jury considers mitigating factors (those things that might lessen an offender's culpability) and aggravating factors (those things that heighten an offender's culpability). The state must prove that certain, specified, aggravating factors were present at the crime's commission. The jury must decide if these factors were present, and if they were more important than the mitigating factors presented by the defense. If aggravation is not present or does not outweigh mitigation the jury is not supposed to sentence the defendant to death. A case can be reversed on appeal for this reason.
- Executing an innocent person is unjust from both a retributive and utilitarian standpoint.
- Research by Liebman, et al looked at the appeals outcomes of capital cases between 1973 and 1995. This study found that 68% of death sentences were reversed on appeal due to an error that occurred at trial. Of the cases that were reversed and retried, 7% were found not guilty upon retrial. This suggests the serious possibility that cases in

which the defendant is innocent may slip through the system and result in an unjust execution.

Race

- The accusation that the death sentencing system is racially biased is not a new one. The argument is that minorities, especially blacks, bear the brunt of capital punishment and are systematically treated unfairly. Many people within the system act with broad discretion in making capital sentencing decisions. Prosecutors decide when to charge someone with a capital crime, juries decide whether to sentence an individual to death, and governors can grant clemency if they desire. At any time, any of these actors can make decisions based upon extra-legal factors, such as race, and it can be almost impossible to prove if they have done so in any particular case.
- There are two ways in which race may come into play in capital sentencing decisions. There may be discrimination against black defendants, making them more likely to receive a death sentence, or there may be bias towards white victims, making defendants who kill whites more likely to receive a death sentence.
- The question then becomes how one would know if racism were playing a part in capital sentencing decision making. One way of answering that question is to look at all decisions to determine if a pattern suggestive of racism exists.

- Several authors have indeed found patterns that suggest the race of the victim, but not the defendant, may be having undue influence on death sentencing decisions.
- One famous study by Baldus, et al looked at Georgia's capital sentencing results from 1973 to 1980. The authors looked at 2400 death-eligible cases and found that defendants who killed whites (regardless of the defendant's own race) were 4.3 times more likely to receive the death penalty than defendants whose victims were black. A black defendant who killed a white victim was 21 times more likely to receive a death sentence than a black defendant whose victim was black. Other studies have found similar patterns in other states.
- Statistics on "race of victim effect" from DPIC: Of the inmates who have been executed since 1976, 80% have been executed for murdering a white victim, 14% for murdering a black victim.

Abolition (Con) Lecture Power Point slides

The Death Penalty

1

Deterrence
Free Will

2

Deterrence
Free Will
Specific deterrence

3

Deterrence
Free Will
Specific deterrence
General deterrence

4

Deterrence
Is the death penalty a general deterrent for murder?

5

Deterrence
Is the death penalty a general deterrent for murder?
■ *To be an effective deterrent, punishment must be **certain** and **swift**. The death penalty is neither.*

6

Deterrence
Is the death penalty a general deterrent for murder?
■ *Thorsten Sellin – comparative studies*

7

Deterrence
Is the death penalty a general deterrent for murder?
■ Thorsten Sellin – comparative studies
■ *brutalization*

8

Deterrence
Is the death penalty a general deterrent for murder?
■ Thorsten Sellin – comparative studies
■ brutalization
■ Bowers & Pierce
■ Cochran & Chamlin

9

Religion
Judeo-Christian tradition:
■ *"Thou shall not kill."*

10

Religion
Judeo-Christian tradition:
■ "Thou shall not kill."
■ *Old Testament*

11

Religion
Judeo-Christian tradition:
■ "Thou shall not kill."
■ Old Testament
■ *New Testament*

12

Retribution

- Punishment should be given because it is deserved.

13

Retribution

- Punishment should be given because it is deserved.
- Do we always "get what we deserve"?

14

Retribution

- Punishment should be given because it is deserved.
- Do we always "get what we deserve"?
 - mitigation

15

Retribution

- Punishment should be given because it is deserved.
- Do we always "get what we deserve"?
 - mitigation
- Is there true retribution for other crimes?

16

Incapacitation

- An executed murderer will never kill again.

17

Incapacitation

- An executed murderer will never kill again.
- Is the death penalty necessary to incapacitate a murderer?

18

Incapacitation

- An executed murderer will never kill again.
- Is the death penalty necessary to incapacitate a murderer?
 - How likely is it that convicted murderers will kill again if they are released?
 - How much of a threat do convicted murderers pose in prison?

19

Incapacitation

How likely is it that convicted murderers will kill again if they are released?

- Of the 4443 prisoners released in 1994 who have been convicted of a homicide, only 1% were *rearrested* for another homicide within 3 years. (BJS)

20

Incapacitation

How likely is it that convicted murderers will kill again if they are released?

- Of the 4443 prisoners released in 1994 who have been convicted of a homicide, only 1% were *rearrested* for another homicide within 3 years. (BJS)
- Marquart & Sorenson (1989) – of the 239 capital murderers released after *Furman*, 1 committed a new homicide.

21

Incapacitation

How much of a threat do convicted murderers pose in prison?

- "lifers" are much less likely to break prison rules and commit acts of violence in prison than short-timers.

22

Cost

- Is it more expensive to keep someone in prison for life than it is to execute them?

23

Cost

- Is it more expensive to keep someone in prison for life than it is to execute them?
 - pre-trial expenses
 - bifurcated trials
 - prison stay
 - lengthy appeals

24

Cost

- Is it more expensive to keep someone in prison for life than it is to execute them?
- Costs vary by state
 - New York - \$23 million/sentence (no execution)
 - New Jersey - \$253 million since 1983 (no executions)
 - Florida - \$24 million/execution
 - North Carolina - \$1 billion since 1976

25

Innocence

- factual innocence vs. a disproportionate death sentence

25

Innocence

- factual innocence vs. a disproportionate death sentence
 - aggravating and mitigating factors

27

Innocence

- factual innocence vs. a disproportionate death sentence
- Liebman, et al
 - between 1973 and 1995, 68% of death sentences were reverse on appeal.
 - 7% found not guilty on retrial.

28

Innocence

- factual innocence vs. a disproportionate death sentence
- Liebman, et al
 - *Since 1973, 123 people in 25 states have been released from death row upon evidence of their innocence*

29

Innocence

Exonerations by state since 1973

Florida	22	Massachusetts	3
Illinois	18	Missouri	3
Louisiana	8	Indiana	2
Texas	8	S. Carolina	2
Arizona	8	Mississippi	2
Oklahoma	7	Kentucky	1
Pennsylvania	6	Maryland	1
Georgia	5	Idaho	1
N. Carolina	5	Nebraska	1
Alabama	5	Nevada	1
Ohio	5	Virginia	1
New Mexico	4	Washington	1
California	3		

30

Innocence

Exonerations by race since 1973

Black	62
White	48
Latino	12
Other	1

31

Race

- Discretion in the capital sentencing system

32

Race

- Discretion in the capital sentencing system
- Is there evidence that race effects capital sentencing decisions?

33

Race

- Discretion in the capital sentencing system
- Is there evidence that race effects capital sentencing decisions?
 - Baldus, et al – Race of victim effect

34

Race of victim in executions since 1976

RACE OF VICTIMS

- Black
- Hispanic
- White
- Other

BLACK	220	14.1%
HISPANIC	72	4.6%
WHITE	1256	79.3%
OTHER	32	2%

35

PERSONS EXECUTED FOR INTERRACIAL MURDERS IN THE U.S. SINCE 1976

White Defendant / Black Victim	14
Black Defendant / White Victim	213

36

Debriefing handout - Facts and information that support the retention of the death penalty

Deterrence:

- The empirical evidence on the deterrent effect of capital punishment is not entirely clear. A number of studies [i.e. Ehrlich (1975) and Dezhbakhsh, et al (2003)] have found evidence that executions prevent murders.
- Punishment is most effective as a deterrent when it is certain and swift. At least one study indicates that a reduction in time spent on death row is associated with a reduction in number of murders.

Religion:

- Several passages in the Old Testament of the Bible and in the Koran are supportive of capital punishment and call for it as the appropriate punishment for certain crimes.

Retribution:

- Retribution need not be a simple “eye-for-an-eye” proposition. Many theorists support the idea of **proportionate retributivism**. This is the idea that crimes can be rank ordered in terms of their severity and punishments can be rank ordered in terms of their harshness. The least severe crimes deserve the least harsh penalties and the most severe crimes deserve the harshest penalties. Since murder is the most severe crime, it deserves the harshest penalty; which in our society is death.

Incapacitation:

- Executed murderers no longer pose *any* threat to society. There is no chance that they will kill another person if they are released or escape from prison. And, there is no chance that they will kill a guard or another prisoner while in prison.

Cost:

- Most studies look at how much capital punishment costs in terms of the number of executions actually carried out, which makes the difference between death and non-death cases seem huge. However, if *every* sentence were actually carried out the additional cost associated with the death penalty would be much smaller. Once an execution is carried out the state’s financial obligation to feed, house, and provide medical treatment for the convict ends.
- A large portion of the extra costs associated with the death penalty stem from the lengthy appeals process. Many states are in the process of attempting to limit the number of appeals an inmate can seek. This would eliminate those extra costs.

Innocence:

- In over 30 years of research, there has never been any proof that any factually innocent person has been executed.
- Liebman’s study that found a high sentence reversal rate can be interpreted to mean that the system works to catch errors and ensure that the innocent are not executed.

Race:

- When one controls for aggravating factors, there is no evidence that the race of the defendant contributes to death sentencing decisions.
- The race-of-victim effect can be explained in terms of the real differences that exist in interracial killings. For example, a murder committed during the course of a robbery is an aggravating factor in most states. Robbery-murders are much more likely to involve a black defendant/white victim (67%) than a white defendant/black victim (20%). Such real differences can account for much of the disparity in victim race in capital sentencing.

Thank you very much for your participation. I would greatly enjoy any feedback that you might have about the study. I am especially interested to know if you changed your mind about the death penalty and why (or why not). You can contact me at either of the following email addresses: dkennedykollar@jjay.cuny.edu or kennedy-kollar@adelphi.edu

Debriefing handout - Facts and information that support the abolition of the death penalty

Deterrence:

- The empirical evidence on the deterrent effect of capital punishment is not entirely clear. A number of studies [i.e. Thorsten Sellin's famous comparative study] have failed to find any evidence that executions prevent murders.
- To be an effective deterrent, a punishment must be **certain** and **swift**. The death penalty is neither.
- Some studies indicate that the death penalty may actually have an opposite, brutalizing effect.

Religion:

- The sixth commandment states: "Thou shall not kill."
- Most major religions officially oppose capital punishment.

Retribution:

- People do not always "get what they deserve", and it is not the state's job to see that they do.
- There can be no true retribution in a system that considers mitigation.
- We do not demand "equivalent retribution" for other crimes (i.e. we do not demand that rapists be raped or robbers be robbed, etc.), why should we demand it for murder?

Incapacitation:

- Of all crimes, murder has the lowest recidivism rate. It can be argued that robbers and car thieves pose a much greater threat to society as they are much more likely to recommit their crimes, yet we do not ask that they be permanently incapacitated.
- LWOP is a sufficient incapacitation, and "lifers" tend to behave better in prison than short-timers.

Cost:

- Capital prosecutions incur extra costs at all stages of the trial process: pretrial procedures take longer and are more extensive, hence more costly; trials are bifurcated and more complicated; prison stays on death row are lengthy and separated from the rest of the prison; and the appeals process is long.
- States spend large sums of taxpayer money on what amounts to very few executions.

Innocence:

- Since 1973, 123 people in 25 states have been released from death row upon evidence of their innocence. 7% of reversed capital cases are found not guilty upon retrial. This suggests the real possibility that an innocent person can fall through the cracks of the capital system.

Race:

- Blacks account for approximately 12-13% of the general population, yet they account for about 40% of the death row population.
- In one famous study (Baldus), defendants who killed whites were 4 times more likely to receive a death sentence than defendant who killed blacks.
- Since 1976, 80% of all executions have been for murdering a white victim, 14% have been for murdering a black victim.

Thank you very much for your participation. I would greatly enjoy any feedback that you might have about the study. I am especially interested to know if you changed your mind about the death penalty and why (or why not). You can contact me at either of the following email addresses: dkennedykollar@jjay.cuny.edu or kennedy-kollar@adelphi.edu

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