

Manuscript # 32394 "Issue-definition And Policy Change: Capital Punishment And The Rise Of The "innocence" Frame, 1960-2003"

Reviewer # 985

This paper reports a longitudinal analysis of the effects of framing using national level data coded from the Times to explain the yearly number of death sentences. I enjoyed reading this methodologically innovative and well-written ms, but I see some important problems. It is more than a bit bothersome that the authors do not seem to know much about the death penalty. More specifically:

1. My primary difficulty concerns the weak controls used in these models. First, including a control for the number of murders isn't terribly convincing because in most jurisdictions only less than 1% of all homicides result in a death sentence, and, with other factors such as the number of murders held constant, there almost certainly is substantial variation across jurisdictions in death sentences. Local prosecutors differ substantially in their propensity to seek this sentence. Furthermore, it is difficult to see why the author(s)' other control, the number of states with a legal death penalty, should have much explanatory power. Many states with a legal death penalty rarely use this sentence. Consider some data. If we examine the sum of death sentences in death penalty states in the two years after the 1970, 1980, and 1990 census, we find that in 32 cases out of these 114 state-years or 28%, states with a legal death penalty did not use the death sentence once. Yet 6 death penalty states had 58 or more death sentences in these 3 2-year periods with two states going past 78. And the number of shifts in the legality of the death penalty in the states was quite modest in the period at issue with about 9 changes, so it is difficult to see how this variable would have much explanatory power (and recent newspaper accounts I've seen state that about 38 states now have a legal death penalty; not 33 as you claim on p. 21). I am not suggesting that you should drop these two controls, but I am arguing that your framing finding isn't convincing without including stronger alternative explanations in your models. If you can't come up with more convincing substantive controls, would it be possible to fit a time trend variable, with a squared and perhaps even a cubed trend term as well? Or how about period-specific dummies coded 1 for multiple years? While these remedies aren't theoretically satisfying, they at least would increase the plausibility of your framing finding if it persists.
2. Also, the way you coded court decisions seems dubious. Perhaps I misread you, but I got the impression that your Furman and Gregg dummies were coded 1 just for the year after each decision.
3. You clearly have an aggregation problem as death sentences are decided locally, and the legality of the death penalty is decided by the states, but you use national data. You at least owe the reader a prominent admission of this difficulty in the text. And there's a large literature in movement theory in sociology and political science on the difficulties in using content analyses of New York Times' stories as a source of data for outcomes in other parts of the U.S. As a start, see the references in Oliver and Maney cited below.
4. On p. 16 your description of what happens to death row offenders is woefully inaccurate. Despite your implication, almost none of the ex death row offenders are released after they win appellate relief. All but a tiny number who win appeals are sent into the regular prison population. In fact, few death row appeals claim innocence. Most instead seek relief for bad lawyering. And of the 800 or so offenders who have been on death row since Furman, there have been only about 65 instances of executive clemency. Stopping executions is too politically costly. About 70% of all death row offenders leave as a result of appeals. Only less than 10% are executed. Most of the remainder die from other causes while they are on death row. As a start look at the Liebman et al. research cited below.

5. You ought to cite studies on public opinion and capital punishment outcomes. See the Erickson and the Mooney and Lee papers listed below. On page 1 cite Liebman et al. on errors in the system.
6. Pp. 6 & 7, cite the Supreme Court decisions (e.g. *Gregg v. Georgia*, *Proffitt v. Florida*, and *Jurek v. Texas*).
7. Note 1, do you really mean you ran a partial correlation or do you mean the correlation in question was modest? Note 5, why can't you lag first differences and/or put a variable in moving average form before differencing?

How about checking out and citing some of the stronger work on the death penalty? Doing so should help you avoid obvious errors and increase credibility. As a start, see:

Erickson, Robert S. 1976. "The Relationship between Public Opinion and State Policy: A New Look Based on Some Forgotten Data." *American Journal of Political Science* 20: 25-36.

Jacobs, David and Jason T. Carmichael. 2002. "The Political Sociology of the Death Penalty: A Pooled Time-Series Analysis." *American Sociological Review* 67:109-131.

Jacobs, David, Jason T. Carmichael, and, Stephanie L. Kent. 2005. "Vigilantism, Current Racial Threat, and Death Sentences." *American Sociological Review* 70:656-677.

Liebman, James S., Jeffrey Fagan, and Valerie West. 2000. A Broken System: Error Rates in Capital Cases, 1973-1995. Unpublished Report, Columbia University Law School (its on their web cite).

Liebman, James S., Jeffrey Fagan, Valerie West, and Jonathan Lloyd. 2000. "Capital Attrition: Error Rates in Capital Cases, 1973-1995." *Texas Law Review* 78: 1839-1865 (shorter version of the above).

Kubik, Jeffrey and John R. Moran. 2003. "Lethal Elections: Gubernatorial Politics and the Timing of Elections." *Journal of Law and Economics* 46: 1-21.

Mooney, Christopher, and Mei-Hsien Lee. 2000. "The Influence of Values on Consensus and Contentious Morality Policy: U.S. Death Penalty Reform, 1956-82." *The Journal of Politics* 62: 223-239.

Oliver, Pamela, and Gregory Maney. 2000. "Political Processes and Local Newspaper Coverage." *American Journal of Sociology* 106:463-505.

Soss, Joe, Laura Langbein, and Alan R. Metelko. 2003. "Why Do White Americans Support the Death Penalty?" *Journal of Politics* 65:397-421.

Zimring, Franklin E. 2003. *The Contradictions of American Capital Punishment*. New York: Oxford University Press.

Zimring, Franklin E., and Gordon Hawkins. 1986. *Capital Punishment and The American Agenda*. New York: Cambridge.