

***Expanding the Marshall Hypotheses: Missouri residents' beliefs regarding justice as a determinant of opinions on the death penalty.***

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*Abstract*

Previous research has supported Justice Thurgood Marshall's contention that emotionally-based desire for retribution can influence the individual to discount rational reasons to oppose the death penalty. However, little has been done to develop a concrete theory from which the Marshall Hypotheses are derived. Retribution is one of several popularly expressed goals of justice, just as the death penalty is one of several preferred penalties for murder. This study tests the theory that opinions regarding the appropriate penalty for murder are influenced by the individual's personal conception of justice. More specifically,

the preference for a particular penalty is guided by utilitarian assumptions about which penalty will best serve the most important goal of justice. Findings show that beliefs concerning the most important goal in achieving justice are a strong predictor of preference for the various penalty alternatives for murder. They also suggest that certain and meaningful punishment, short of execution, must be assured through the criminal justice system in order to gain strong majority support for abolition of the death penalty.

*Introduction*

There are few public issues over

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which Missourians are more highly divided than the contentious debate over capital punishment. Much of the research on the death penalty has investigated factors that influence a particular individual's stance on this issue. Several researchers have investigated the influence of desire for retribution on death penalty opinions suggested by Justice Thurgood Marshall in 1972. This study attempts to clarify the underlying theory behind Marshall's contention in an effort to explain preference for one of the several popular penalty options for murder. A thorough understanding of these dynamics can help guide effective policy decisions regarding penalties for murder that satisfy the greatest majority of Missouri citizens.

Marshall's personal abhorrence of the death penalty was such that it led

him to conclude that any "informed" citizen would be compelled to deem it unconstitutional by virtue of its inherent cruelty, impracticality and biased imposition (Furman v. Georgia 1972, p. 363). The theory implied in Marshall's opinion led to the development of what have been called The Marshall Hypotheses.

The Marshall Hypotheses are summarized by Bohm (1998) in three statements:

- 1) The public at large is not well informed regarding the implementation and effects of the death penalty.
- 2) An informed electorate will overwhelmingly conclude that the death penalty is immoral and unconstitutional. More specifically stated, support for the death penalty is a function of

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lack of knowledge regarding its implementation and effects.

3) If the underlying basis for supporting the death penalty is retribution, knowledge will have little effect on opinions.

*Literature Review*

Several researchers have tested the second Marshall Hypothesis under experimental conditions and found at least qualified support. Significant decreases in support for the death penalty were found among subjects exposed to data describing its effects and implementation (Sarat and Vidmar 1976; Vidmar and Dittenhoffer 1981; Bohm, Clark and Aveni 1991; Bohm, Vogel and Maisto 1993; Bohm and Vogel 1994; Wright, Bohm and Jamieson 1995). However, the validity of conclusions drawn from previous studies has been mitigated by methodological and

theoretical concerns over representativeness of the sample (Sarat and Vidmar 1976; Lord, Ross and Lepper 1979; Vidmar and Dittenhoffer 1981; Ellsworth and Ross 1983; Bohm et al. 1991; Wright et al. 1995), operational definitions of “knowledge” (Sarat and Vidmar 1976; Wright et al. 1995; Bohm 1998), the possibility of projected bias on the part of authority figures in the process of conveying knowledge (Bohm et al. 1991; Wright et al. 1995), abstract conceptions of the death penalty by subjects in that no executions were occurring at the time the data were collected (Ellsworth and Ross 1983; Sarat and Vidmar 1976; Vidmar and Dittenhoffer 1981; Lord et al. 1979) and a tendency for the effects of knowledge on opinion to decrease over time (Bohm et al. 1993). The erosion of the knowledge effect has been

explained by the third Marshall hypothesis. The resilience of emotional desire for retribution tends to overshadow rationality in determining opinions on the death penalty (Bohm 1998). The knowledge intervention that results in a temporary shift away from support for the death penalty has the weakest effect on subjects who base their death penalty sentiments on retribution (Bohm et al. 1993), supporting the third Marshall hypothesis.

Some researchers found that a knowledge intervention had the effect of polarizing opinion (Lord et al. 1979; Ellsworth and Ross 1983; Bohm, Clark and Aveni 1990; Bohm 1990), an effect attributed to “biased assimilation” of the knowledge (Ellsworth and Ross 1983; Lord et al. 1979). Regardless of whether respondents initially favored or opposed

the death penalty, a knowledge intervention tended to make respondents’ initial positions even stronger. This theory explains the polarizing effect of knowledge as a result of systematic acceptance of knowledge that supports one’s established opinion and dismissal of knowledge that contradicts it (Lord et al. 1979). It is intuitive that emotional reactions to an individual committing murder and the subsequent desire for retribution could be causal factors that influence whether a subject accepts or discounts a piece of knowledge. As applied to Marshall’s third hypothesis, the act of murder elicits strong emotions of sympathy toward the victim and anger toward the perpetrator in some people that can only be quelled through retribution directed at the convicted murderer. The death penalty, or support

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for it, is the response that tends to quell that anger. Bohm and Vogel (1994) use cognitive dissonance theory to explain why biased assimilation occurs. When retribution-based supporters of the death penalty are presented with evidence that the death penalty is a dysfunctional or an irrational response to murder, they are forced to deny or discount that knowledge to avoid the resulting dissonance invoked from either supporting an unjust social policy or abandoning the only satisfactory means of retribution for a heinous crime.

Strong emotional reaction to the crime of murder is a likely source of desire for retribution. But emotional reactions are subject to causal forces. They are likely to be derived from beliefs regarding the topic of the emotional reaction. Individual emotional reactions to murder are associated with a

belief system the individual has formed regarding murder and the appropriate societal reaction to murder. An area that should be explored is the belief system that determines whether an emotionally-based desire for retribution will influence the individual to discount knowledge presented supporting abolition of the death penalty.

The third Marshall hypothesis provides a clue to identifying the beliefs that ultimately effect objective consideration of the facts. Marshall stated that the effect of knowledge on death penalty opinion would be nullified if the subject's opinion is based on retribution. This suggests that death penalty opinions are influenced by some independent variable of which retribution is one alternative.

Warr and Stafford (1984) tested the relationship between opinions on the

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death penalty and those regarding the most important goal of punishment. They found that respondents who indicated retribution, or “making criminals pay for their crimes,” as the primary reason for incarceration were much more likely to support the death penalty. Results of this study are also subject to criticism of representativeness, since they are based on measurements taken from a systematic sample of the Seattle phone book, and abstract conceptions of the death penalty, since data were collected in the wake of the Furman moratorium. Retribution was conceptualized as a component of the relatively narrow construct of punishment. Death penalty opinions were measured using one questionnaire item with a dichotomous response set, asking respondents if they favor or oppose the death penalty.

This study expands the scope of the independent variable to the broader construct of justice, while using a variety of dependent variables with multiple response sets to measure death penalty opinions. The data were collected from a highly representative sample of Missouri residents in 1999, a time when executions in Missouri had been occurring for some time and were scheduled to occur in the future.

Previous research has addressed the complex semantics of retribution (Cottingham, 1979; Feinberg and Gross, 1975; Finckenauer, 1988; Packer, 1968; Radin 1980). In analyzing this literature, Bohm (1992) concluded that the various definitions fell into the two major categories “vindictive revenge” and “revenge-utilitarianism,” and that vindictive revenge better captured the emotionally-based sentiments of death

penalty proponents. Warr and Stafford (1984) operationally defined retribution as “making criminals pay for their crimes,” a definition more characteristic of Bohm’s (1992) “revenge-utilitarianism” typology. The instrument in this study uses the more vindictive, visceral phrase “making the perpetrator suffer” in describing retribution to better illicit the emotionally-based sentiments associated with support for the death penalty.

The study tests the theory that people’s opinions on the death penalty are influenced by their beliefs regarding the primary goal of justice. An individual’s preferred punishment for murder will tend to be the one that best facilitates what he or she believes is the primary goal of justice. From this theoretical framework, the following research hypotheses were derived.

Hypothesis 1: People who feel retribution is the most important goal of justice will be most likely to support the death penalty.

Hypothesis 2: People who feel retribution is the most important goal of justice will want to impose the death penalty on more convicted murderers.

Hypothesis 3: People who feel retribution is the most important goal of justice will report lower levels of influence on their death penalty opinions by rational reasons to oppose it.

Hypothesis 4: People who feel restitution is the most important goal of justice will be most likely to favor a sentence where the convicted murderer is required to compensate the victim’s family.

Hypothesis 5: People who feel incapacitation is the most important goal of justice will be least likely to favor a

parole option for convicted murderers.

Hypothesis 6: Opinions regarding which goal of justice is most important will be a statistically significant predictor of preference for the death penalty.

### *Methodology*

Data regarding opinions on the death penalty and the most important goal in achieving justice were collected through a telephone survey conducted by Southwest Missouri State University's Center for Social Sciences and Public Policy Research. The target population was adult residents residing in Missouri. A random-digit-dialing sample of Missouri households was called. Household members were then screened for age and residency eligibility and stratified by sex to insure a representative sample of males and

females. With a response rate of 62%, a total of 1,000 respondents completed interviews administered by trained university students using a computer-assisted telephone interviewing system between August 30 and October 13, 1999. Demographic distributions closely matched Census data.

This study addresses several weaknesses in previous research; non-representative samples, the absence of actual executions at the time data were collected, limited scope of the dependent and independent variables and a relatively benign operational definition of retribution. Although the sampling pool was not drawn from residents of the U.S., the study surveyed a highly representative sample of adult Missouri residents. Although much of Missouri is rural, it has two major urban areas, Kansas City and St. Louis, facilitating a

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good mix of rural (51.2%) and urban (48.8%) respondents and making it a suitable microcosm of the U.S. in several demographic characteristics including race, age, gender, level of urbanism and education. At the time the data were collected, Missouri had executed 40 persons in the past 10 years and was scheduled to execute several more in the coming years, facilitating a concrete conceptualization of the death penalty.

The survey script introduced the study as one designed to assess Missouri residents' opinions on the death penalty for the purpose of allowing state legislators to make better-informed decisions. The survey opened with several questions measuring support for various aspects of the death penalty. Respondents were also presented with five popular reasons to oppose the death

penalty and asked whether each reason affected their opinion of the death penalty a lot, some or not at all. The five items were presented as reasons to oppose the death penalty, not facts regarding the death penalty. These questions measuring death penalty opinions constituted the dependent variables. A question measuring which aspect of justice they thought was most important, together with several demographic variables found in previous research to be associated with death penalty opinions, constituted the independent variables.

The first five questions on the survey instrument were dependent variables measuring preference for various aspects of the death penalty. The first question asked for respondents' general view on the death penalty, whether they (1) strongly favored, (2)

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somewhat favored, (3) somewhat opposed or (4) strongly opposed it.

Second, respondents who stated they either strongly or somewhat favored the death penalty were asked if they favored the death penalty for (1) all, (2) most or (3) some convicted of murder. The third question asked respondents whether they preferred (1) life with 25 years before possibility of parole, (2) life without parole or (3) the death penalty for those convicted of first-degree murder. The fourth question asked respondents whether they preferred (1) life without parole plus restitution or (2) the death penalty for convicted murderers.

Restitution was defined as having the convicted murderer work in a prison setting to provide monetary compensation to the victim's family.

The fifth question asked respondents if their State Senator or Representative

voted to replace the death penalty statute with one mandating life with no possibility of parole, (1) would they be more likely to vote for that candidate, (2) would it not affect whether they voted for that candidate or (3) would they be less likely to vote for that candidate.

The sixth question was the primary independent variable, measuring what the respondent believed was the most important goal of achieving justice. Respondents were asked to choose which of the following they considered the most important goal in achieving justice; (1) making sure the accused person is actually guilty of the crime, (2) making sure the perpetrator doesn't repeat the crime, (3) compensating the victim's family for their emotional and material loss, or (4) making the perpetrator suffer as much or more than

the victim.

Questions seven through thirteen were the remaining dependent variables measuring concern for the major criticisms and support for two other aspects of the death penalty. The seventh question asked respondents whether they believed a judge in a first-degree murder case (1) should or (2) shouldn't have the power to impose the death penalty when the jury is unwilling to do so. Questions eight through twelve cited the five most commonly given reasons to oppose the death penalty and asked respondents whether each reason affected their own opinion (1) a lot, (2) some or (3) not at all. The five reasons were (1) some people executed are later found to be innocent, (2) the death penalty costs the taxpayers more than life in prison, (3) the death penalty is more often imposed on the poor and minorities, (4) in some

cases, the victim's family is against execution, and (5) some oppose the death penalty for moral or religious reasons. Question thirteen asked respondents whether they (1) would or (2) would not be willing to support a three-year delay of all scheduled executions in order to investigate the sentencing practices and effects of the death penalty.

The survey concluded with six demographic questions measuring ethnicity, voter registration, voting frequency, religious preference, income category and sex. These demographics have shown in previous research to be associated with death penalty opinions, and are used as independent control variables to isolate the effects of the primary independent variable, most important goal in achieving justice. Question fourteen asked respondents

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with which racial or ethnic category they most closely identified; (1) Euro-American, (2) African-American, (3) Hispanic-American, (4) Asian-American or (5) something else? Question fifteen asked if they were (1) registered or (2) not registered to vote. Of those registered, question sixteen asked respondents whether they voted (1) always, (2) often, (3) rarely or (4) never. Question seventeen asked with what religious denomination, if any, the respondent was affiliated. These responses were later categorized and recoded as (1) Protestant, (2) Catholic or (3) Other. Question eighteen asked in which annual household income category the respondent's family fell, (1) under \$20,000, (2) \$20,000 to \$40,000, (3) \$40,000 to \$75,000 or (4) over \$75,000. Finally, the respondent's sex, (1) female or (2) male, was recorded

before terminating the interview. A variable indicating whether the respondent lives in a (1) rural or (2) urban environment was constructed using zip code data provided by the commercial sample provider.

Since all the variables are measured at the nominal and ordinal level, hypotheses 1 through 5 are tested by crosstabulating the dependent death penalty opinion variables by the independent variable of most important goal in achieving justice. Level of significance is tested using Chi<sup>2</sup>.

Hypothesis 6 is tested with logistic regression models, using three of the death penalty opinions as dependent variables and opinion of the most important goal of justice, race, sex, urbanism, religion and income as independent predictor variables. Although only one of the chosen

dependent variables had a dichotomous response set, necessary for logistic regression analysis, the other two were easily recoded. The first model used the general death penalty opinion as dependent. Those who (1) strongly and (2) somewhat favored the death penalty were recoded to (1) favor, while those who (3) somewhat oppose and (4) strongly opposed the death penalty were recoded to (2) oppose. The second model used the question measuring preference for (1) life with 25 years before parole, (2) life without parole or (3) the death penalty as dependent. For this model, the first two categories were combined into (1) favor alternatives to the death penalty. Those favoring the death penalty were recoded to (2), leaving a dichotomous response set. The third model, using respondent's preference between (1) life without

parole plus restitution or (2) the death penalty as dependent, was dichotomous in its raw form.

The independent predictor variables in the logistic regression analysis were opinion of the most important goal in achieving justice, race, sex, income, urban or rural residence and religion. While income was measured as an ordinal level variable making it suitable for use as a predictor in regression, opinions of justice, race, sex, urban/rural and religion are all nominal variables and had to be converted to categorical variables. Race was converted to a (1) white / (2) non-white coding, while sex [(1) male/ (2) female] and (1) urban / (2) rural were already dichotomous response sets. Religion was coded as (protestant/catholic/other, producing three categorical variables. The primary

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independent variable, opinion regarding the most important goal of justice, had a four item response set, producing four categorical variables.

The logistic regression analysis used forward stepwise variable entry, where predictor variables with the most significant Wald values are entered first. The process continues until no more significant independent predictor variables are left. This type of analysis allows determination of the strongest predictors of the dependent variable, as well as predictions of the probability a given person will support the death penalty.

#### *Analysis*

Responses to the survey items measuring opinions on the death penalty were crosstabulated by the most important goal for achieving justice to

test the first five research hypotheses.

Hypothesis 1: People who feel retribution is the most important goal of justice will be most likely to support the death penalty.

Results presented in Table 1 strongly support hypothesis 1. Respondents who said retribution was the most important goal in achieving justice (retribution respondents) were more likely than the overall sample to either somewhat or strongly favor the death penalty (88.8% vs. 78.3% overall) and much more likely to strongly favor the death penalty (64.9% vs. 45.3% overall). None of the non-retribution groups had more than 44.4% of respondents saying they strongly favor the death penalty.

Hypothesis 1 is strongly supported when respondents are

Table 1  
In general, what is your view on the death penalty?

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
Strongly Favor	44.4%	34.9%	36.4%	64.9%	45.3%
Somewhat Favor	34.0%	35.4%	39.4%	23.9%	33.0%
Somewhat Opposed	10.6%	13.1%	15.2%	4.5%	10.3%
Strongly Opposed	10.9%	16.6%	9.1%	6.7%	11.3%

Chi<sup>2</sup> = 34.094 (sig = .000)

presented with alternatives to the death penalty. Table 2 shows that retribution respondents were much more likely to chose the death penalty over 25 years

before parole or life without parole.

Table 2  
Which of these penalties would you prefer for someone convicted of first-degree murder?

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
25 Years Before Parole	10.6%	8.5%	9.7%	7.6%	9.7%
Life With No Parole	43.4%	55.5%	58.1%	29.8%	44.1%
Death Penalty	46.1%	36.0%	32.3%	62.6%	46.2%

Chi<sup>2</sup> = 26.231 (sig = .000)

The same results are found when presented with the alternatives of the death penalty and life without parole plus restitution. Table 3 shows that retribution respondents were much more likely to choose the death penalty over

life without parole plus restitution.

Table 3  
Which of these penalties would you prefer for someone convicted of first-degree murder?

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
LWOP + Restitution	55.2%	63.0%	64.5%	35.2%	54.1%
Death Penalty	44.8%	37.0%	35.5%	64.8%	45.9%

Chi<sup>2</sup> = 24.741 (sig. = .000)

Hypothesis 1 is also confirmed when support for the death penalty is translated into likelihood of voting for a legislator who had voted to replace the death penalty with life without parole.

respondents were least likely to express support for a candidate replacing the death penalty with life without parole.

Table 4 shows that retribution

Table 4  
If your State Senator or Representative voted to replace the death penalty statute with one mandating a life sentence with no possibility of parole, would you be:

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
More likely to vote	20.8%	25.4%	37.1%	16.7%	21.7%
Would not affect vote	44.0%	46.2%	40.0%	37.1%	43.3%
Less likely to vote	35.2%	28.3%	22.9%	46.2%	35.0%

Chi<sup>2</sup> = 16.801 (Sig. = .010)

If support for the death penalty is expanded to include a preference for giving the judge in a murder trial the power to impose the death penalty when the jury is unwilling, hypothesis 1 is

again supported by the data. Table 5 shows that retribution respondents were much more likely than the other groups to favor giving the judge the power to override the jury and impose the death

penalty.

Table 5  
Do you believe the judge should have the power to impose the death penalty when the jury is unwilling to do so?

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
Yes	56.3%	58.4%	50.0%	81.4%	60.0%
No	43.7%	41.6%	50.0%	18.6%	40.0%

Chi<sup>2</sup> = 29.584 (sig. = .000)

The data in Table 6 provide limited support for hypothesis 1, in that retribution respondents were least likely to express support for a moratorium. Note, however, that the Chi<sup>2</sup> significance indicates that the differences between

the groups for this variable are not large enough to reject the null hypothesis for the population at the 95% level of confidence.

Table 6  
Would you be willing to support a three-year delay of all scheduled executions so that Missouri could investigate the sentencing practices and effects of the death penalty?

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
Yes	57.4%	58.0%	54.3%	45.3%	55.7%
No	42.6%	42.0%	45.7%	54.7%	44.3%

Chi<sup>2</sup> = 6.693 (Sig. = .082)

Hypothesis 2: People who feel retribution is the most important goal of justice will want to impose the death

penalty on more convicted murderers.

Hypothesis 2 is supported by the statistics summarized in Table 7.

Retribution respondents were much more likely to say they favor the death penalty for all persons convicted of murder and least likely to say only some persons convicted of murder.

Table 7  
Do you favor imposing the death penalty on:

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
All convicted	24.4%	27.1%	33.3%	47.1%	28.8%
Most convicted	38.5%	34.3%	25.9%	26.4%	35.4%
Only some convicted	37.1%	38.6%	40.7%	26.4%	35.8%

Chi<sup>2</sup> = 26.133 (sig. = .000)

Hypothesis 3: People who feel retribution is the most important goal of justice will report lower levels of influence on their death penalty opinions by rational reasons to oppose it.

likely to say that the argument that innocent people are executed did not affect their opinion at all and least likely to say it affected their opinion a lot.

Respondents were presented with five of the most commonly sited reasons to oppose the death penalty and asked how much that concern affected their own opinion. Hypothesis 3 is supported by the statistics summarized in Table 8, in that retribution respondents were most

Table 8  
 The first reason is that some people who are executed are later found to be innocent.  
 Does this reason affect your opinion:

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
A lot	48.3%	33.3%	55.6%	28.1%	42.9%
Some	36.6%	48.0%	30.6%	41.5%	39.2%
Not at all	15.1%	18.6%	13.9%	30.4%	17.9%

Chi<sup>2</sup> = 36.050 (sig. = .000)

The second reason given to oppose the death penalty was that it costs the taxpayers more money than life without parole. The data summarized in Table 9 show weak support for hypothesis 3. Although the retribution respondents were most likely to say this did not affect their opinion at all, they were also most likely to say it affected their opinion a lot. These results suggest that some characteristic of this reason supersedes the desire for retribution among some retribution respondents. Note that of the five reasons given for opposing the death penalty, this is the one that most directly affects the

personal interests of most respondents, in that it affects the amount of taxes he or she pays. If this interpretation is correct, it is ironic that an emotion supposedly strong enough to call for the death of another human being can be appeased by a few extra dollars in the pocket. Another possibility may be that many social conservatives, who are more likely to support the death penalty, are also fiscal conservatives, and their fiscal conservatism significantly mitigates their feelings about the death penalty as a moral punishment.

Table 9

Another reason is that imposing the death penalty costs the taxpayers more money than a life sentence.  
Does this concern affect your opinion:

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
A lot	20.0%	12.0%	8.8%	21.4%	18.3%
Some	24.1%	25.7%	44.1%	10.7%	23.2%
Not at all	55.9%	62.3%	47.1%	67.9%	58.5%

Chi<sup>2</sup> = 26.893 (sig. = .000)

Hypothesis 3 is not strongly supported by the data summarized in Table 10. Incapacitation respondents were most likely to say the argument that the death penalty is more often imposed on the poor and minorities affected their opinion not at all and least likely to say it affected their opinion a lot. Retribution respondents did,

however, have the second highest percent saying it did not affect their opinion at all and the second lowest percent saying it affected their opinion a lot. Both of the percentages for retribution respondents are within 3 points of the incapacitation respondent percentages. So these data do provide weak support for hypothesis 3.

Table 10

The death penalty is more often imposed on minorities and poor people.  
Does this concern affect your opinion:

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
A lot	36.5%	24.3%	34.3%	27.2%	32.8%
Some	26.7%	23.7%	22.9%	22.8%	25.4%
Not at all	36.8%	52.0%	42.9%	50.0%	41.8%

Chi<sup>2</sup> = 18.807 (sig. = .005)

Hypothesis 3 is supported by the

statistics summarized in Table 11.

Retribution respondents were most likely to say the argument that some victims' family members are against execution did not at all affect their

opinion and least likely to say it affected their opinion a lot.

Table 11  
In some cases, the victim's family is against executing the defendant.  
Does this concern affect your opinion:

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
A lot	22.2%	21.3%	27.8%	9.7%	20.5%
Some	29.3%	28.1%	38.9%	31.3%	29.7%
Not at all	48.5%	50.6%	33.3%	59.0%	49.8%

Chi<sup>2</sup> = 15.210 (sig. = .019)

Hypothesis 3 is supported by the data summarized in Table 12.

likely to say it affected their opinion not at all.

Retribution respondents were least likely to say moral or religious reasons affected their opinion a lot and most

Table 12  
And finally, some oppose the death penalty for moral or religious reasons.  
Does this concern affect your opinion:

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
A lot	22.6%	25.8%	22.2%	12.5%	21.7%
Some	26.5%	28.7%	30.6%	20.6%	26.2%
Not at all	50.9%	45.5%	47.2%	66.9%	52.0%

Chi<sup>2</sup> = 16.786 (sig. = .010)

Hypothesis 4: People who feel restitution is the most important goal of justice will be most likely to favor a sentence where the convicted murderer is required to compensate the victim's family.

Hypothesis 4 is supported by the statistics summarized in Table 13. Although the percent of restitution respondents favoring LWOP+ (64.5%) was significantly higher than the overall

percent, incapacitation respondents were almost as likely to choose that option (63.0%). These results are compatible with the overall theory, in that life without parole, regardless of whether there is a restitution requirement, serves the goal of incapacitation almost as well as the death penalty.

Table 13  
Which of these penalties would you prefer for someone convicted of first-degree murder?

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
LWOP + Restitution	55.2%	63.0%	64.5%	35.2%	54.1%
Death Penalty	44.8%	37.0%	35.5%	64.8%	45.9%

Chi<sup>2</sup> = 24.741 (sig. = .000)

Hypothesis 5: People who feel incapacitation is the most important goal of justice will be least likely to favor a parole option for convicted murderers.

The hypothesis that incapacitation respondents will be least

likely to favor a parole option is not supported by the data in Table 14. Although the bivariate Chi<sup>2</sup> was highly significant, there was little variation between groups in the percent that chose the parole option (univariate Chi<sup>2</sup> sig. >

.10). Incapacitation respondents did have the second lowest percent choosing the parole option, while retribution respondents were least likely. The modal response for incapacitation respondents was life without parole, which is highly incapacitating. So although

incapacitation respondents were the second least likely to favor parole, the difference was too small to reject the null hypothesis for Hypothesis 5 with an acceptable degree of confidence.

Table 14  
Which of these penalties would you prefer for someone convicted of first-degree murder?

	Certain of Guilt	Incapacitation	Restitution	Retribution	Total
25 years before parole	10.6%	8.5%	9.7%	7.6%	9.7%
Life with no parole	43.4%	55.5%	58.1%	29.8%	44.1%
Death penalty	46.1%	36.0%	32.3%	62.6%	46.2%

Chi<sup>2</sup> = 26.231 (sig. = .000)

Hypothesis 6: Opinions regarding which goal of justice is most important will be a statistically significant predictor of preference for the death penalty.

Hypothesis 6 is tested with three logistic regression models that use the independent variable opinions regarding the most important goal of justice, as well as five demographic variables, to

predict three dependent death penalty opinion variables. The independent variables are entered using the forward stepwise method.

The first dependent variable tested is the general death penalty question asking respondents whether they strongly favor, somewhat favor, somewhat oppose or strongly oppose the death penalty for convicted murderers.

The dependent variable was first recoded to a dichotomous response set, indicating whether respondents favor or oppose the death penalty. This model correctly predicts the dependent variable in 77.3% of the sample cases and has a model Chi<sup>2</sup> of 47.201 with 8 degrees of freedom (sig. = .000), suggesting a good fit. Table 15 shows the model coefficients, standard errors, Wald statistics, degrees of freedom and

associated significance. The Wald statistic tests the null hypothesis that the logistic regression coefficient is zero. Five of the six independent variables were significant predictors of this dependent variable. Income did not meet the significance criteria, so the null hypothesis that the Wald statistic for income is zero could not be rejected, and income was not entered into the model.

Table 15  
 Logistic Regression Model  
 General Death Penalty Opinion as Dependent  
 Favor Death Penalty (1)    Oppose Death Penalty (2)

Independent Variables	B	S.E.	Wald	df	Sig.
Race - White (1) Nonwhite (2)	.912	.226	16.334	1	.000
Sex - Female (1) Male (2)	-.363	.180	4.085	1	.043
Urban (1) Rural (2)	-.390	.182	4.572	1	.032
Religion Other	N/A	N/A	7.217	2	.027
Religion Protestant	-.285	.215	1.765	1	.184
Religion Catholic	.293	.240	1.492	1	.222
Justice Retribution	N/A	N/A	11.961	3	.008
Justice Assured Guilt	.828	.334	6.158	1	.013
Justice Incapacitation	1.198	.365	10.750	1	.001
Justice Restitution	1.327	.549	5.842	1	.016
Constant	-1.998	.628	10.120	1	.001

The race variable was the strongest predictor of whether a respondent favors or opposes the death penalty, as indicated by the highest Wald value and lowest associated significance. The positive coefficient means non-whites are more likely to oppose the death penalty.

The variable measuring most important goal of justice was the second strongest predictor of the dependent variable. Note that all four categorical variables for the justice variable have higher Wald statistics and lower associated significances than all but one of the remaining independent variables. The positive coefficients for assured guilt, incapacitation and restitution, indicate that respondents choosing these as the most important goal of justice tended to oppose the death penalty, while the negative coefficient for the

constant suggests that those who chose retribution tended to favor the death penalty.

Sex, urban/rural and one of the categorical religion variables were also significant predictors of support for the death penalty. The negative coefficients for sex and urban/rural indicate that males and rural residents were more likely to support the death penalty than females and urban residents. Negative coefficients for Protestants and the constant indicate that Protestants and persons with other religious preferences are more likely than Catholics, which has a positive coefficient, to favor the death penalty.

The results from the first logistic regression model strongly support hypothesis 6, in that each of the four opinions regarding the most important goal of justice is a strong and highly

significant (sig. < .017) predictor of whether a person will favor or oppose the death penalty.

The second logistic regression analysis models the dependent variable measuring preference for the death penalty over prison either with or without parole. This model correctly predicts the dependent variable in 61.6 % of the sample cases and has a model

Chi<sup>2</sup> of 77.128 with 8 degrees of freedom (sig. = .000), again suggesting a reasonably good fit to the data. As with the previous model, all independent variables except income met the significance criteria for entry. Table 16 shows the statistics for the model coefficients.

Table 16  
 Logistic Regression Model  
 Preference for Death Penalty Over Prison as Dependent  
 Favor Alternatives to D.P. (1) Favor Death Penalty (2)

Independent Variables	B	S.E.	Wald	df	Sig.
Race - White (1) Nonwhite (2)	-.679	.245	7.691	2	.006
Sex - Female (1) Male (2)	.571	.154	13.646	1	.000
Urban (1) Rural (2)	.415	.159	6.838	1	.009
Religion Other	N/A	N/A	16.286	1	.000
Religion Protestant	.284	.186	2.348	1	.125
Religion Catholic	-.512	.224	5.227	1	.022
Justice Retribution	N/A	N/A	28.668	3	.000
Justice Assured Guilt	-.836	.238	12.311	1	.000
Justice Incapacitation	-1.386	.285	23.604	1	.000
Justice Restitution	-1.842	.490	14.136	1	.000
Constant	-.041	.555	.005	1	.941

For this model, the independent variable most important goal of justice was the strongest predictor, as indicated by the high Wald values and low significance levels, followed by sex, religion, race and urbanism. The negative coefficients for assured guilt, incapacitation and restitution indicate that respondents who chose those goals of justice were more likely to choose one of the two prison alternatives than those who felt retribution was most important. The coefficients for race, sex, urban/rural and religion all indicate similar conclusions from the previous model, that non-whites, females, urban dwellers and Catholics are all less likely to prefer death over a life or extended prison sentence for convicted murderers. The signs of these coefficients are all the opposite from the first model because

support for the death penalty was a low value on the first model and a high value on this one.

The second regression model supports Hypothesis 6, in that opinion regarding the most important goal of justice was the strongest predictor of preference for the death penalty, stronger than several demographic variables all commonly found to be related to death penalty opinion.

The final logistic regression analysis models preference for the death penalty over life without parole plus restitution. The goodness of fit is similar to the previous model, correctly predicting 60.7% of the sample cases and exhibiting a model  $\chi^2$  of 58.612 (sig. = .000). Neither income nor religion had a Wald significance of less than .05, so neither was entered into the

model. Table 17 shows the statistics for the model coefficients.

Table 17  
Logistic Regression Model  
Preference for Death Penalty Over Life Without Parole Plus Restitution as Dependent  
Favor LWOP+ (1) Favor Death Penalty (2)

Independent Variables	B	S.E.	Wald	df	Sig.
Race - White (1) Nonwhite (2)	-.560	.241	5.400	1	.020
Sex - Female (1) Male (2)	.692	.154	20.300	1	.000
Urban (1) Rural (2)	.314	.158	3.972	1	.046
Justice Retribution	N/A	N/A	20.908	3	.000
Justice Assured Guilt	-.877	.242	13.116	1	.000
Justice Incapacitation	-1.257	.285	19.396	1	.000
Justice Restitution	-1.284	.470	7.475	1	.006
Constant	-.206	.523	.156	1	.693

For this model, sex was the strongest predictor, having the highest Wald value and the lowest associated significance. The justice variable had the second highest Wald value, indicating that it is a strong predictor of whether respondents chose the death penalty over life without parole plus restitution. The third strongest predictor was race, followed by urban/rural. The coefficient signs for this model are identical to

those of the previous model, again supporting the conclusion that white, male, rural-dwellers who consider retribution the most important goal of justice are more likely to prefer the death penalty over life without parole plus restitution.

All three logistic regression models have supported Hypothesis 6, suggesting that opinions regarding the most important goal of achieving justice

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are strong predictors of whether a person favors or opposes the death penalty, as well as their preference for popular alternatives to the death penalty. Further, the justice variable is a stronger predictor of death penalty opinions than several other demographic variables found in previous studies to be associated with death penalty opinions.

*Conclusions*

The data collected from residents of Missouri have shown strong support for the first three research hypotheses, which in turn support the third Marshall Hypothesis stating that persons who base their support for the death penalty on retribution will not be swayed by rational reasons to oppose it. Respondents who said that making the perpetrator suffer as much or more than the victim was the most important goal

of justice were more likely than other respondents to favor the death penalty, much more likely to strongly favor it, more likely to favor imposing it on all convicted murderers, more likely to favor it over the life sentence alternatives, less likely to say they would vote for a congressperson who had voted to replace the death penalty with life without parole, much more likely to favor giving judges the power to impose the death penalty when the jury is unwilling and least likely to favor a moratorium on executions. Finally, they were less likely than other groups to say that three of the five reasons to oppose the death penalty had any affect at all on their death penalty opinions.

Moderately strong support is found for the fourth hypothesis. Respondents who believe restitution is the most important goal of justice were

most likely to favor the LWOP+ sentencing option, which fits the theory well. However, respondents who believe incapacitation, making sure the victim doesn't repeat the crime, is the most important goal of justice were almost as likely as restitution respondents to choose the LWOP+ option. Since the added restitution component has little to do with incapacitation, it does not fit into the overall theoretical scheme. One possible interpretation is that incapacitation respondents may have construed the operational definition of incapacitation (making sure the person doesn't repeat the crime) as deterrence, perceiving the added requirement to work in prison to compensate the victim's family as a deterring factor. Some may have an image of prisoners lounging in their cells reading or watching TV all day and feel that a work

requirement would make the prospect of prison less appealing, thus deterring others from criminal activity. Another interpretation is that requiring a work component in prison would tend to foster a work ethic and provide skills applicable to employment outside the prison, thus deterring them from future criminal activity should they ever be paroled. Regardless of the interpretation, LWOP+ serves the goals of both restitution and incapacitation in achieving justice. High levels of preference for LWOP+ among restitution and incapacitation respondents supports hypothesis four and the general theory that people's opinions on the death penalty are guided by whether it serves their own belief system regarding justice.

Hypothesis 5 was not supported by the data. Regardless of which goal of

justice respondents felt was most important, few chose the parole option for convicted murderers. The four groups exhibited small and statistically insignificant differences in preference for the parole option. This suggests that people don't really think of incapacitation as a goal of justice, though they may considerate it a goal of the criminal justice system. Unlike making sure the accused is guilty, compensating the victims and making the perpetrator suffer as much or more than the victim, incapacitation isn't concerned with the direct relationship between the perpetrator and victim of a given crime. If this was the context of justice most often assumed by respondents, it would explain why incapacitation as a goal of justice is not a good predictor of preference for a particular punishment for murder.

Hypothesis 6 was strongly supported by the data. The three logistic regression analyses modeling the three primary measures of support for the death penalty all showed the categorical variables for the primary goals for achieving justice were highly significant predictors of the dependent variables. Further, they were often stronger predictors than the demographic variables commonly associated with death penalty opinions.

### *Discussion*

The findings of this study are significant in that they support the third Marshall Hypothesis. But more importantly, they support a broad theory upon which this hypothesis is based, a theory that can be expanded into other hypotheses supported by the data and offering a more thorough explanation of

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a given person's preference for one of the various penalty options for murder.

The findings are also significant in that the demographic variables found in the past to be associated with opinions on the death penalty have personal utilitarian causal explanations, with the possible exception of sex, since women tend more to oppose capital punishment, yet are less likely to be executed when convicted of murder. The older, wealthier, white, rural and religious members of society who have traditionally supported the death penalty are less likely to find themselves in a position to be subject to it or its inherent injustice. These demographic groups have less to lose in supporting the death penalty. This study suggests that the cognitive dynamics that determine a given individual's opinion of the death penalty are based on more than mere

self-interest. It suggests that they are also based on the individual's personal concept of justice and the judicial policies they deem will best meet those implied goals.

Statistically significant association found between demographic variables and the justice variable suggests that constructs of justice may be somewhat dependent on social situation. This leads to the question of whether a spurious or intervening relationship exists between demographic characteristics, opinions of justice and opinions on the death penalty. Does social situation have a causal affect on both opinions of justice and opinions on the death penalty? Or does social situation affect opinions of justice, which in turn affect opinions on the death penalty?

This study found that one

hypothesized goal, incapacitation, did not seem to fit well into the theoretical frame, since it addresses potential future criminal acts rather than the relationship between the perpetrator and victim of a documented crime. Further research is needed to refine the construct of justice into an exhaustive, mutually exclusive set of components. Refining the response set for the justice variable may result in even stronger measures of association with death penalty opinions.

This study found evidence supporting the theory that the individual's belief regarding the most important goal of justice influences that person's opinions on the death penalty. The particular death penalty opinion professed tended to facilitate the goal of justice each respondent thought was most important. But the overall theory upon which these hypotheses were

derived implies that the other goals of justice that the individual deems of secondary or tertiary importance may also have a contributing affect. This explains why the measures of association between most important goal of justice and opinions on the death penalty were not particularly strong, as well as why a large percentage of survey respondents (43%) choose the somewhat opposed or somewhat in favor response alternatives for the general opinion question.

Warr and Stafford (1984) also concluded that priorities of the various goals of punishment explained death penalty opinions much more thoroughly than just the primary goal. This, they reasoned, was why, although respondents reporting retribution as the primary goal of punishment were the strongest supporters of capital

punishment, a significant proportion of respondents reporting other primary goals of punishment also supported the death penalty. These conclusions, together with data from this study, suggest a need for policies that facilitate all of the primary goals of justice simultaneously. The problem is that sentencing policies fully facilitating each goal of punishment, or justice, are diverse and often incompatible.

Since analysis of death penalty opinion in this paper is oriented around the concept of justice, Equity Theory (Walster, Walster & Berscheid 1978) seems a relevant theoretical framework on which to base policy implications. Justice is the state of equilibrium that is disrupted when the crime of murder is committed. Retribution is the reaction that, to varying degrees, reestablishes equilibrium by forcing the same fate on

the murderer suffered by the victim. For many, a substantial or terminal prison sentence with a possible restitution component constitutes adequate retribution, while others require execution to reestablish the justice equilibrium. The most commonly reported concerns of the death penalty are based on inherent conviction errors known to occur, to which the poor and minorities are more vulnerable. This situation results in the greatest imbalance in the justice equilibrium, in that not only do two innocent persons die, a guilty person gets away with murder. Acquittal errors, from which the wealthy and ethnic majority defendants are more likely to benefit, also exacerbate the imbalance in the justice equilibrium. This analysis suggests policy implications regardless of whether society accepts or rejects the

death penalty as a legitimate sanction for murder.

The data from this study suggest that a relatively small percentage of Missourians are strongly opposed to the death penalty (11.5%), either because it is inherently wrong or because it has not or cannot be applied fairly and without error. They also suggest that most of the variance in death penalty opinions is not over whether murderers should be executed, but which murderers or under what circumstances murderers should be executed. For the data collected in this study, level of general support for the death penalty (FavOpp) and the extent to which it should be applied (FavWho) exhibit a Spearman's Rho correlation of .494 (sig. = .000). Sixty-six percent of Warr and Stafford's (1984) sample cited retribution as at least one of the top three goals of punishment. Their conclusions

and others' (Ellsworth and Gross 1994) suggest that at least some desire for retribution is present in most people, especially for particularly heinous murders where guilt is almost certain. If this is true, the strong effect of desire for retribution on preference for the death penalty may make popular support for total abolition a formidable goal.

The high proportion of marginal opinions (43.2%) for the death penalty, either somewhat in favor or somewhat opposed, suggests a conditional opinion for many respondents. For the less heinous crimes, or where guilt is questionable, a less severe form of retribution may be acceptable for most, such as life or an extensive prison sentence. The literature explores a wide variety of factors that affect death penalty opinions. Ellsworth and Gross (1994) found that differences in

individual opinion regarding if and when the death penalty should be applied to a given case are largely an artifact of how severe, atrocious and salient the crime and mitigating circumstances regarding the defendant's age, sex and mental state. If the death penalty is to be an acceptable form of punishment, a crucial policy goal is to promote a consensus on exactly how heinous the crime must be, how strong the evidence must be and what mitigating circumstances justify a lesser punishment.

The most common reasons to oppose the death penalty are conviction errors and disproportional imposition on the poor and minorities. Although conviction errors cannot be totally eliminated, Missouri must be willing to devote considerably more resources to lower income murder defendants and provide extensive checks within the

criminal justice system to at least greatly reduce conviction errors, since these tend to cause the greatest disruption in the justice equilibrium. Another strategy for reducing the class disparity in imposition would be to devote more resources to prosecuting the wealthier murder defendants who can afford a "dream team" of highly competent defense attorneys. Efforts to increase the proportion of ethnic minorities serving as judges, jurors and prosecutors in murder cases might reduce the racial disparity found in death penalty imposition. The crucial question is whether Missouri residents are willing to expend the considerable amount of additional resources needed to implement the death penalty fairly and with minimal conviction error.

If the death penalty is to be abolished, adequate provisions must be

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put in place to insure the justice equilibrium is reestablished, at least for most. This requires a criminal justice system that insures what most would consider a meaningful punishment for the crime of murder. When asked for a preference, over half of the subjects in this study chose life without parole or life without parole plus restitution over the death penalty. This suggests that the justice equilibrium can be established with less than a death sentence for the majority of Missourians. There is evidence that verifying the certainty of a life sentence can sway persons otherwise committed to the death penalty.

Bowers (1993) concluded that jurors were less likely to favor a death sentence if they were certain the alternative would be life in prison, especially if that sentence included a restitution component for the victim's

family. Bowers negatively correlates the general public's knowledge of minimum sentencing requirements for murder with support for the death penalty. He also cites this as the reason why opinion surveys, as was found in this study, often show a dramatic drop in death penalty support when respondents are presented with alternatives that stipulate a harsh sentence such as life without parole or this option plus some form of restitution.

Thurgood Marshall's opinion in Furman vs. Georgia spelled out both why most people want the death penalty (retribution) and why they oppose it (knowledge regarding the imposition and effects of the death penalty). The death penalty cannot be totally abolished nor universally applied to all convicted of murder without detracting from one or more of the popular goals of justice. No social policy or set of death penalty

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statutes will totally meet the desire for retribution without serious miscarriages of justice. Nor will any scheme provide for complete assurance of guilt and fairness of sentence without forsaking to some degree retribution. If Missouri is to have the death penalty, public policy must provide for fair, unbiased determination of guilt, allowing retribution to be exacted only on the most malicious and culpable, while minimizing the likelihood of executing the innocent and less culpable. If Missouri is to abolish the death penalty, the criminal justice system must be structured to insure convicted murderers stay in prison unless sufficient evidence for acquittal is found.

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