

# LINCOLN MEMORIAL UNIVERSITY LAW REVIEW

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VOLUME 7      FALL 2020      ISSUE 2

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## EFFECTIVE DEATH PENALTY ABOLITIONIST RHETORIC:

### A QUANTITATIVE ANALYSIS OF WHAT WORKS

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#### I. INTRODUCTION

This essay reports the findings of a study designed to measure the effectiveness of anti-death penalty rhetoric at decreasing support for the practice. Demographic factors, such as gender and political affiliation, were also analyzed for potential causal relationships. The surprising results of this novel study will help inform abolitionist advocates as to the best practices for promoting their message. Furthermore, the findings invite future research into death penalty attitudes and advocacy.

#### A. OVERVIEW

Depending on the phrasing of the question, Americans have generally expressed support for the death penalty, but there has been great variation as to how much.<sup>1</sup> Since 1939,

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<sup>1</sup> See Michael Conklin, *Painting a Deceptive Portrait: A Critical Review of Deadly Justice*, 22 NEW CRIM. L. REV. 223, 224–28 (2019) (providing examples of how different phrasings of survey questions result in vastly different levels of support for the death penalty and discussing how the standard Gallup Poll phrasing “Are you in favor of the death penalty for a person convicted of murder?” is likely to

there was only one brief period—in the 1960s—when opposition outweighed support.<sup>2</sup> At the other extreme, support was at 80% with opposition at 16% in 1995.<sup>3</sup> Currently, support is at 56% while opposition is at 42%.<sup>4</sup> However, in November 2019 Americans favored life imprisonment over the death penalty for the first time in that survey's thirty-four year history.<sup>5</sup> In the twenty-first century five states abolished the death penalty, and others have placed moratoriums on the practice.<sup>6</sup> The first twenty years of the twenty-first century have not only seen a decline from the rates of execution in the late 1990s, but also a declining trend in the twenty-first century itself.<sup>7</sup>

## B. METHODOLOGY

This survey was administered to 122 undergraduate and graduate students (hereinafter “participants”) in the fall of 2019. Four different versions of the survey were utilized. Each version asked the participant, “Which best describes your view of the death penalty?” A zero-to-ten Likert scale was provided, with zero labeled “strongly oppose” and ten labeled “strongly support.” Then, one of four randomly generated anti-death penalty prompts was presented and the participant was asked, “After reading the previous statement, which best describes your view of the death penalty?” The same zero-to-ten Likert

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understate support since it implies that a large number of people convicted of murder (which includes second-degree murder and involuntary manslaughter) would receive the death penalty).

<sup>2</sup> *Death Penalty*, GALLUP, <https://news.gallup.com/poll/1606/death-penalty.aspx> (last visited June 24, 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Jeffrey M. Jones, *Americans Now Support Life in Prison over Death Penalty*, GALLUP (Nov. 25, 2019), <https://news.gallup.com/poll/268514/americans-support-life-prison-death-penalty.aspx>.

<sup>6</sup> *Id.*

<sup>7</sup> *The Death Penalty in the U.S.: What the Data Says*, USA FACTS, <https://usafacts.org/reports/facts-in-focus/death-penalty-capital-punishment-data> (last visited June 24, 2020).

scale was used for this follow-up question. Therefore, the only difference between the four survey versions was that each participant was presented with only one of the following four prompts<sup>8</sup>:

**SAVE MONEY:**

Someone tells you the following, "We should abolish the death penalty because it would save money. On average, the death penalty costs \$1.12 million more than a life sentence per person. With 2,738 inmates on death row we could have saved \$3 billion by sentencing them to life in prison. That money could be better used elsewhere." You do some research and find that these statements are true.

**IRREVERSIBLE/TRUST GOVERNMENT:**

Someone tells you the following, "We should abolish the death penalty because we simply cannot trust the government with the power to kill citizens. Governments inevitably make mistakes, and executing an innocent person is irreversible."

**INTERNATIONAL:**

Someone tells you the following, "By maintaining the death penalty, America is associating itself with other countries that execute their citizens like Iran, Somalia, North Korea, and Syria. We should join the vast majority of the industrialized world and abolish the death penalty."

**RACISM:**

Someone tells you the following, "The death penalty in America is rooted in racism and is still implemented in a racist manner to this day. For example, a Black person who kills a white victim is far more likely to receive the death penalty than a white person who kills a Black victim. We cannot stand for such blatant racism in America; the death penalty must be

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<sup>8</sup> The bold titles provided here at the beginning of each prompt were not included in the original survey.

abolished." You do some research and find that the statistic this person presented is accurate.

### C. RESULTS

Overall, the prompts were effective at decreasing support for the death penalty. Participant support fell from an average of 6.8 before the prompt, to 5.9 after, on the zero-to-ten scale. However, the prompts were not equally effective. The save money prompt decreased support by 1.4, the racism prompt by 1.1, the international prompt by 0.8, and the irreversible/trust government prompt by 0.1. The irreversible/trust government prompt was not as effective on conservative<sup>9</sup> participants as predicted. Conservatives went from 6.9 to 6.6 after reading this prompt. The racism prompt was equally effective among white participants as it was non-white participants.<sup>10</sup>

Male participants stated more initial support for the death penalty than female participants. Females decreased support for the death penalty at a greater rate than males. Females went from 6.5 to 5.3 while males went from 7.0 to 6.4. The main differences in how participant gender related to the effectiveness of the prompts was that the racism prompt produced essentially no change in support from males and the irreversible/trust government prompt produced essentially no change among females.<sup>11</sup>

## II. DISCUSSION

### A. OVERALL

The result that participants were willing to decrease support for the death penalty after reading an abolitionist prompt is not surprising. The death penalty was a major issue

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<sup>9</sup> Defined as a 6-10 on a 0-10 Likert scale, with 0 defined as "extremely liberal" and 10 defined as "extremely conservative."

<sup>10</sup> The number of Black, Hispanic, and Asian participants for this version of the survey was not adequate to report findings of those three groups individually.

<sup>11</sup> Males went from 7.8 to 7.7 on the racism prompt, and females went from 5.7 to 5.8 on the irreversible/trust government prompt.

in past elections, especially in 1988,<sup>12</sup> but not in recent elections.<sup>13</sup> Furthermore, the death penalty is not as politically polarizing as other issues.<sup>14</sup> Therefore, survey participants may have been more open-minded about considering arguments that challenged their initial position on the issue.

#### IRREVERSIBLE/TRUST GOVERNMENT:

Perhaps the reason this prompt was the least effective and produced essentially no increase in support is that it did not provide any information the participant was not already aware of. Pointing out that the death penalty is irreversible and that it is the government who is entrusted to implement it may

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<sup>12</sup> It was a debate question about the death penalty that is referred to as "The debate answer that ruined [presidential candidate] Michael Dukakis in 1988." *The Debate Answer that Ruined Michael Dukakis in 1988*, NBC NEWS (Sept. 22, 2016), <https://www.youtube.com/watch?v=DQNVICr9nMo>.

<sup>13</sup> *Top Voting Issues in 2016 Election*, PEW RES. CTR. (July 7, 2016), <https://www.people-press.org/2016/07/07/4-top-voting-issues-in-2016-election/> (finding that neither capital punishment nor law enforcement made the top 14 issues).

<sup>14</sup> With the arguable exception of John Kerry, every Democratic presidential candidate since Michael Dukakis has supported the death penalty. See Nicky Woolf & Maria L. La Ganga, *Politics and the Death Penalty: for Clinton and Trump, Safest Stance May be Silence*, THE GUARDIAN (Aug. 17, 2016), <https://www.theguardian.com/world/2016/aug/17/death-penalty-election-2016-hillary-clinton-donald-trump> (Hillary Clinton); Steven Mufson & Mark Berman, *Obama Calls Death Penalty 'Deeply Troubling,' But His Position Hasn't Budged*, WASH. POST (Oct. 23, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/10/23/obama-calls-death-penalty-deeply-troubling-but-his-position-hasnt-budged/> (Barack Obama); John Nichols, *No Longer Pushing the Death Penalty*, NATION (July 27, 2004), <https://www.thenation.com/article/no-longer-pushing-death-penalty/> (John Kerry supported the death penalty only for terrorists); James Q. Wilson, *Gore, Bush, and Crime*, SLATE (Aug. 25, 2000), <https://slate.com/news-and-politics/2000/08/gore-bush-and-crime.html> (Al Gore); Ron Fournier, *The Time Bill Clinton and I Killed a Man*, ATLANTIC (May 28, 2015), <https://www.theatlantic.com/politics/archive/2015/05/the-time-bill-clinton-and-i-killed-a-man/460869/> (Bill Clinton).

have been so patently obvious that it was interpreted by the participants as trivial and therefore did not justify the altering of their initial position.

#### SAVE MONEY:

Few abolitionists promote cost savings as a main reason for abolishing the death penalty, although it is sometimes mentioned as an ancillary benefit.<sup>15</sup> Perhaps this is because these abolitionists believe that discussing money would serve to trivialize their humanitarian arguments against the death penalty. The fact that this prompt was the most effective should cause abolitionists to reconsider the relative value of emphasizing the cost savings from abolition. The abolitionists' hesitancy to use the cost savings argument may also be a result of how they do not personally view it as a persuasive argument for abolition. In a survey where multiple responses were allowed, only 2% of abolitionists said cost savings was one of the reasons for their position.<sup>16</sup>

#### INTERNATIONAL:

The moderate success of this prompt was somewhat of a surprise. This is essentially an argument *ad populum*, which is the fallacy of choosing a course of action just because others are doing it. However, participants may have been persuaded by this prompt, not because of the "if others are doing it, it must be right" fallacious logic, but rather based on a theory of considering the importance of other countries' perceptions of America. If most developed countries view the death penalty as abhorrent, America's reputation could be harmed by engaging

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<sup>15</sup> *Five Reasons to Abolish the Death Penalty*, AMNESTY INT'L (May 8, 2019), <https://www.amnesty.org.au/5-reasons-abolish-death-penalty/> (cost is not one of the five reasons provided); Mary Meehan, *10 Reasons to Oppose the Death Penalty*, AM. JESUIT REV. (Nov. 20, 1982), <https://www.americamagazine.org/politics-society/1982/11/20/10-reasons-oppose-death-penalty> (cost is not one of the ten reasons provided); *The Case Against the Death Penalty*, ACLU, <https://www.aclu.org/other/case-against-death-penalty> (last visited June 25, 2020) (cost savings is listed as a benefit to abolition but is not reinforced as much as other arguments).

<sup>16</sup> *Death Penalty*, *supra* note 2.

in the practice, and therefore, being associated with countries such as Iran, Somalia, North Korea, and Syria.

#### RACISM:

Not surprisingly, the damning statistics presented in the racism prompt were effective. More interesting is how this prompt was viewed based on the race and political affiliation of participants (discussed below).

#### B. GENDER

Gender is “one of the strongest and most persistent predictors” of death penalty support.<sup>17</sup> The results of this study are consistent with this principle; men expressed greater support than women for the death penalty both before and after the prompt.<sup>18</sup> But the role of gender was far from uniform in the different prompts. The cause behind the ineffectiveness of the irreversible/trust government prompt on females invites investigation. Perhaps this prompt was counterproductive with females because of its obvious nature. Participants likely knew that the survey was designed by a male researcher,<sup>19</sup> which may have caused this obvious prompt to be viewed by female participants as condescending “mansplaining.”<sup>20</sup>

#### C. POLITICAL AFFILIATION

It was originally hypothesized that the prompt emphasizing the dangers of government power would be highly effective on conservative respondents. Perhaps the reason this prompt was less effective on conservatives than liberals had more to do with which party happens to currently

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<sup>17</sup> John K. Cochran & Beth A. Sanders, *The Gender Gap in Death Penalty Support: An Exploratory Study*, 37 J. CRIM. JUST. 525, 525 (2009).

<sup>18</sup> Overall, males went from 7.0 to 6.3 and females went from 6.5 to 5.3.

<sup>19</sup> The survey was provided to the participants by the male researcher, who most of them knew.

<sup>20</sup> “Mansplaining” is a colloquialism for when a man explains something to a woman that she already knows, often in a condescending tone.

occupy the presidency rather than principled positions on limiting government power. Studies show that trust in the government is largely dependent on which political party is in power; and this is especially true for conservatives.<sup>21</sup> While the federal government executes very few people—only three in the last thirty years<sup>22</sup>—the average participant in this survey was unlikely to make the distinction between state and federal criminal justice systems. This result could also be affected by recent increases in political divisiveness,<sup>23</sup> which may result in more polarizing opinions on supporting government actions. It would be interesting to see this study reproduced during a Democratic president's administration and/or during a less-polarizing political climate.

As predicted, the save money prompt was highly effective on conservatives (from 7.9 to 4.9), and was unexpectedly even more effective on liberals (from 5.7 to 1.7).<sup>24</sup> Studies show that conservatives are significantly more likely than liberals to support budget cuts on a variety of government programs.<sup>25</sup> However, when the topic of law enforcement is isolated, liberals support decreased spending more than conservatives.<sup>26</sup>

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<sup>21</sup> Tom Jacobs, *Many Conservatives Only Trust Government When Their Party Is in Power*, PAC. STANDARD (Feb. 19, 2019), <https://psmag.com/news/many-conservatives-only-trust-government-when-their-party-is-in-power>.

<sup>22</sup> *Federal Death Penalty*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty> (last visited June 25, 2020).

<sup>23</sup> *Political Polarization in the American Public*, PEW RES. CTR. (June 12, 2014), <https://www.people-press.org/2014/06/12/political-polarization-in-the-american-public/>.

<sup>24</sup> Liberals are defined as a 0-4 on a 0-10 Likert scale, with 0 defined as “extremely liberal” and 10 defined as “extremely conservative.”

<sup>25</sup> John Gramlich, *Few Americans Support Cuts to Most Government Programs, Including Medicaid*, PEW RES. CTR. (May 26, 2017), <https://www.pewresearch.org/fact-tank/2017/05/26/few-americans-support-cuts-to-most-government-programs-including-medicaid/>.

<sup>26</sup> Philip Bump, *Republican Interest in Spending on Law Enforcement Surged 34 Percent from 2014 to 2016*, WASH. POST (Apr. 3, 2017), <https://www.washingtonpost.com/news/politics/wp/2017/04/03>

The racism prompt was significantly more effective on liberals (from 8.0 to 4.0) than conservatives (from 8.4 to 7.8). This finding is consistent with how political affiliation correlates to views on the death penalty<sup>27</sup> and views on racism and law enforcement.<sup>28</sup>

### III. CAUTIOUS OPTIMISM FOR ABOLITIONISTS

It is important to note that the findings of this study are the result of a “best case scenario” interaction. Meaning, participants were exposed to an anti-death penalty argument, but no counterargument was provided. In reality, people are exposed to arguments for and against the death penalty. A skilled, pro-death penalty advocate could easily present counterarguments to each of the prompts used in this study. The following are potential examples:

#### SAVE MONEY:

Sure, you can always save money through injustice; reducing life sentences to ten-year sentences would also save money; that doesn’t mean it’s a good idea. The large amount of money spent on death penalty appeals ensures that the process is fair.

#### IRREVERSIBLE/TRUST GOVERNMENT:

The irreversibility of the death penalty is an advantage; it ensures that the person never kills again. As demonstrated by Willie Horton, life sentences without the possibility of parole do

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/republican-interest-in-spending-on-law-enforcement-surged-34-percent-from-2014-to-2016/.

<sup>27</sup> Jeffrey M. Jones, *supra* note 5 (finding that 58% of Republicans and 19% of Democrats support the death penalty in 2019).

<sup>28</sup> *Racial Divide in Attitudes Towards the Police*, OPPORTUNITY AGENDA, <https://www.opportunityagenda.org/explore/resources-publications/new-sensibility/part-iv> (last visited June 25, 2020) (finding that 67% of Republicans and 16% of Democrats agree that “[t]hese days police in most cities treat blacks as fairly as they treat whites”).

not offer the same assurance.<sup>29</sup> Furthermore, capital sentences are less a function of trust in the government than trust in the citizens that make up juries. And if all the capital punishment safeguards are so untrustworthy, then where are all the instances of innocent people being executed?<sup>30</sup>

#### INTERNATIONAL:

What other countries choose to do is irrelevant to what is right to do in America. Furthermore, most other countries who abolished the death penalty did so over the objection of their citizens,<sup>31</sup> which would be inappropriate for a democracy such as the United States.

#### RACISM:

It is reductionist to selectively present certain racial disparities – while ignoring others – and then assert that racism

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<sup>29</sup> Michael Conklin, *A Stretch Too Far: Flaws in Comparing Slavery and the Death Penalty*, DENVER L. REV. F. (2019), <https://www.denverlawreview.org/dlr-online-article/a-stretch-too-far-flaws-in-comparing-slavery-and-the-death-penalty>. Despite being sentenced to life without parole, Willie Horton was given unsupervised furloughs from prison. During one of these furloughs he kidnapped a young couple, torturing the man and raping the woman. *Id.*

<sup>30</sup> Michael Conklin, *Innocent or Inconclusive? Analyzing Abolitionists' Claims About the Death Penalty*, NEB. L. REV. BULL. ED. (2018), <https://lawreview.unl.edu/Analyzing-Abolitionists-Claims-About-the-Death-Penalty>. The case of Cameron Todd Willingham is often cited as the best example of an innocent person who was executed in the modern era. While he was likely wrongfully convicted, his innocence is far from clear. *Id.*

<sup>31</sup> *An Evolving Debate: Do Voters Want to be Asked What They Think About the Death Penalty?*, THE ECONOMIST (Feb. 8, 2013), <https://www.economist.com/lexingtons-notebook/2013/02/08/an-evolving-debate> (“In every Western democracy that has scrapped the death penalty, politicians have acted against the wishes of a majority of voters . . .”).

has been proven. Other racial disparities exist that counter the narrative being promoted in the prompt.<sup>32</sup>

However, the argument could be made that advocating against the death penalty in a face-to-face conversation is even more effective than these survey results demonstrate. This is because in a face-to-face conversation, the advocate would be able to address any concerns or misunderstandings the other party may have. For example, it has been the experience of this author that lay people find it hard to believe that the death penalty is more expensive than life in prison. Some participants in this study may have been confused as to exactly what the save money prompt was trying to communicate. A face-to-face interaction could identify this misunderstanding and correct it. An example could come from the response, "Wait, you mean the death penalty is more costly up front, but it would be cheaper in the long run, right?" to which the abolitionist could explain, "Actually, no. . . ." Future research could assess how the presence of counterarguments and the ability to address misunderstandings would affect support.

#### IV. CONCLUSION

The findings discussed in this article provide some guidance for the manner in which abolitionist rhetoric affects average Americans. This serves to better inform abolitionists as to the best practices in persuading others. Furthermore, results based on demographic factors of the intended audience allow for the customization of the message to maximize effectiveness.

This study benefits abolitionists by not only discovering what type of rhetoric to use but also what type of rhetoric not to use. Based on the findings of this study, abolitionists are well advised not to mention things that their audience likely already knows, such as how the death penalty is irreversible. While the irreversibility of the death penalty may be a good reason to oppose it, people are already aware of this aspect, and therefore, explaining it will likely not change their mind and runs the risk of the advocate being perceived as condescending.

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<sup>32</sup> See Conklin, *supra* note 1, at 230 ("It would be a very peculiar racist system against blacks that resulted in whites being more likely to receive the death penalty, more likely to be executed after receiving the death penalty, executed at a faster rate, and to have these results more prominent in the South").

The results from the save money prompt serve as a powerful illustration that just because an abolitionist advocate does not personally find an argument persuasive, that does not mean that others will not be persuaded by it.

The abolitionist movement has made significant progress in the twenty-first century. The Supreme Court appointments of Neil Gorsuch and Brett Kavanaugh were impediments to finding the death penalty unconstitutional.<sup>33</sup> But through the continued advocacy of dedicated abolitionists, the decrease in support for the death penalty, and the related decrease in executions, the abolitionist movement can continue.

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<sup>33</sup> Gorsuch and Kavanaugh both ruled against the plaintiff in *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019), rejecting a death row inmate's claim that the death penalty, as applied in his case, violated the Eighth Amendment.