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# Death Qualification and Prejudice: The Effect of Implicit Racism, Sexism, and Homophobia on Capital Defendants' Right to Due Process<sup>†</sup>

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**Two hundred venirepersons from the 12th Judicial Circuit in Bradenton, Florida completed the following measures: (1) one question that measured their level of support for the death penalty; (2) one question that categorized their death-qualification status; (3) 23 questions that measured their attitudes toward the death penalty (ATDP); (4) 22 questions that assessed their attitudes toward women (ATW); (5) 25 questions that measured their level of homophobia (H); (6) seven questions that assessed their level of modern racism (MR); (7) eight questions that measured their level of modern sexism (MS); and (8) standard demographic questions. Results indicated that as death-penalty support increased participants exhibited more positive attitudes toward the death penalty, more negative attitudes toward women, and higher levels of homophobia, modern racism, and modern sexism. Findings also suggested that death-qualified venirepersons exhibited more positive attitudes toward the death penalty and higher levels of homophobia, modern racism, and modern sexism. Finally, more positive attitudes toward the death penalty were correlated with more negative attitudes toward women and higher levels of homophobia, modern racism, and modern sexism. Legal implications are discussed. Copyright © 2007 John Wiley & Sons, Ltd.**

## INTRODUCTION

In *Furman v. Georgia* (1972), the U.S. Supreme Court ruled that the death penalty was arbitrarily and capriciously applied. In 1976, the U.S. Supreme Court reinstated

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the death penalty, instituting a policy of “guided discretion” in order to enhance the fairness of the ultimate punishment (*Gregg v. Georgia*, 1976).

In spite of the court’s efforts, *Gregg* (1976) did not have the intended effect. Social scientists continue to conclude that men are significantly more likely to receive the death penalty than women (Haney, 2005). Similar research has also found that Black defendants are significantly more likely to receive the death penalty when they are convicted of murdering someone who is White than someone of their own ethnic background (Haney, 2005). Previous research has also suggested that defendants who are gay face considerable hostility in the legal system (Haney, 2005). Although it is reasonable to conclude that prejudice (i.e. a hostile or negative attitude toward a distinguishable group of people based solely on their membership of that group; Aronson, Wilson, & Akert, 2005) plays a salient role in juror decision-making, very little empirical research has directly examined the impact that such preexisting beliefs have on various aspects of capital cases.

One individual-difference variable that may correlate with prejudice is death-qualification status. During the process of death qualification, prospective jurors are questioned regarding their beliefs about capital punishment. This process serves to eliminate jurors whose attitudes toward the death penalty would render them unable to be fair and impartial in deciding the fate of a defendant.

The current standard for death qualification is the *Witt* standard. In *Wainwright v. Witt* (1985), the Court ruled that if a potential juror feels so strongly about the death penalty that [his/her] belief would “prevent or substantially impair the performance of his duties as a juror, it is grounds for dismissal for cause” (p. 852). In order to sit on a capital jury, a person must be willing to consider both legal penalties (i.e. death or life in prison without the possibility of parole) as appropriate forms of punishment. Jurors who “pass” the aforementioned standard are deemed “death qualified” and are eligible for capital jury service; jurors who “fail” the aforementioned standard are deemed “excludable” and are barred from hearing a death penalty case.

Social scientists have discovered that death-qualified jurors are distinguishable from their excludable counterparts in four key ways: First, death-qualified jurors are demographically unique. When compared with excludables, they are more likely to be male, Caucasian, moderately well educated, politically conservative, Catholic or Protestant, and middle-class (Butler, 2007a, 2007b; Butler & Moran, 2007a, 2007b; Butler & Wasserman, 2006; Dillehay & Sandys, 1996; Fitzgerald & Ellsworth, 1984; Hans, 1986; Moran & Comfort, 1986).

Second, death-qualified jurors are dispositionally unique. When compared with excludables, they are more likely to have a high belief in a just world (i.e. feel the world is a fair and just place), espouse legal authoritarian beliefs (i.e. believe the rights of the government should supercede the rights of the individual), exhibit an internal locus of control (i.e. feel that internal factors control the events in their lives), and have a low need for cognition (i.e. lack the tendency to engage in and enjoy effortful cognitive activity) (Butler & Moran, 2007a, 2007b).

Third, death-qualified jurors are attitudinally unique. When compared with excludables, they are more likely to weigh aggravating circumstances (i.e. arguments for death) more heavily than mitigating circumstances (i.e. arguments for life) (Butler & Moran, 2002, 2007), evaluate ambiguous expert scientific testimony more favorably (Butler & Moran, 2007b), be skeptical of defenses involving mental illness (including the insanity defense) (Butler & Wasserman, 2006; Cutler, Moran, &

Narby, 1992; Ellsworth, Bukaty, Cowan, & Thompson, 1984), and are more susceptible to the pretrial publicity that inevitably surrounds capital cases (Butler, 2007b). Finally, death-qualified jurors are more likely to believe in the infallibility of the criminal justice process and less likely to agree that even the worst criminals should be considered for mercy (Butler & Moran, 2002; Butler & Wasserman, 2006; Cowan, Thompson, & Ellsworth, 1984; Fitzgerald & Ellsworth, 1984; Haney, 1984a, 1984b; Haney, Hurtado, & Vega, 1994; Moran & Comfort, 1986; Robinson, 1993; Thompson, Cowan, Ellsworth, & Harrington, 1984).

Fourth, death-qualified jurors are behaviorally unique with respect to their decision-making processes. When compared with excludables, they are more likely to find capital defendants guilty as well as sentence them to death (Butler, 2007a, 2007b; Butler & Moran, 2002, 2007a, 2007b; Butler & Wasserman, 2006; Moran & Comfort, 1986). We have seen this pro-conviction, pro-death bias in death-qualified jurors' evaluations of both adult and juvenile defendants (Butler, 2007a).

Since death-qualified jurors tend to have a low need for cognition and low need for cognition has been correlated with tendency to engage in cognitive shortcuts, it logically follows that death-qualified participants will be more likely to be prejudiced (Butler and Moran, 2007b). However, the relationship between death-qualification status and prejudice has yet to be empirically examined.

The purpose of the current study is to correlate death-qualification status with attitudes toward the death penalty, attitudes toward women, homophobia, modern racism, and modern sexism. Based on the findings of similar studies, it is hypothesized that participants with higher levels of death-penalty support will be more likely to exhibit the following: (1) more positive attitudes toward the death penalty; (2) more negative attitudes toward women; (3) higher levels of homophobia; (4) higher levels of modern racism; and (5) higher levels of modern sexism. It is also hypothesized that death-qualified venirepersons, when compared with excludables, will be more likely to exhibit the following: (1) more positive attitudes toward the death penalty; (2) more negative attitudes toward women; (3) higher levels of homophobia; (4) higher levels of modern racism; and (5) higher levels of modern sexism. Finally, it is hypothesized that higher level of support for the death penalty will be correlated with more negative attitudes toward women and higher levels of homophobia, modern racism, and modern sexism.

## METHOD

### Participants

Participants consisted of 200 venirepersons who had been called for jury duty at the 12th Judicial Circuit in Bradenton, Florida. Fifty-nine percent of participants were women; 41% were men. The median age was 55; the median income was \$65,000. The ethnic origin of the sample was as follows: 5% were African-American; 88% were Caucasian; 3% were Hispanic; and 4% were of an ethnic origin other than what was specified on the questionnaire. Less than one percent of respondents had no high school education; two percent had some high school education; 14% had completed high school; 35% had some college or junior college; 31% had a college degree;

and 17% had a post-graduate or professional degree. Twenty-five percent of jurors had served on a jury before. A comparison revealed that the sample closely resembled the demographic breakdown of the 12th Judicial Circuit; consequently, representativeness does not appear to be a pertinent issue.

### **Level of Support for the Death Penalty**

First, venirepersons specified their level of support for the death penalty. Participants were asked to circle the statement that they agreed with most: (1) The death penalty is never an appropriate punishment for the crime of first-degree murder; (2) I am opposed to the death penalty, but would consider it under certain circumstances for the crime of first-degree murder; (3) I favor the death penalty, but would not consider it under certain circumstances for the crime of first-degree murder; and (4) The death penalty is the only appropriate punishment for the crime of first-degree murder.

### **Death-Qualification Status**

Venirepersons were then asked to indicate whether they felt so strongly about the death penalty (either for or against it) that their views would prevent or substantially impair the performance of their duties as a juror in a capital case. Participants who answered “No” to the aforementioned question were classified as death qualified; those who answered “Yes” were classified as excludable.

### **Attitudes Toward the Death Penalty**

Twenty-three questions that measured their attitudes toward the death penalty (ATDP) were included in the survey. Items were measured on a five-point Likert scale ranging from 1 = strongly disagree to 5 = strongly agree (Hingula, unpublished honors thesis). Two examples of items contained in the ATDP are “A judge should have the right to sentence the defendant to death, even if the jury has recommended life in prison” and “People on death row are permitted to appeal their sentence too often.”

### **Attitudes Toward Women**

Twenty-two questions that assessed participants’ attitudes toward women (ATW) were included in the survey. Two examples of items contained in the ATW are “It sounds worse when a woman swears than when a man does” and “There should be more female leaders in jobs in the public sector (e.g., politics).” Items were measured on a six-point Likert scale ranging from 1 = strongly disagree to 6 = strongly agree (Spence & Helmreich, 1978).

## Homophobia

Twenty-five questions that measured venirepersons' levels of homophobia (H) were measured on a five-point Likert scale ranging from 1 = strongly disagree to 5 = strongly agree (Wright, Adams, & Bernat, 1999). Two examples of items contained in the H are "Gay people make me nervous" and "Gay people deserve what they get."

## Modern Racism

Seven questions that assessed participants' levels of modern racism (MR) were measured on a five-point Likert scale ranging from 1 = strongly disagree to 5 = strongly agree (Swim, Aikin, Hall, & Hunter, 1995). Two examples of items contained in the MR are "Discrimination against blacks is no longer a problem in the United States" and "It is easy to understand the anger of black people in America." Previous research has found the MR to have a high level of internal reliability ( $\alpha = .85$ ) (Swim et al., 1995).

## Modern Sexism

Eight questions that measured venirepersons' levels of modern sexism (MS) were measured on a five-point Likert scale ranging from 1 = strongly disagree to 5 = strongly agree (Swim et al., 1995). Two examples of items contained in the MS are "Discrimination against women is no longer a problem in the United States" and "Women often miss out on good jobs due to sexual discrimination." Previous research has found the MR to have a high level of internal reliability ( $\alpha = .84$ ) (Swim et al., 1995).

## Procedure

Permission to collect data at the courthouse was obtained from the Director of the Jury Pool, Marlene Moran, under the assumption she have the opportunity to review the proposal before the research was undertaken. After the proposal was approved, the experimenter collected data from June to October of 2006. Volunteers were solicited from an area designated for prospective jurors who were waiting to be called randomly and assigned to particular cases.

Prior to their participation, venirepersons read an informed consent form, which described the nature of the study, ensured that their participation was completely voluntary and anonymous, and reiterated that they would not receive compensation for their participation. Venirepersons were also given a contact number in case they were interested in the final results of the study once the data were collected and analyzed.

Participants completed the following booklet of measures: (1) one question that measured their level of support for the death penalty; (2) one question that categorized their death-qualification status; (3) 23 questions that measured their

attitudes toward the death penalty; (4) 22 questions that assessed their attitudes toward women; (5) 25 questions that measured their level of homophobia; (6) seven questions that assessed their level of modern racism; (7) eight questions that measured their level of modern sexism; and (8) standard demographic questions.

## RESULTS

### Level of Support for the Death Penalty

Seven percent of participants felt that the death penalty is never an appropriate punishment for the crime of first-degree murder; 32% opposed to the death penalty, but would consider it under certain circumstances for the crime of first-degree murder; 43% favored the death penalty, but would not consider it under certain circumstances for the crime of first-degree murder; and 18% of venirepersons felt that the death penalty is the only appropriate punishment for the crime of first-degree murder.

### Death-Qualification Status

Twenty percent of participants felt so strongly about the death penalty that they said their views would prevent or substantially impair the performance of their duties as a juror in a capital case. Consequently, they were classified as excludable.

### Attitudes Toward the Death Penalty

Level of support for the death penalty was significantly related to attitudes toward the death penalty ( $F(69, 528) = 4.45, p < .001$ ). Specifically, as death-penalty support increased, jurors were more likely to think that a judge should have the right to sentence the defendant to death, even if the jury has recommended life in prison ( $F(3, 196) = 11.76, p < .001$ ), more likely to feel that people on death row are permitted to appeal their sentence too often ( $F(3, 196) = 13.68, p < .001$ ), less likely to believe that if there is any doubt about a defendant's guilt, he or she should not be executed ( $F(3, 196) = 5.72, p = .001$ ), less likely to feel that if a defendant on death row wants a DNA test of evidence, the state should automatically grant it ( $F(3, 196) = 7.72, p < .001$ ), more likely to feel that people remain on death row too long ( $F(3, 196) = 17.77, p < .001$ ), less likely to feel that it is wrong to sentence a mentally retarded defendant to death ( $F(3, 196) = 10.89, p < .001$ ), more likely to feel that children over 14 years should be able to receive the death sentence if they commit murder ( $F(3, 196) = 16.00, p < .001$ ), more likely to believe that those sentenced to life in prison often get out on parole ( $F(3, 196) = 2.89, p = .04$ ), more likely to believe that those who spend life in prison have too many luxuries (e.g. TV, exercise equipment, etc.) ( $F(3, 196) = 6.78, p < .001$ ), more likely to feel that severe actions deserve equally severe punishments ( $F(3, 196) = 7.60, p < .001$ ), less likely to believe that the government does not have the right to sentence people to death ( $F(3,$

196) = 21.63,  $p < .001$ ), and less likely to oppose the execution of women who are pregnant ( $F(3, 196) = 7.79$ ,  $p < .001$ ).

Venirepersons who exhibited a higher level of support for the death penalty were also less likely to feel that no civilized society permits capital punishment ( $F(3, 196) = 43.24$ ,  $p < .001$ ), more likely to believe that it is necessary to permit the death penalty in order to reduce the murder rate ( $F(3, 196) = 13.14$ ,  $p < .001$ ), more likely to believe that the possibility of being executed serves as a deterrent against committing violent crimes ( $F(3, 196) = 11.03$ ,  $p < .001$ ), less likely to feel that laws that permit the death penalty devalue the worth of every human life ( $F(3, 196) = 30.03$ ,  $p < .001$ ), more likely to feel that the death penalty is acceptable as a last resort ( $F(3, 196) = 10.31$ ,  $p < .001$ ), less likely to feel that a vote for the death penalty in some cases may be due to discrimination against a defendant who is a minority ( $F(3, 196) = 16.57$ ,  $p < .001$ ), less likely to feel that laws permitting the death penalty use violence to punish violence ( $F(3, 196) = 15.85$ ,  $p < .001$ ), and more likely to believe that the only way to control some potential crime is to enforce the death penalty ( $F(3, 196) = 17.10$ ,  $p < .001$ ).

Death-qualification status was significantly related to attitudes toward the death penalty ( $F(23, 176) = 3.99$ ,  $p < .001$ ). Specifically, death-qualified jurors were less likely to feel that if a defendant on death row wants a DNA test of evidence, the state should automatically grant it ( $F(1, 198) = 6.35$ ,  $p = .01$ ), more likely to feel that people remain on death row too long ( $F(1, 198) = 6.67$ ,  $p = .01$ ), less likely to feel that it is wrong to sentence a mentally retarded defendant to death ( $F(1, 198) = 8.86$ ,  $p = .003$ ), more likely to feel that children over 14 years should be able to receive the death sentence if they commit murder ( $F(1, 198) = 5.39$ ,  $p = .02$ ), less likely to believe that the government does not have the right to sentence people to death ( $F(1, 198) = 10.08$ ,  $p = .002$ ), equally more likely to believe that severe actions deserve equally severe punishments ( $F(1, 198) = 4.83$ ,  $p = .03$ ), less likely to feel that no civilized society permits capital punishment ( $F(1, 198) = 31.88$ ,  $p < .001$ ), less likely to feel that laws that permit the death penalty devalue the worth of every human life ( $F(1, 198) = 13.76$ ,  $p < .001$ ), more likely to feel that the death penalty is acceptable as a last resort ( $F(1, 198) = 16.00$ ,  $p < .001$ ), and less likely to feel that a vote for the death penalty in some cases may be due to discrimination against a defendant who is a minority ( $F(1, 198) = 8.78$ ,  $p = .003$ ).

### Attitudes Toward Women

Level of support for the death penalty was significantly related to attitudes toward women ( $F(66, 531) = 1.58$ ,  $p = .004$ ). Specifically, as death-penalty support increased, jurors were more likely to report that it sounds worse when a woman swears than when a man does ( $F(3, 196) = 2.72$ ,  $p = .05$ ), less likely to believe that there should be more female leaders in jobs in the public sector (e.g., politics) ( $F(3, 196) = 6.33$ ,  $p < .001$ ), more likely to believe that it is okay for a man to tell dirty jokes, but not for a woman ( $F(3, 196) = 2.67$ ,  $p = .05$ ), more likely to feel that it is worse to see a drunk woman than a drunk man ( $F(3, 196) = 4.14$ ,  $p = .007$ ), more likely to believe that women should not be bosses in important jobs ( $F(3, 196) = 3.09$ ,  $p = .03$ ), and less likely to feel that women are better off having their own jobs and the freedom to do as they please ( $F(3, 196) = 3.00$ ,  $p = .03$ ).

## Homophobia

Level of support for the death penalty was significantly related to level of homophobia ( $F(75, 522) = 1.52, p = .005$ ). Specifically, as death-penalty support increased, venirepersons were more likely to report that gay people make them nervous ( $F(3, 196) = 2.83, p = .04$ ), more likely to feel that gay people deserve what they get ( $F(3, 196) = 2.81, p = .04$ ), more likely to think that homosexual people should not work with children ( $F(3, 196) = 4.65, p = .004$ ), more likely to make derogatory remarks about gay people ( $F(3, 196) = 2.62, p = .05$ ), less likely to report that they enjoy the company of gay people ( $F(3, 196) = 6.26, p < .001$ ), more likely to report that they make derogatory remarks like “faggot” or “queer” to people they suspect are gay ( $F(3, 196) = 4.69, p = .003$ ), more likely to feel that it matters as to whether their friends are gay or straight ( $F(3, 196) = 5.40, p = .001$ ), more likely to feel that they cannot trust a person who is homosexual ( $F(3, 196) = 6.77, p < .001$ ), less likely to feel that organizations which promote gay rights are necessary ( $F(3, 196) = 2.82, p = .04$ ), more likely to admit that they would hit a homosexual for coming on to them ( $F(3, 196) = 5.71, p = .001$ ), more likely to report being bothered by seeing two homosexual people together in public ( $F(3, 196) = 2.97, p = .03$ ), more likely to report that when they see a gay person they think, “What a waste.” ( $F(3, 196) = 6.18, p < .001$ ), more likely to report that when they meet someone they try to find out if he/she is gay ( $F(3, 196) = 2.61, p = .05$ ), and more likely to report that they have rocky relationships with people they suspect are gay ( $F(3, 196) = 4.29, p = .006$ ).

Death-qualification status was significantly related to level of homophobia ( $F(25, 174) = 2.50, p < .001$ ). Specifically, death-qualified jurors were less likely to report that they enjoy the company of gay people ( $F(1, 198) = 7.38, p = .007$ ), less likely to feel that marriage between homosexual individuals is acceptable ( $F(1, 198) = 10.26, p = .002$ ), more likely to report that they make derogatory remarks like “faggot” or “queer” to people they suspect are gay ( $F(1, 198) = 7.48, p = .01$ ), more likely to report having damaged property of gay persons, such as “keying” their cars ( $F(1, 198) = 12.49, p = .001$ ), and more likely to report being bothered by seeing two homosexual people together in public ( $F(1, 198) = 6.42, p = .01$ ).

## Modern Racism

Level of support for the death penalty was significantly related to level of modern racism ( $F(21, 576) = 3.06, p < .001$ ). Specifically, as death-penalty support increased, venirepersons were more likely to believe that discrimination against blacks is no longer a problem in the United States ( $F(3, 196) = 7.66, p < .001$ ), less likely to understand the anger of black people in America ( $F(3, 196) = 8.98, p < .001$ ), more likely to feel that blacks have more influence upon school desegregation plans than they ought to have ( $F(3, 196) = 14.65, p < .001$ ), more likely to feel that blacks are getting too demanding in their push for equal rights ( $F(3, 196) = 11.83, p < .001$ ), more likely to feel that blacks should not push themselves where they are not wanted ( $F(3, 196) = 5.65, p = .001$ ), more likely to feel that, over the past few years, blacks have gotten more economically than they deserve ( $F(3, 196) = 6.30, p < .001$ ), and more likely to feel that, over the past few years, the government and news media have shown more respect to blacks than they deserve ( $F(3, 196) = 5.57, p = .001$ ).

Death-qualification status was significantly related to level of modern racism ( $F(7, 192) = 1.93, p = .07$ ). Specifically, death-qualified venirepersons were more likely to believe that discrimination against blacks is no longer a problem in the United States ( $F(1, 198) = 6.61, p = .01$ ).

### Modern Sexism

Level of support for the death penalty was significantly related to level of modern sexism ( $F(24, 573) = 1.99, p = .004$ ). Specifically, as death-penalty support increased, jurors were more likely to believe that it is rare to see women treated in a sexist manner on television ( $F(3, 196) = 3.03, p = .03$ ), less likely to understand the anger of women's groups in America ( $F(3, 196) = 2.59, p = .05$ ), less likely to understand why women's groups are still concerned about societal limitations of women's opportunities ( $F(3, 196) = 3.41, p = .02$ ), and more likely to believe that, over the past few years, the government and news media have been showing more concern about the treatment of women than is warranted by women's actual experiences ( $F(3, 196) = 5.52, p = .001$ ).

Death-qualification status was significantly related to level of modern sexism ( $F(8, 191) = 3.09, p = .003$ ). Specifically, death-qualified jurors were more likely to believe that discrimination against women is no longer a problem in the United States ( $F(1, 198) = 8.74, p = .003$ ).

### Correlations Between Measures

Attitudes toward the death penalty were correlated with attitudes toward women ( $r = -.203, p = .01$ ), homophobia ( $r = -.284, p = .01$ ), modern racism ( $r = .498, p = .01$ ), and modern sexism ( $r = -.262, p = .01$ ). Specifically, more support for the death penalty was correlated with more negative attitudes toward women and higher levels of homophobia, racism, and sexism.

Attitudes toward women were correlated with homophobia ( $r = .608, p = .01$ ), modern racism ( $r = -.370, p = .01$ ), and modern sexism ( $r = .442, p = .01$ ). Specifically, more negative attitudes toward women were correlated with higher levels of homophobia, racism, and sexism.

Homophobia was positively correlated with modern racism ( $r = -.565, p = .01$ ) and modern sexism ( $r = -.408, p = .01$ ). Specifically, higher levels of homophobia were correlated with higher levels of modern sexism.

Modern racism was correlated with modern sexism ( $r = .534, p = .01$ ). Specifically, higher levels of modern racism were correlated with higher levels of modern sexism.

## DISCUSSION

As hypothesized, death-qualified venirepersons were more likely to have more positive attitudes toward the death penalty and higher levels of homophobia, modern racism and modern sexism. Also as hypothesized, higher levels of support for the

death penalty were correlated with more negative attitudes toward women and higher levels of homophobia, modern racism, and modern sexism.

While not without its limitations (e.g., lack of attorney-conducted voir dire), the present findings replicate an earlier body of research that has concluded that the process of death qualification results in the seating of differentially partial jurors. In addition, the current study extends previous findings by demonstrating that simply selecting a jury for a capital case systematically excludes people who are less prejudiced while systematically including people who are more prejudiced. Clearly, this is a violation of capital defendants' right to due process.

So, what does the future hold? Regrettably, the United States Supreme Court has reviewed the body of death-qualification research and definitively concluded that the death-qualification process is both constitutional and necessary (*Lockhart v. McCree*, 1986). Given the recent controversy surrounding a proposed moratorium on the death penalty, this issue has been brought into the forefront of American consciousness with a vengeance. Skepticism about the ultimate punishment is to be expected. However, it is imperative that future research be conducted to examine the factors that impact capital jurors' decision-making processes.

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