

BOOK REVIEWS

Frank R. Baumgartner, Suzanna L. DeBoef, and Amber E. Boydston (2008). *The Decline of the Death Penalty and the Discovery of Innocence*. Cambridge, UK: Cambridge University Press, 292 pp., ISBN 978-0-521-88734-2.

In 1967, the rock group Buffalo Springfield released a song entitled “For What It’s Worth.” Written by Stephen Stills, the song became an anthem for the 1960’s counterculture. The opening lines of the song are: “There’s something happening here; what it is ain’t exactly clear.” Although the song is not about the death penalty, the song’s opening lines aptly describe the death penalty’s current zeitgeist. In 1994, a Gallup poll showed that 80 percent of Americans favored the death penalty for a person convicted of murder; in 2008, only 64 percent of Americans favored the penalty. In 1993, when Americans were asked which is the better penalty for murder—the death penalty or life imprisonment with absolutely no opportunity of parole (LWOP)—59 percent chose the death penalty, and only 29 percent chose LWOP. When the same question was asked in 2006, 47 percent chose the death penalty, while 48 percent chose LWOP. In 1994, 328 defendants were sentenced to death in the U.S.; in 2008, only 111 defendants received death sentences. In 1999, 98 death row inmates were executed in the U.S.; in 2008, 37 death row inmates were executed. So, what is happening here? That is the subject of *The Decline of the Death Penalty and the Discovery of Innocence* by Frank R. Baumgartner, Suzanna L. DeBoef, and Amber E. Boydston.

Baumgartner and his colleagues contend that beginning in the mid-1990s death penalty discourse has been successfully “reframed” around the issue of innocence, and this shift has driven the decrease in death penalty support and current death penalty policy outcomes, such as the decline in both death sentences and executions. The core arguments of the innocence frame involve wrongful convictions, calls for a moratorium, and the availability of DNA evidence. The authors describe a “self-reinforcing process”, in which a “tipping point” has been reached where changes in the public’s understanding about the death penalty produce changes in policy, which, in turn, reinforce the changes in the public’s understanding. Specifically, the media’s “new focus on innocence has generated public doubt, official caution, powerful individual stories of exoneration, and fewer death sentences, all in a self-perpetuating cycle” (p. 10). The authors call this process a “social cascade”.

The authors suggest that as long as the public’s focus remains on the issue of innocence, the trends described above should continue. However, if the focus were to return to other well-worn topics, such as the morality or the

constitutionality of the death penalty, then the trend may shift back to pro-death penalty, as the public discounts the practical question of the actual administration of the death penalty and refocuses its attention on more abstract, theoretical, or philosophical concerns. The authors believe that arguing about the death penalty being morally wrong is a losing argument for abolitionists.

To study the subjects of issue-definition and framing, the authors introduce a new statistical analytic technique, evolutionary factor analysis (EFA), and hope the new technique will prove widely applicable to the study of social change. Indeed, a large part of the book is devoted to a description of their methods and the various analytic strategies they use to demonstrate the impact of the framing variables on aggregate-level death penalty opinions and death sentencing outcomes. The authors present the results of their elaborate analysis in numerous figures and tables throughout the book. Their ultimate goal is to use the death penalty as a “test case” in their attempt to explain the nature of political change in America more generally.

Following an introduction, outlining the book’s contents and basic arguments, Chapter 2 describes the “evolution of capital punishment since 1945”, emphasizing the chronological development of the death penalty debate.

Chapter 3 provides an expanded examination of the “new” innocence frame’s emergence. The authors readily acknowledge that wrongful convictions and executions have long been a part of the death penalty debate but maintain that the subjects took on a qualitatively different importance beginning in the 1990s, coming to dominate the debate. The authors maintain that locating innocence projects within law schools and journalism departments in major universities and staffing them with “bright, energetic, and dedicated young volunteers” has had “the single . . . greatest impact on the rise of the innocence frame social cascade”. According to the authors: “News that college students have helped to free an innocent man from prison tells a fundamentally different story than news that high-powered attorneys have accomplished the same feat” (p. 63).

Chapter 4 continues the previous chapter’s treatment of the new innocence frame by empirically documenting its rise through a comprehensive review of the content of the 3,939 articles on capital punishment that appeared in the *New York Times* since 1960. (Note: The researchers actually examined abstracts of the articles rather than the articles themselves.) The authors discovered that the ratio of pro-death penalty articles to anti-death penalty articles peaked in favor of pro-death penalty articles in 1993. Then the ratio steadily decreased until 1997, when it reversed and the number of anti-death penalty articles exceeded the number of pro-death penalty articles. By 2000, the imbalance in favor of anti-death penalty articles was by far the largest it had ever been during the period and, according to the authors, was directly

related to the emergence of the innocence frame. They also found that “exonerated defendants today receive more than ten times the number of stories, per individual, than those who were exonerated before 1991” (p. 52). The authors corroborated their *New York Times*’ findings by examining death penalty articles in the *Reader’s Guide to Periodical Literature* and nine other U.S. newspapers archived by LexisNexis.

Chapter 5 offers a theoretical discussion of issue definition and introduces EFA. The authors show why the new innocence frame is so powerful: “It gives a coherent overall structure to a number of arguments that have, in fact, been around for decades.” The authors maintain those other arguments, such as the death penalty is imposed in a racially biased and geographically arbitrary way, which gained little traction on their own, have been successfully “piggybacked” on the innocence frame. The power of the innocence frame, write the authors, also lies in its focus on practical questions about the functioning of the justice system instead of theoretical questions about what is right and wrong. They maintain that the focus on practical questions is more persuasive and easier to accept than questions about morality.

In Chapter 6, the authors explain changes in aggregate death penalty support over time, and how the changes are related to “argumentation, framing, and the discovery of innocence”. Their analysis uses more than 250 national death penalty surveys, which the authors claim is “the most complete compilation of such surveys so far assembled”. They employ a “sophisticated mathematical algorithm to incorporate as many survey questions as possible into [their] series, even those using slightly different question wordings, creating a more complete and robust time series for public opinion”. Their analysis reveals that the framing effect of media coverage has a statistically significant long-term impact on aggregate death penalty opinion after controlling for the number of exonerations, the number of homicides, and other control variables.

In Chapter 7, the authors explain changes in death penalty policy over time, using annual changes in the number of death sentences as their measure of changes in death penalty policy. The authors chose death sentences because, for them, they are the best indicators of jury behavior and prosecutors’ strategic decisions. This analysis shows that the media’s framing of the death penalty debate around the innocence issue “alone account[s] for a decline of more than 100 death sentences per year in recent years” . . . while “the number attributable to declining homicide rates is about one quarter as much” (p. 21). The authors also found that the media’s effects on opinions “exert additional indirect effects on sentences”. They emphasize, however, that the innocence frame exerts a much greater impact on the more practical and concrete jury sentencing behavior than it does on the more hypothetical and abstract aggregate death penalty opinion.

Chapter 8 is the conclusion. Here the authors discuss the death penalty’s future and the causes of policy change more generally. An epilog lists the

individuals who have been exonerated and removed from death row since 1973, and provides photos of 11 of the exonerees. Appendix A provides detail about the coding of the *New York Times* capital punishment articles (abstracts), and Appendix B describes the data used in the analysis. Notes and an index follow.

By any standards, *The Decline of the Death Penalty and the Discovery of Innocence* is an impressive piece of scholarship. However, the authors do make a few mistakes. For example, they write, “Capital sentences go through a two-stage review process, with automatic federal review of state court decisions” (p. 36). Capital sentences may go through a three-stage review process (automatic or direct review to a state’s highest appellate court, state post-conviction review, and federal habeas corpus review). Only the direct review to the state’s highest appellate court is automatic; there is no automatic federal review. The authors also mislead somewhat about the results of some Gallup death penalty polls (p. 173). For instance, they write, “The Gallup murder measure shows that nearly three quarters of Americans supported the death penalty for persons convicted of murder in 1953, the earliest year this question was asked.” However, a review of the Gallup death penalty polls shows that only two-thirds (68%), and not three-quarters, of Americans supported the death penalty in 1953, and the earliest year Gallup asked the question was 1936, and not 1953. The authors also note that, according to a Gallup poll, death penalty support peaked in 1995 at 86 percent. However, a review of Gallup’s data reveals that death penalty support peaked in 1994 at 80 percent and not in 1995 at 86 percent. In 1995, death penalty support was 77 percent. The Gallup organization has never reported death penalty support greater than 80 percent. The problem is that the authors calculated death penalty support in an unusual way. They divided the percentage of support reported by Gallup by the percentage of respondents who supported the death penalty and the percentage of respondents who opposed the death penalty. Thus, the 86 percent in 1995 was derived by the following formula: $[77/(77 + 13)]$. One also could quibble with the coding of death penalty articles (abstracts) as pro-death penalty, anti-death penalty, and neutral/not codeable (see examples on p. 112). I did so, myself. I also found the narrative overly repetitive in places. Problems aside, the book is an excellent edition to the scholarly literature on capital punishment. Baumgartner and his colleagues were not the first to discover the impact of innocence on the death penalty debate and death penalty policy, but no one else has empirically documented that impact more comprehensively and more imaginatively than they have.