

Baumgartner, POLI 195 Spring 2013

Shifting Frames of the Death Penalty

Reading: Decline, ch 8, conclusion;
also notes on geography

March 6, 2013

Conclusions from our study

- Framing has a big impact, got that? Have I repeated it enough?
- It is possible to construct a social movement in favor of the most disfavored members of society.
- There is little organized infrastructure in favor of the death penalty. Rather, it is more diffuse support.

Conclusions (cont)

- It did not have to be this way. In fact, many trends from 1995 to present would have made one think it would be impossible:
 - George W. Bush in the White House during most of the decline
 - Rise, not decline, of evangelical religions over time
 - War on Terror, various attacks on privacy, etc.
 - Continued support for the abstract theory of it
 - A reviled constituency
- And, yet, it happened. Or, it is in the midst of happening. Truly amazing when you think about it.

Things that amazed me

- Error rates: 65 percent overturned, only 20 percent eventually carried out
- Exoneration rates: 140 exonerees, 1,320 executed. So more than 1 in 10.
- The rarity of the death penalty, given the murder rate
- The degree of geographic bias
- The degree of racial disparity, especially on the race / gender of victims

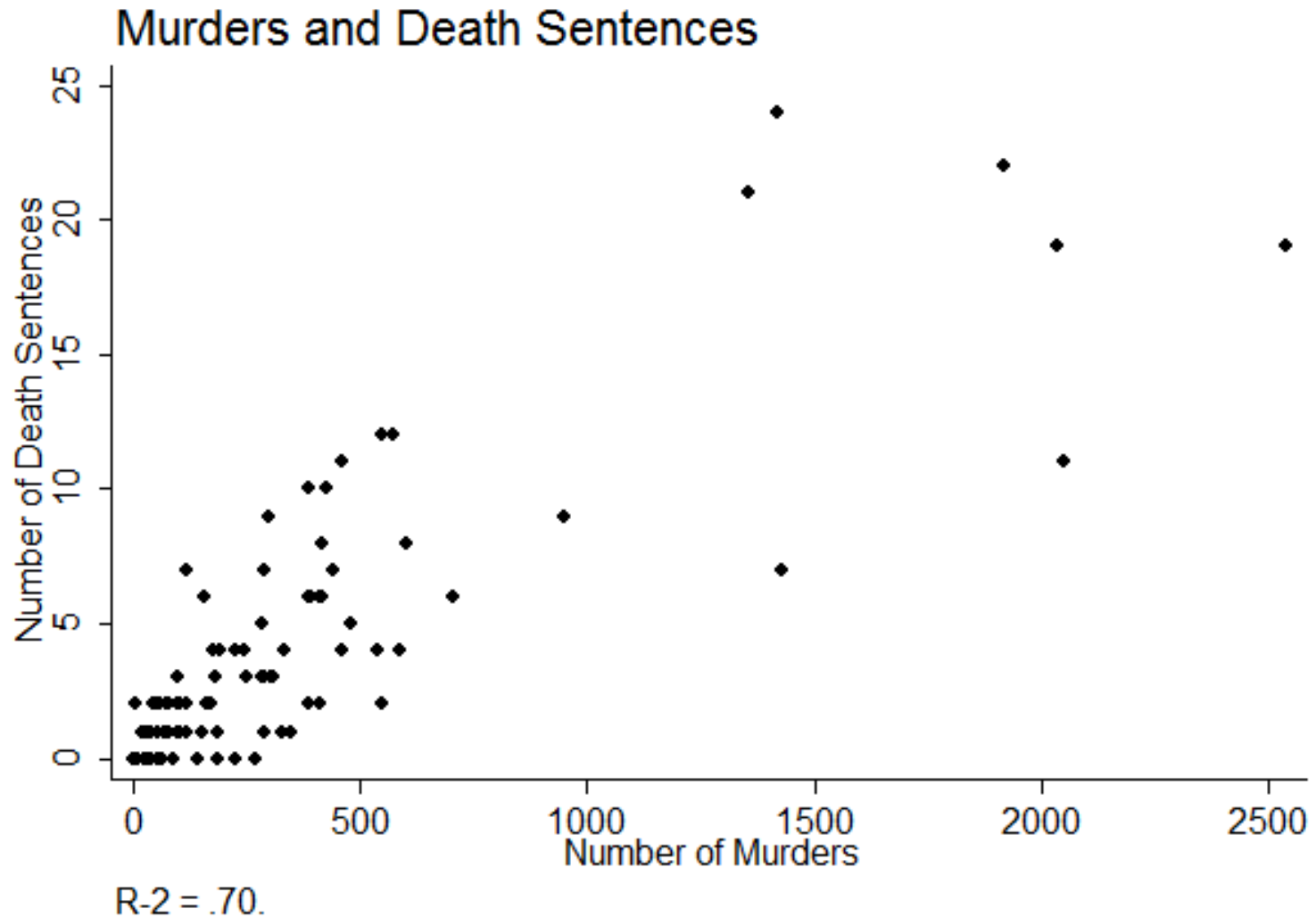
Following up on this research

- Several aspects:
 - Race of victim effects
 - Timing, delays, other things we can learn by looking comprehensively at all 1,320 executions
 - Geographical arbitrariness of the law
 - Looking at death sentence reversals
 - Lots of research on-going. Most focuses on gathering statistics about patterns of use. This may show that it is legally “arbitrary” – not applied in a legally neutral way.
- Example: Geography
 - How to explain WHY some jurisdictions have so many; others, so few executions?

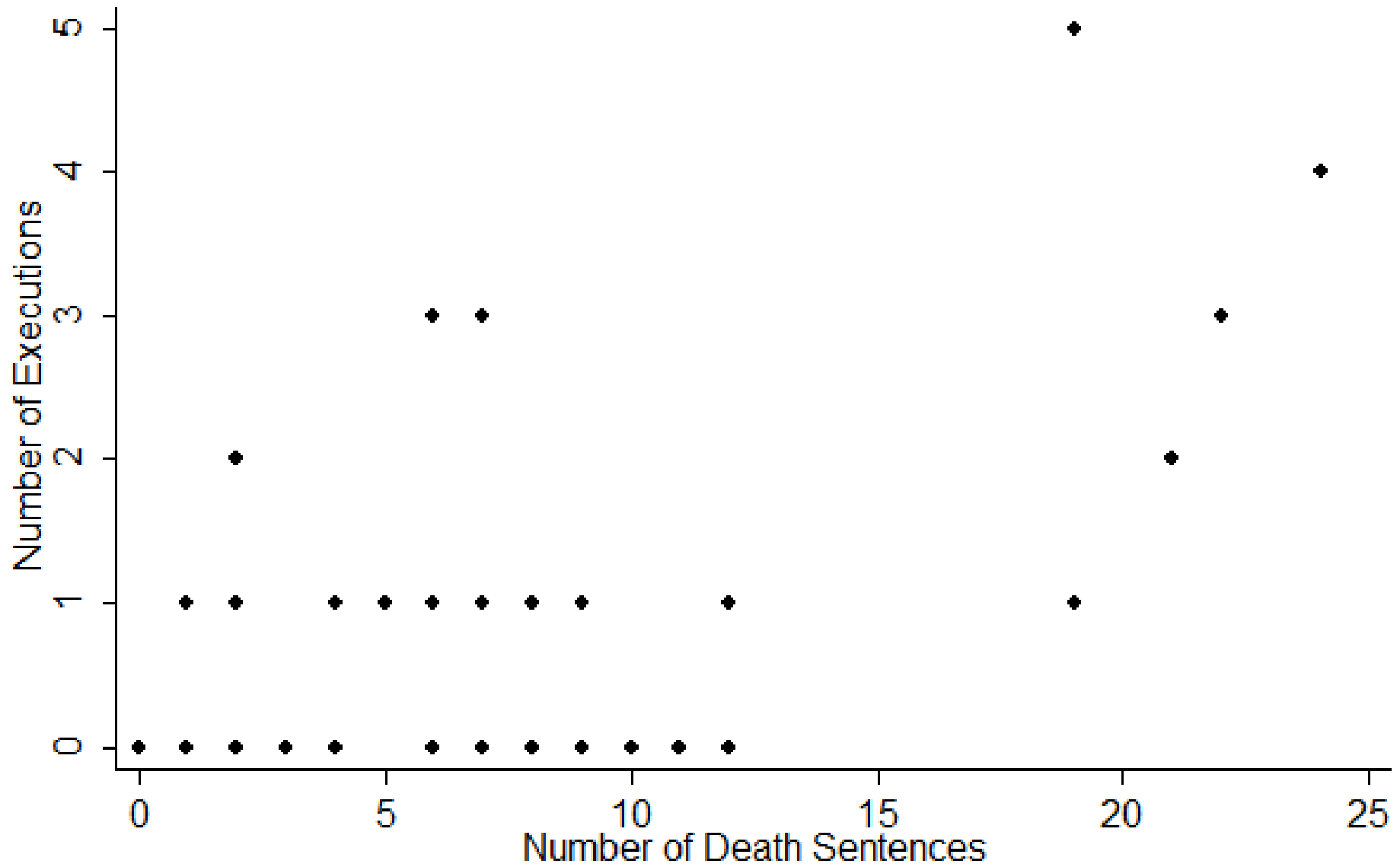
Are the stages progressively more skewed?

- For North Carolina, I have data from the state indigent defense services database of all murder cases from approx 1977 to 2011.
- Following slides show progressively more skew in the distributions as we move from:
 - Murders
 - Death sentences
 - Executions

Murders, Sentences, and Executions are imperfectly correlated

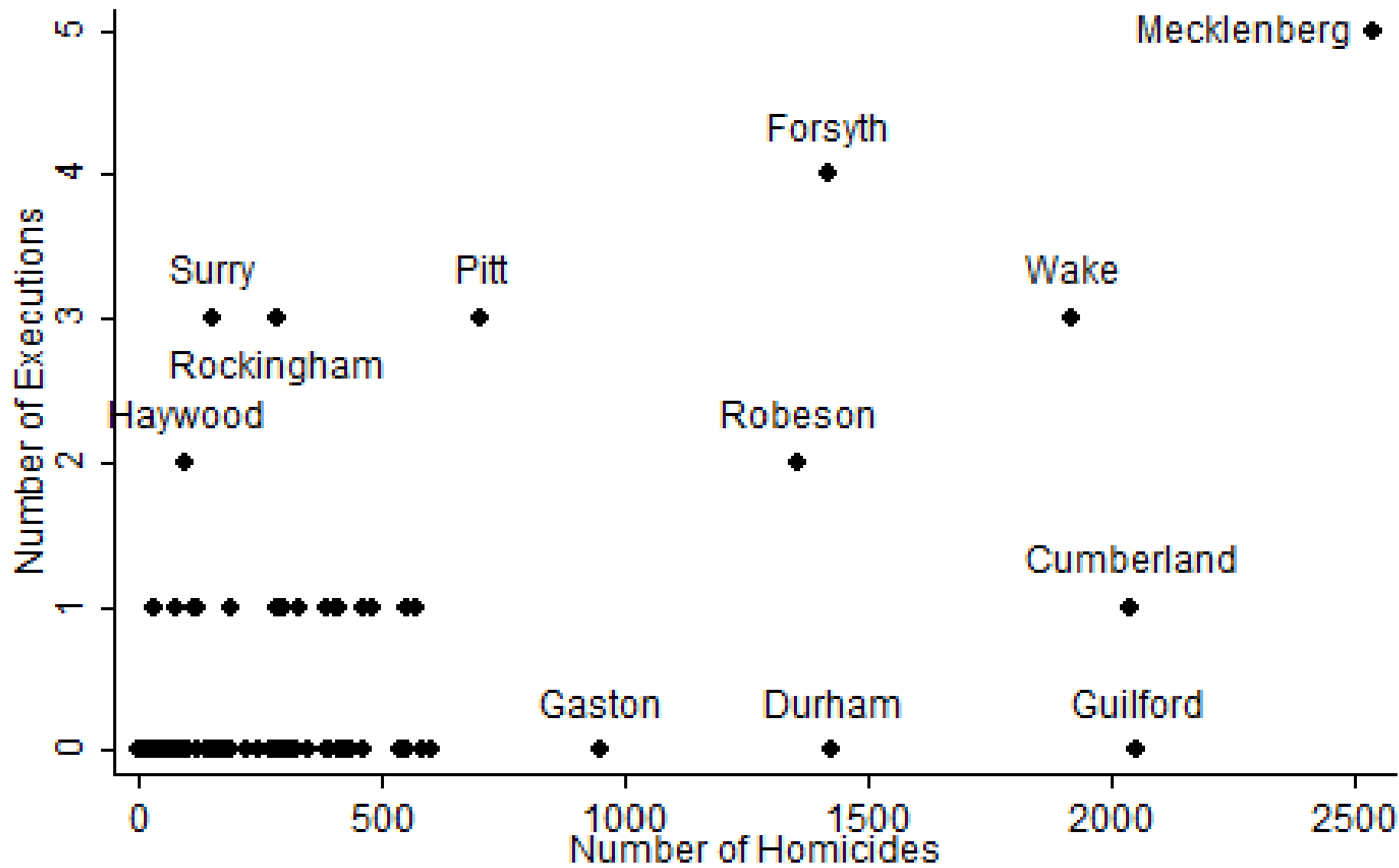


Death Sentences and Executions



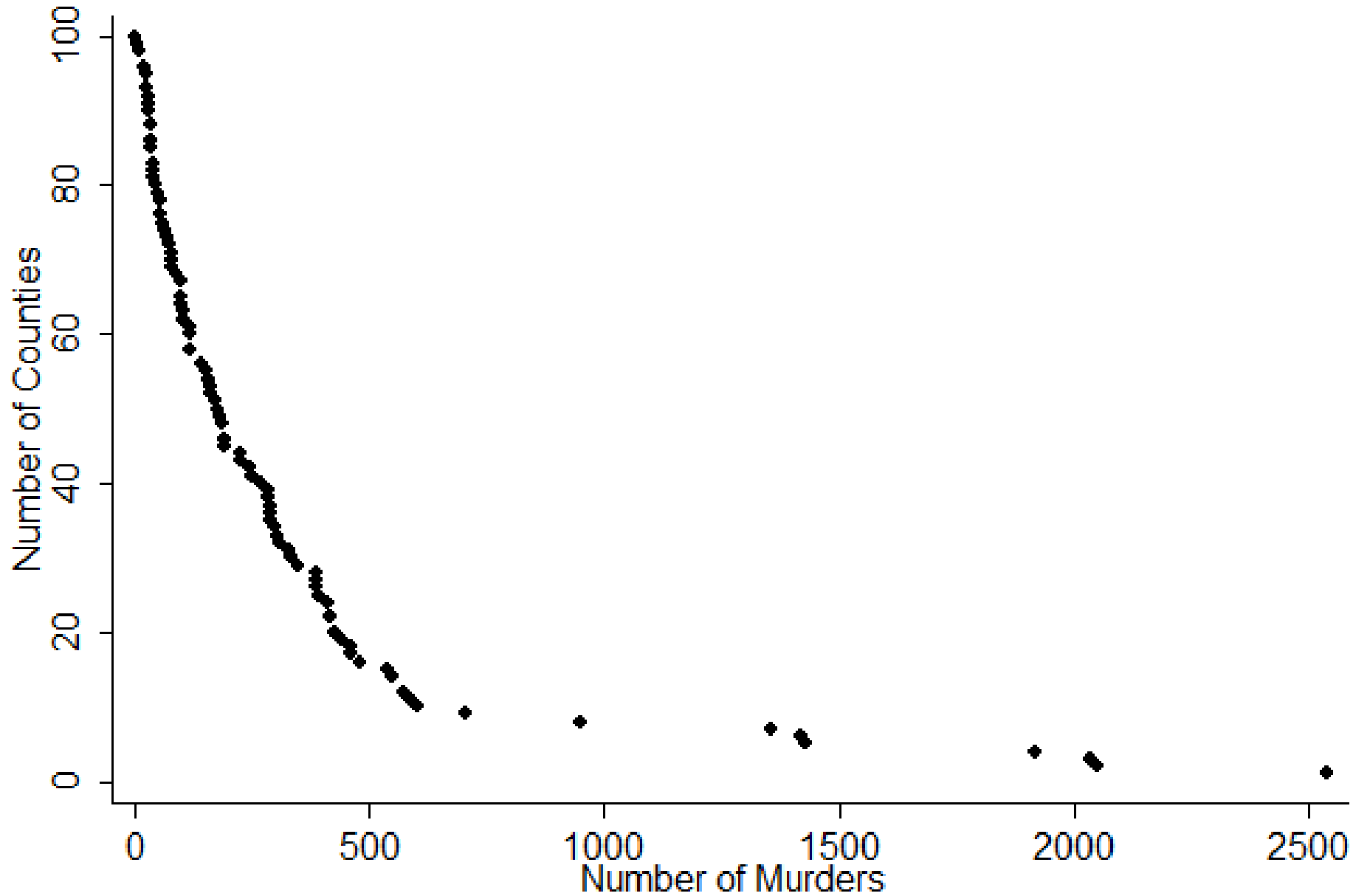
$R^2 = .41$.

Homicides and Executions

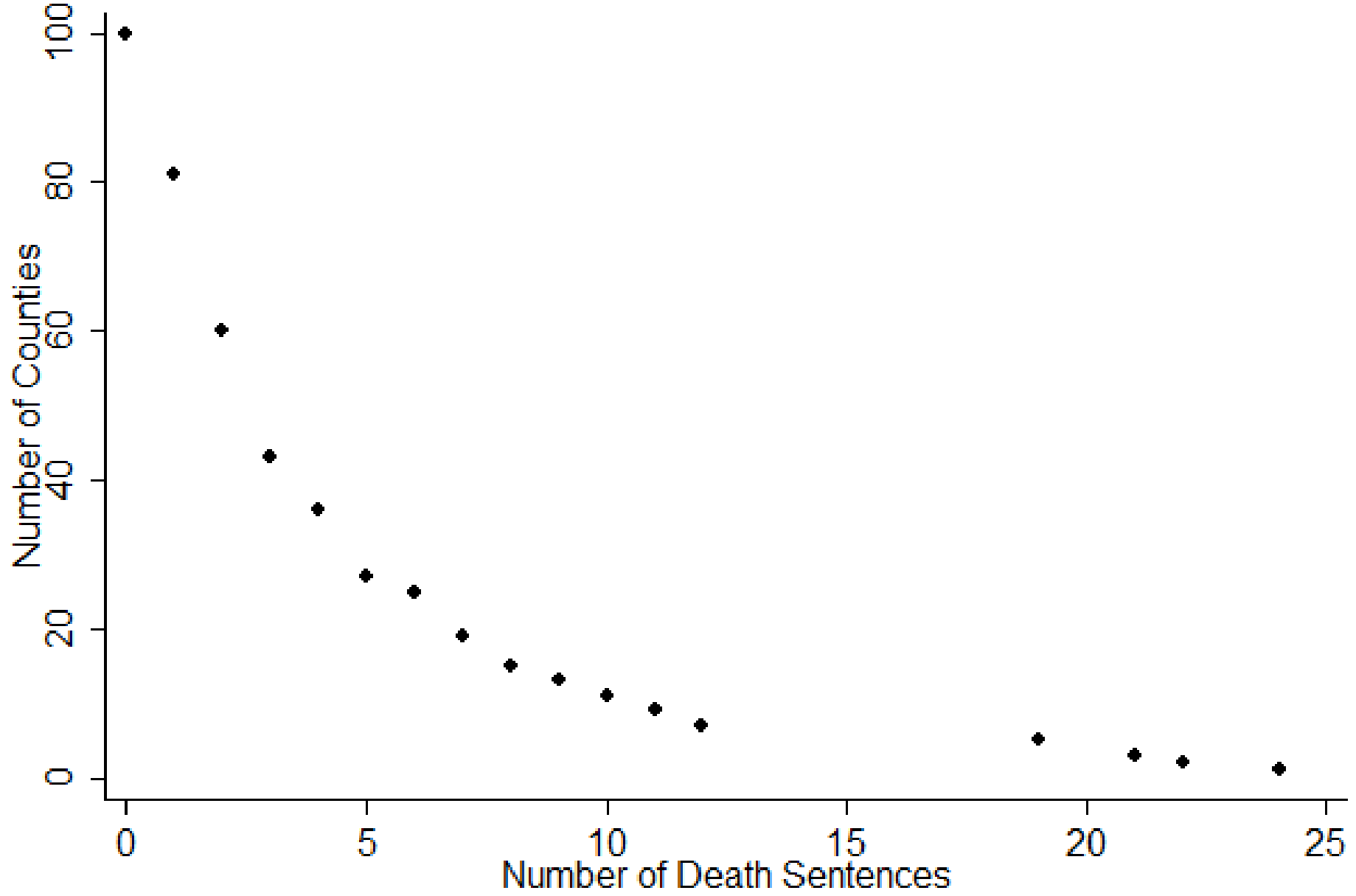


$R^2 = .31$.

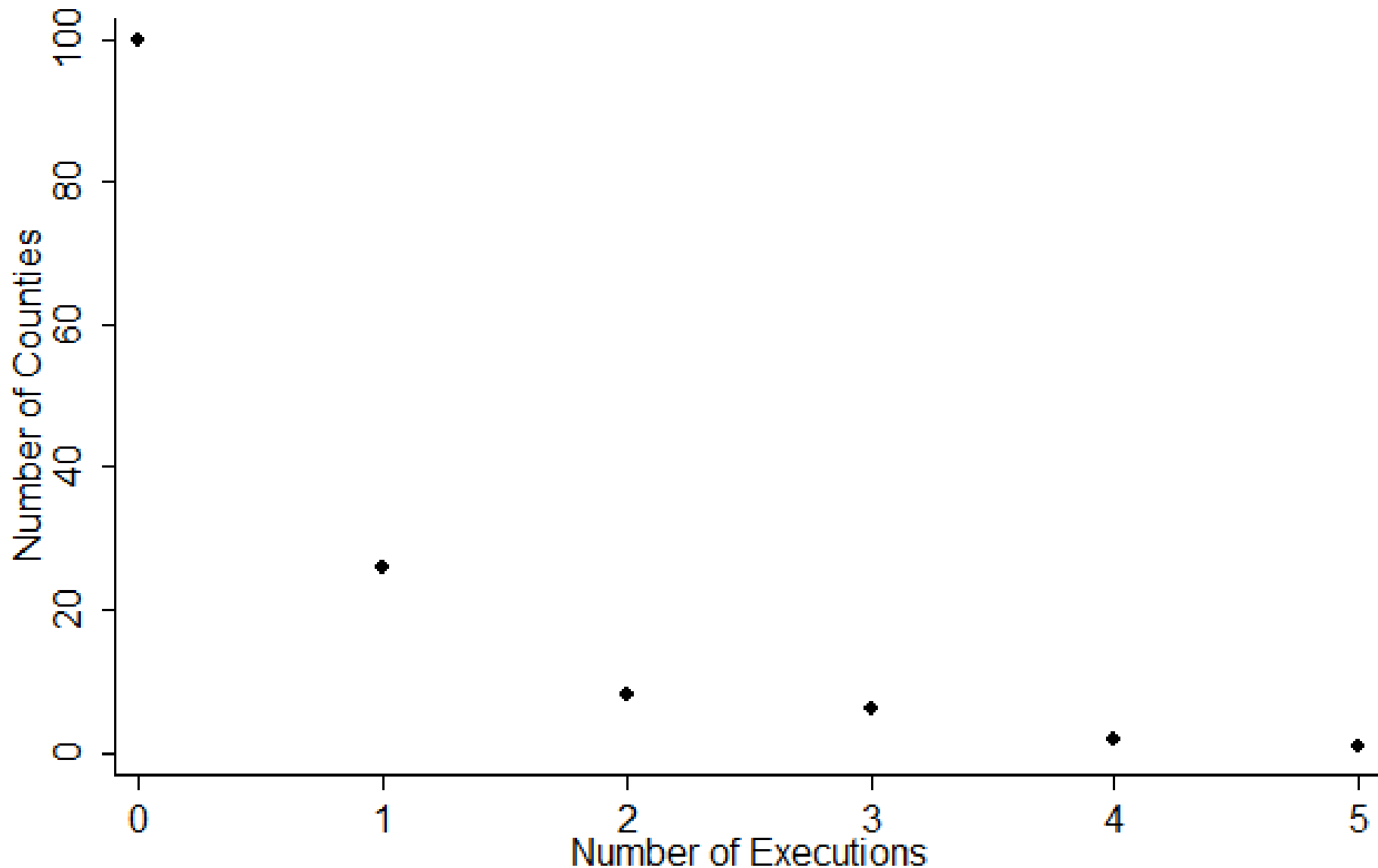
Cumulative Number of Murders in North Carolina



Cumulative Number of Death Sentences in North Carolina

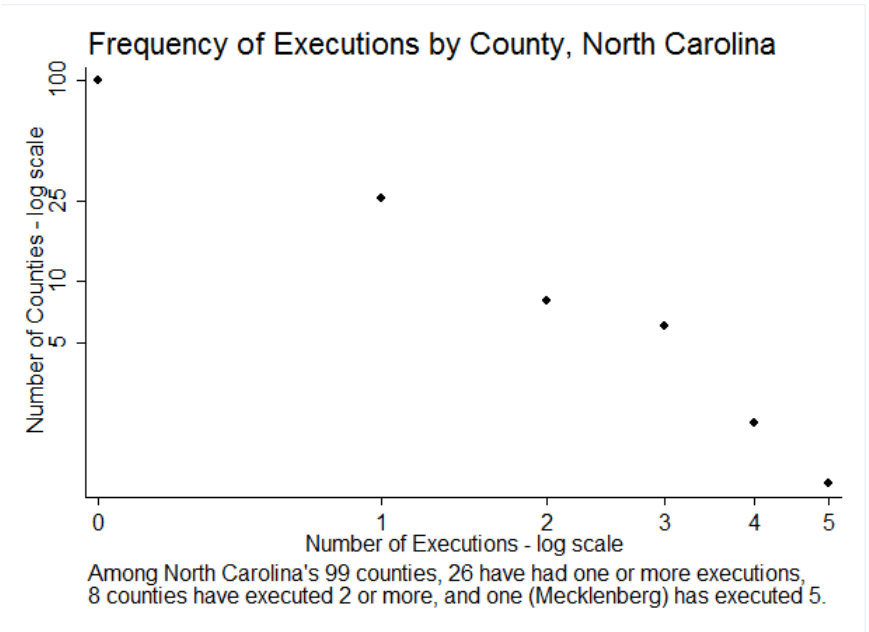
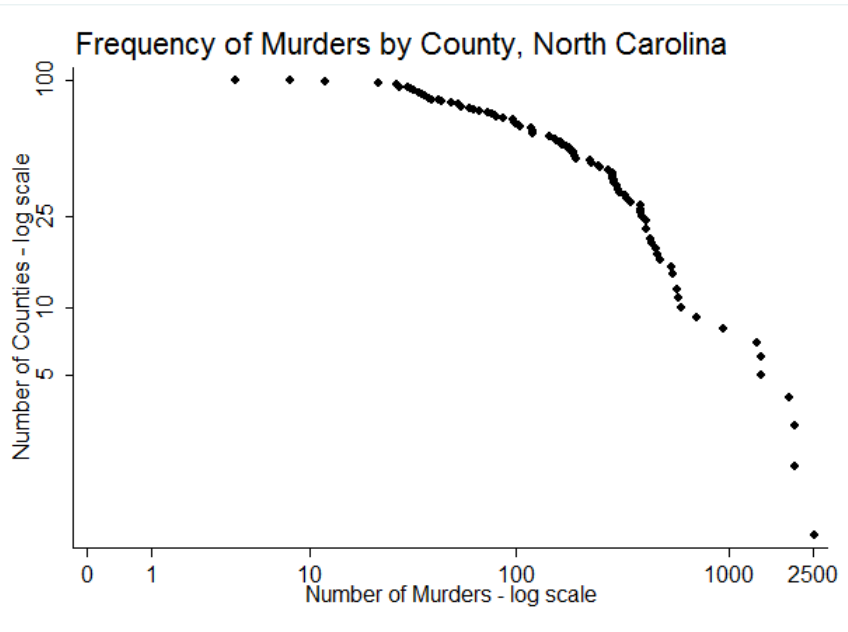


Cumulative Number of Executions in North Carolina



78 counties have executed no one but Mecklenberg has executed 5.

Murders are not close to a log-log distribution but executions are



- More later on what that means, but the graph on the right shows much higher skew than the one on the left. Something is creating that.

Studying geographic skew

- We know there is a huge skew: most counties across the US, or even within a single state, have no executions (even in Texas).
- But a few localities have a large number.
- What creates this “slippery slope” phenomenon?

Proportionate Growth with a Random Start

- Assume a random start, and different units begin with different sizes (or histories)
- Subsequent growth is proportionate to size.
 - Think: web sites with more prominence continue to get more links to them, increasing their prominence
 - Distribution of links across all WWW sites: a few are huge, most have very few links. Which would you link to if you were making a site you wanted to be popular?
 - See:
<http://ccl.northwestern.edu/netlogo/models/PreferentialAttachment>

How might this apply to the development of a “local legal culture”?

Six actors in the US system

- Prosecutor
- Defense (Public Defender's Office, funded by state)
- Juries
- Judges
- State appellate courts
- US circuit courts
- (US Supreme court as well, but affects all actors equally)

Assume no executions so far in your jurisdiction

- Next heinous murder occurs
- Probably not the most heinous in local history
 - Therefore does not merit more severe punishment
- Prosecutor has no confidence that:
 - He has the staff experience to do it
 - Defense attorneys cannot fight successfully
 - Juries will go for it
 - Judges will allow it
 - Appellate courts will sanction it

Assume some previous executions

- Next heinous murder occurs
- It may well be more heinous than some previous case which led to execution
- Prosecutor has confidence that:
 - He has the staff experience to do it (and maybe a younger lawyer who needs a promotion)
 - Juries will go for it
 - Public Defender is under-funded and ill-equipped
 - Judges will allow it (and keep the Defender weak)
 - Appellate courts will sanction it

Local norms developing independently

- Baseline factors:
 - Former slave states
 - High minority population
- But why Houston and not, say, New Orleans?
- Random start, then self-reinforcement
- If we can show this it excludes “equal justice” as a factor, which could be unconstitutional

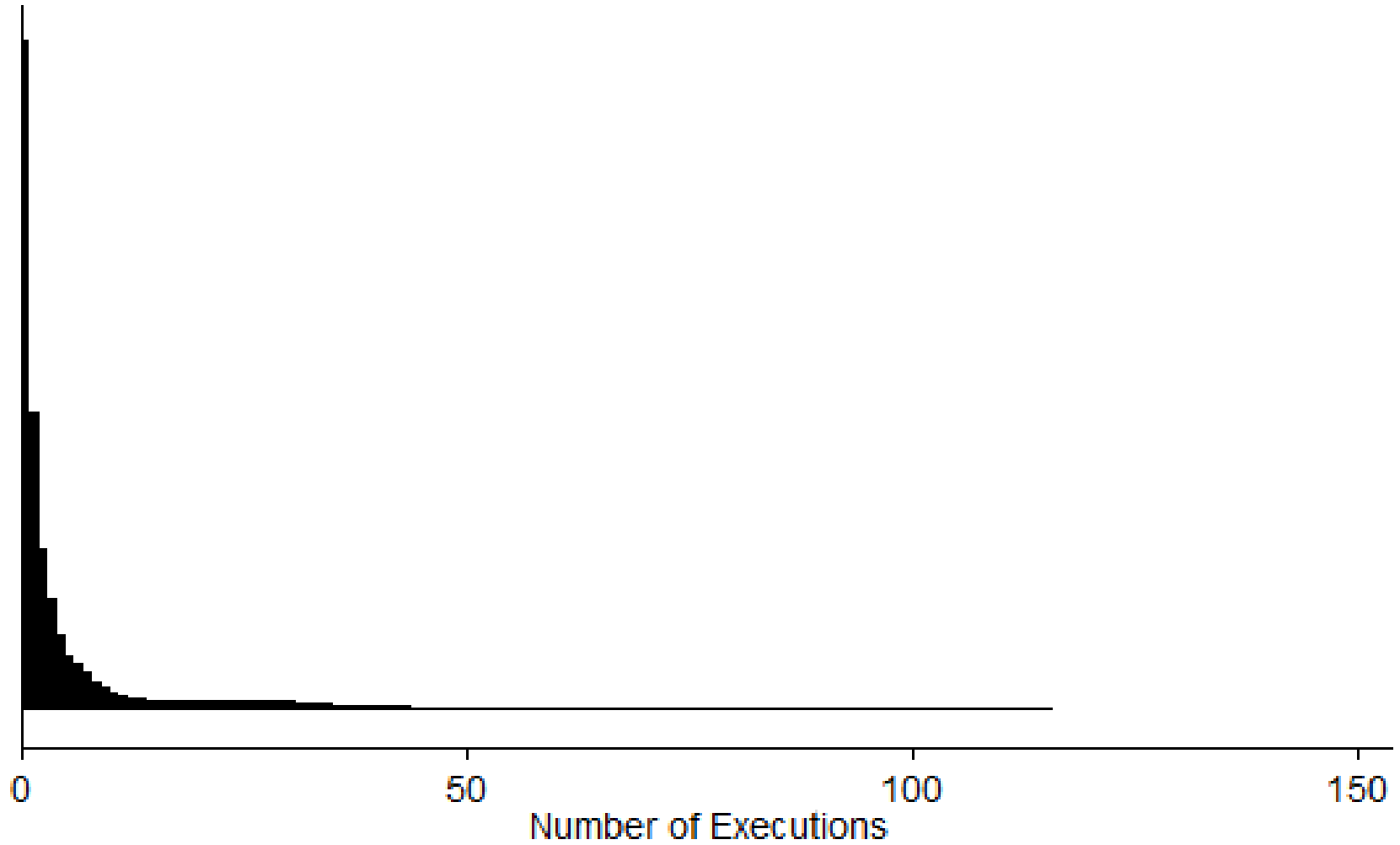
Empirical Expectations

- Time elapsed between executions then decline with each successful case
- Executions per year should be predicted by number of previous executions, more than by number of murders or the crime rate
- Patterns should not be predictable based on simple geography or slave-state status
- Should hold at all levels of scale
- Pattern should move from relatively random (murders) to relatively extreme as we move through the stages of the process: capital charges brought, sentences, executions
- Outliers should always be present but may not always be the same in different historical periods

Five levels of scale, same pattern

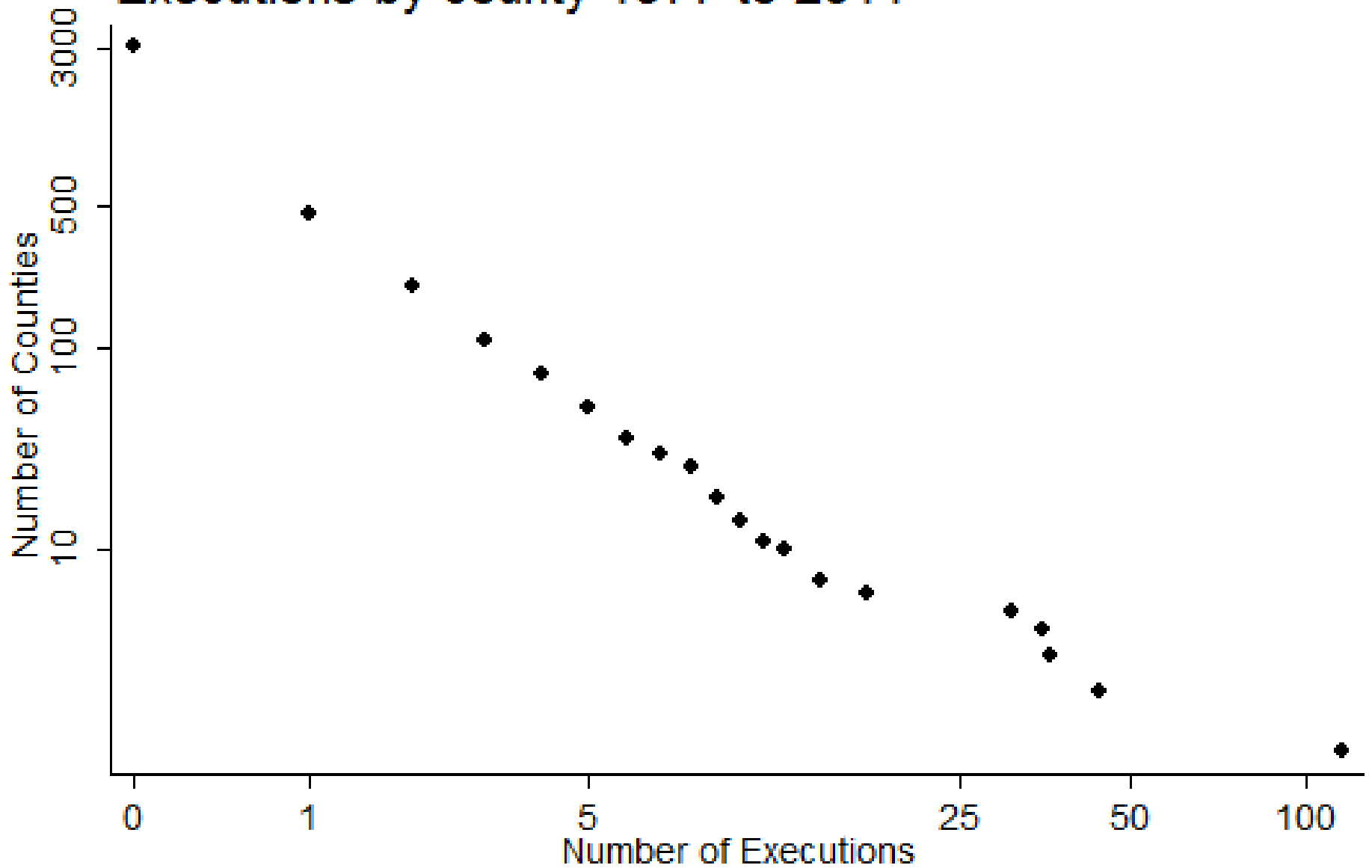
- ~3,000 counties in the US
 - Counties within individual states
 - The 50 states
 - The 12 federal judicial circuits
 - ~200 countries of the world
-
- Patterns are not identical and some are more exponential than Paretian, but all are extreme

Executions by County



Includes 1245 executions from 1977 to April 10 2011.
2692 counties have executed no inmates 455 at least one and Harris County 116.

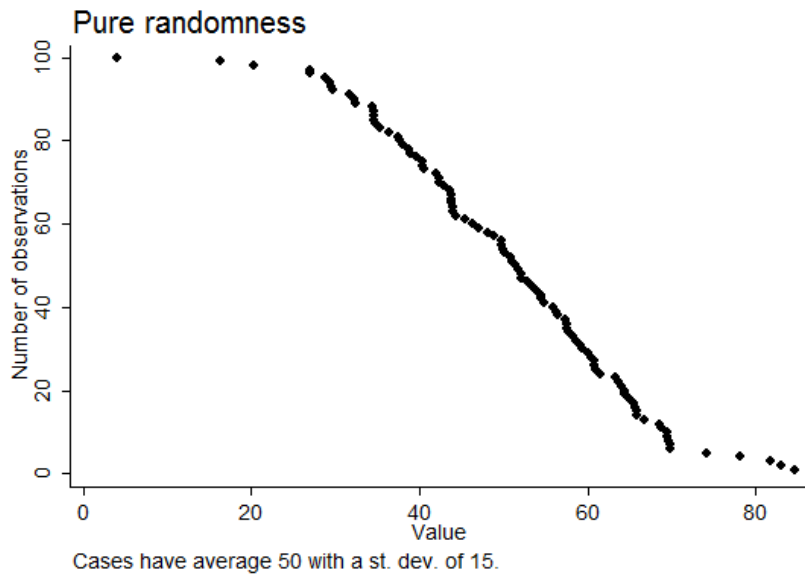
Executions by county 1977 to 2011



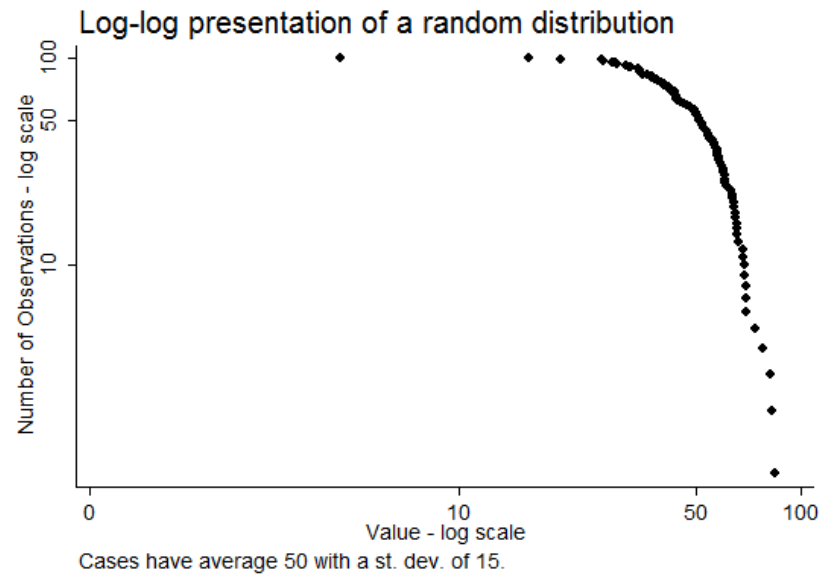
454 counties 1242 executions as of April 11

If all cases were random

Frequency Distribution

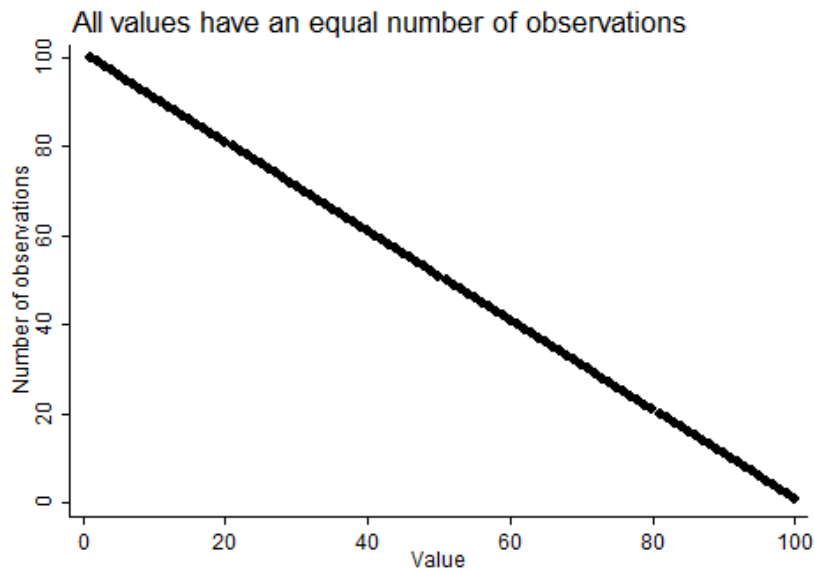


Log-Log Presentation

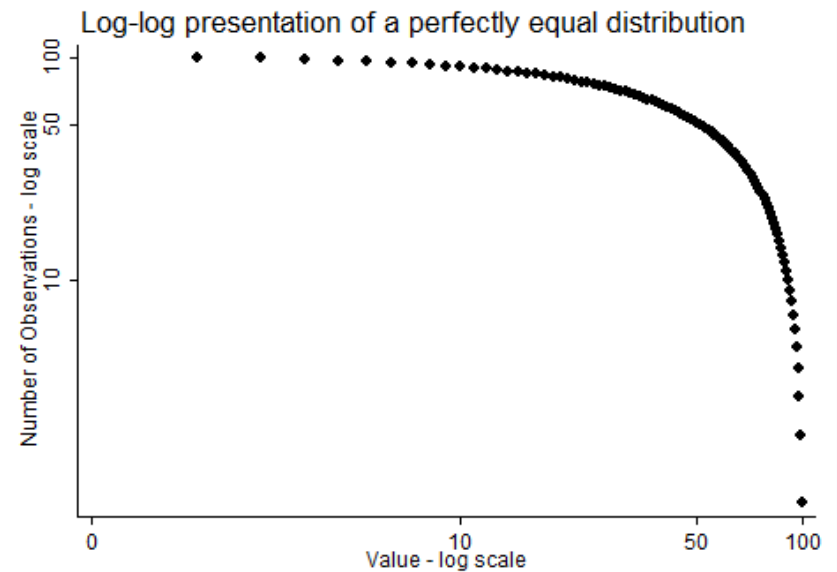


If all cases were equal

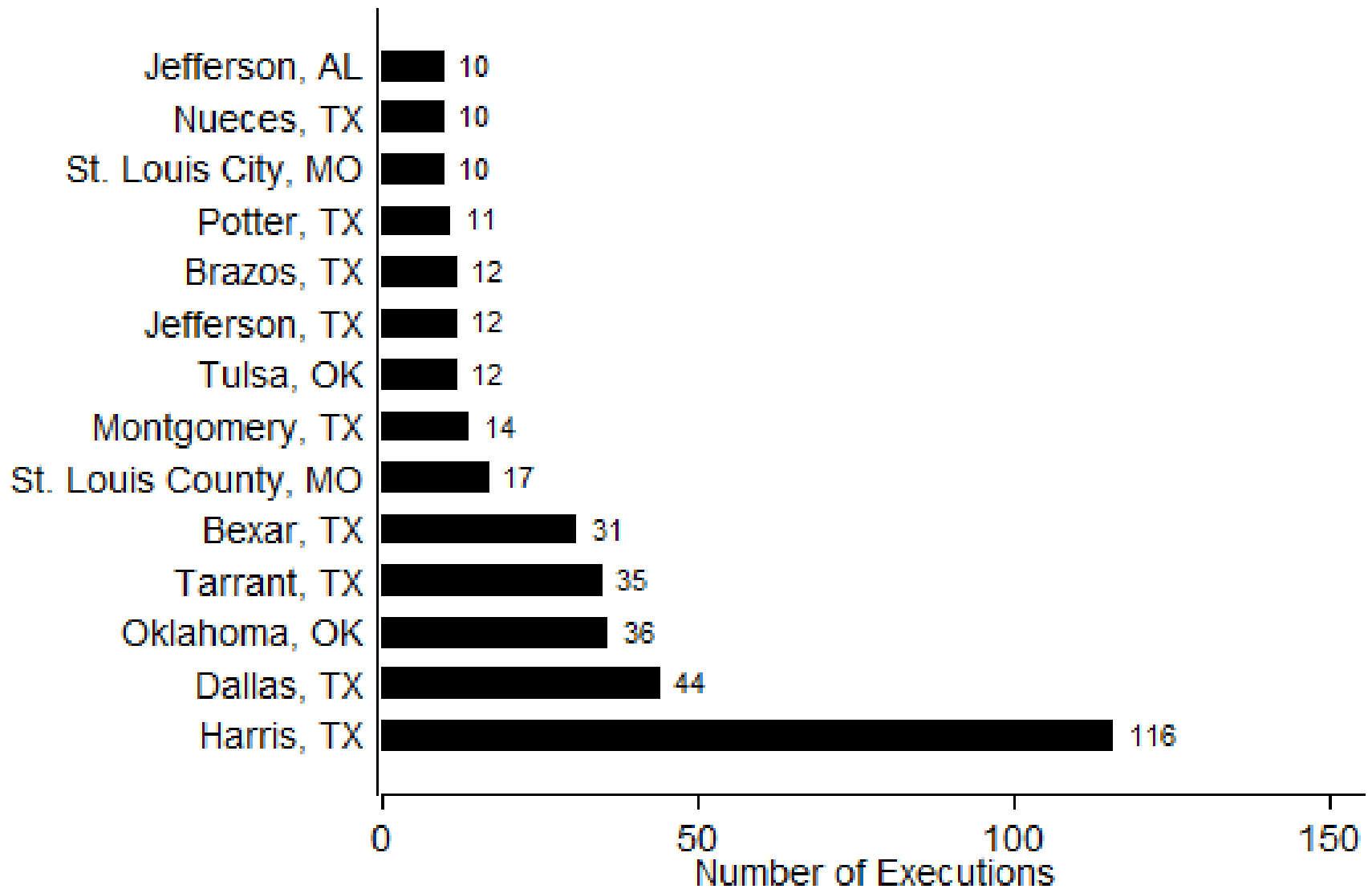
Frequency Distribution



Log-Log Presentation

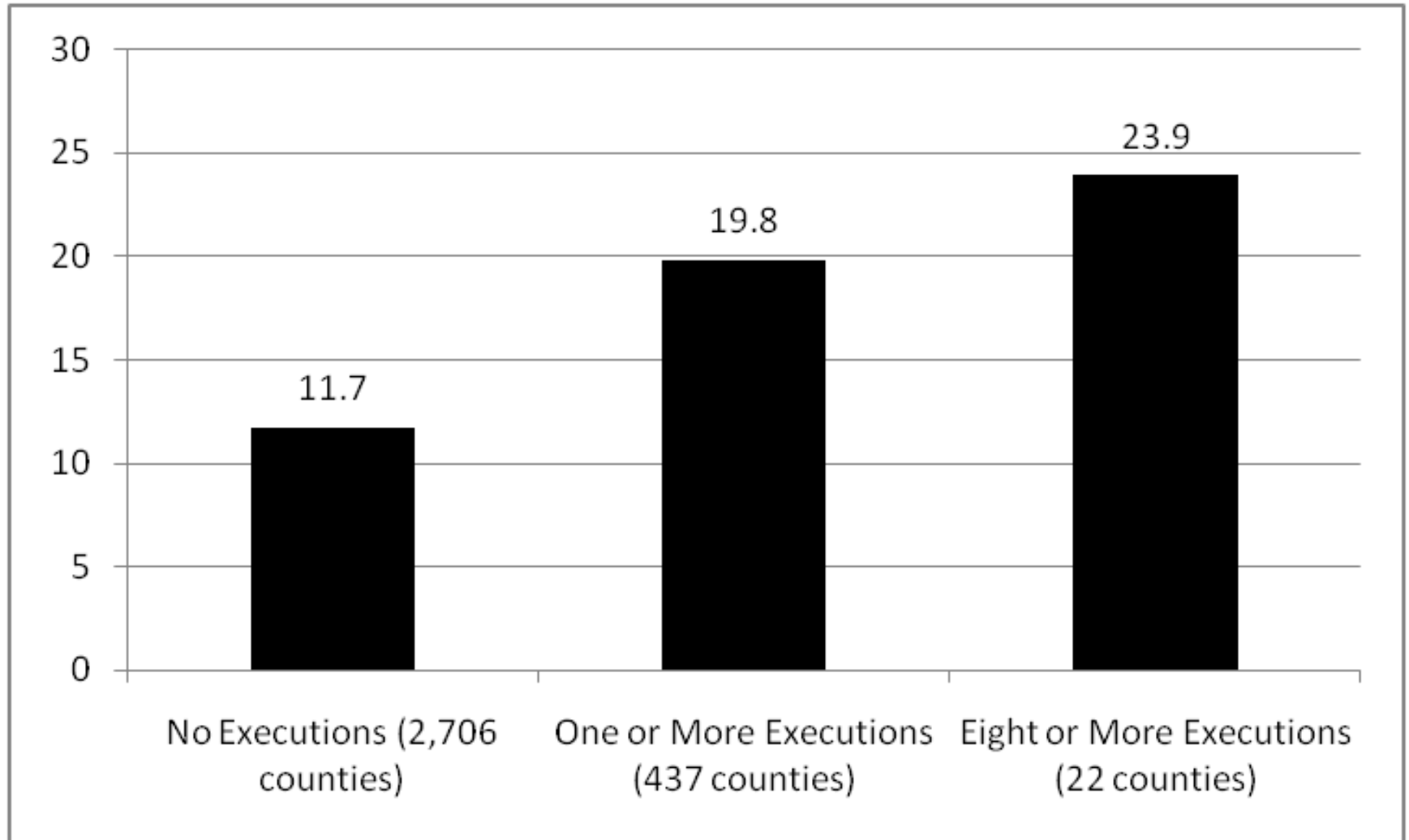


US counties with 10 or more executions since 1977



Includes counties with 10 or more executions from 1977 to April 10 2011.

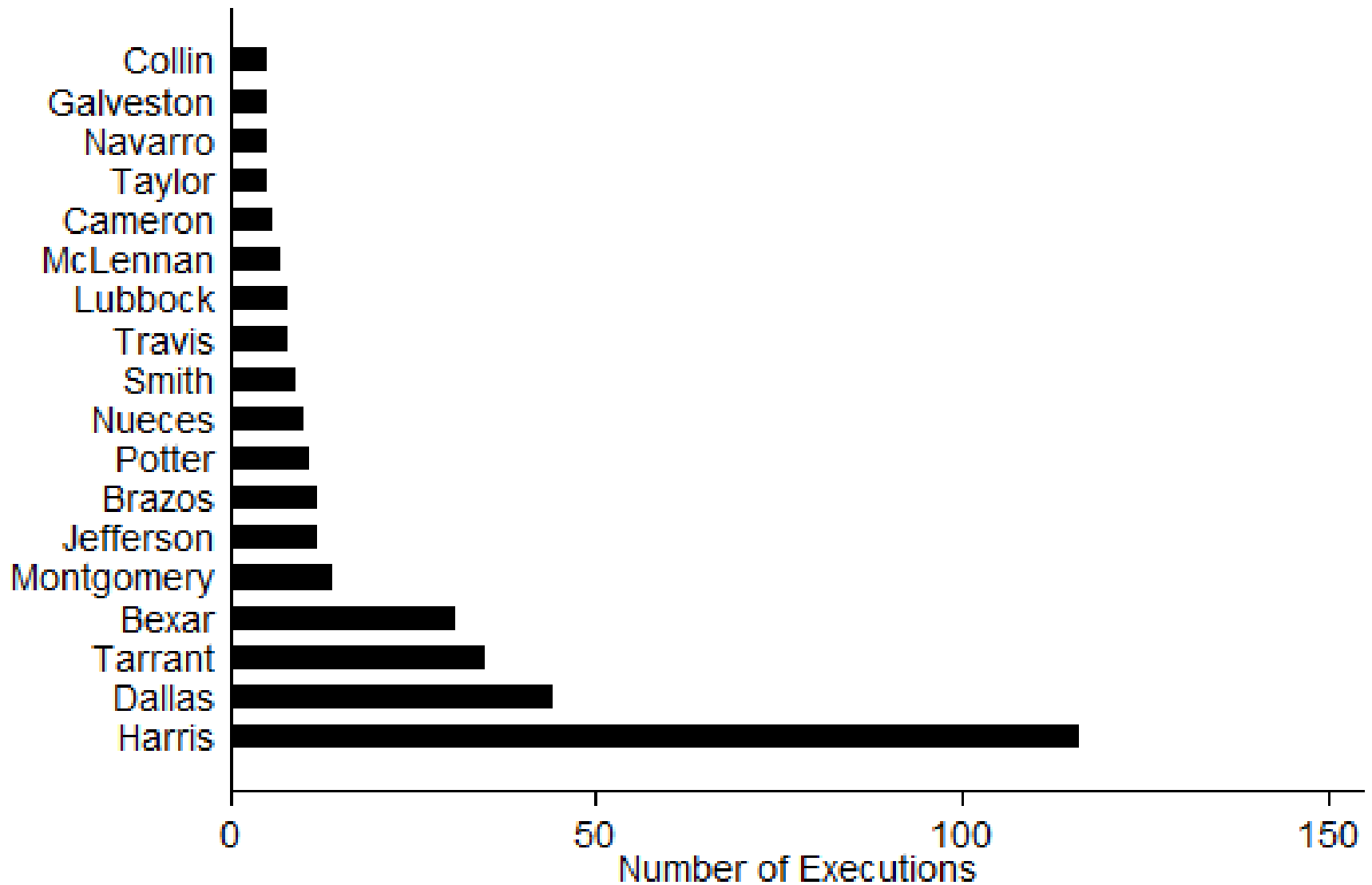
Percent Minority Population



These trends also hold for individual states

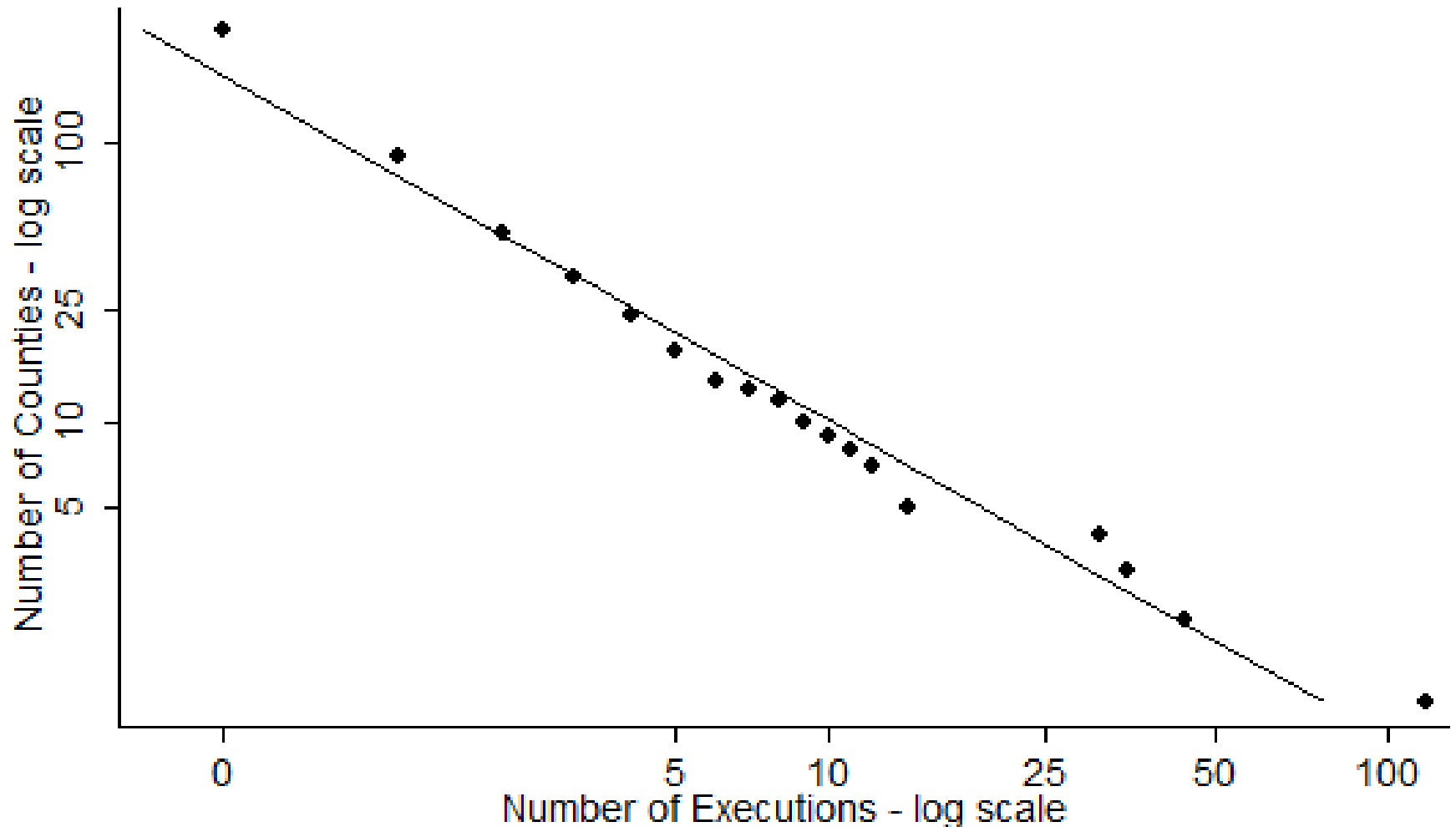
- The following slides show similar analyses for the state with by far the greatest number of executions, Texas, and for North Carolina.
- We can have greater confidence in the national analysis since it is based on a larger number of observations, but the pattern also holds within individual states.

Texas counties with 5 or more executions 1977 to 2011



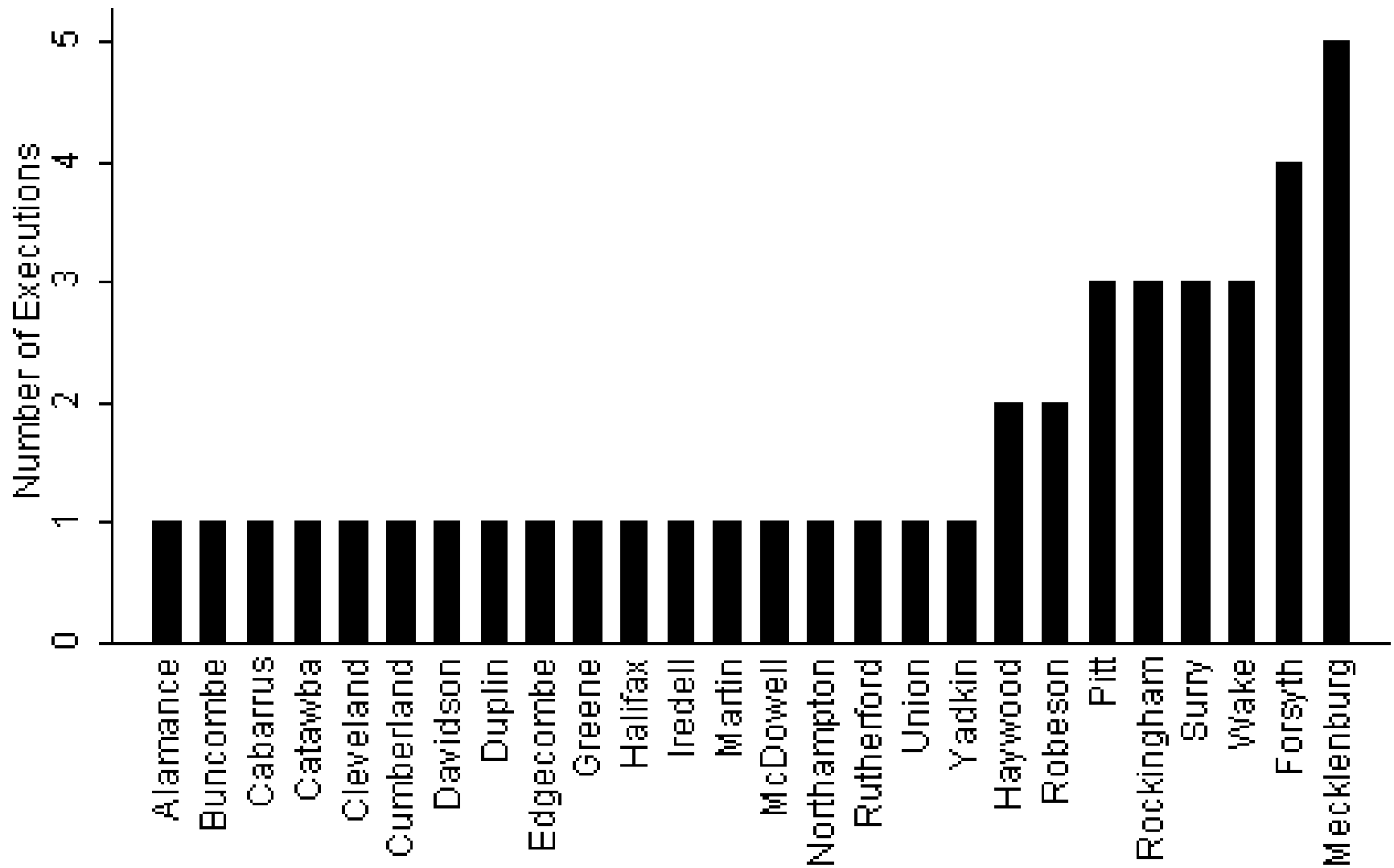
Note: 164 of the 254 counties in Texas have had no executions.

Frequency of Executions by County, Texas



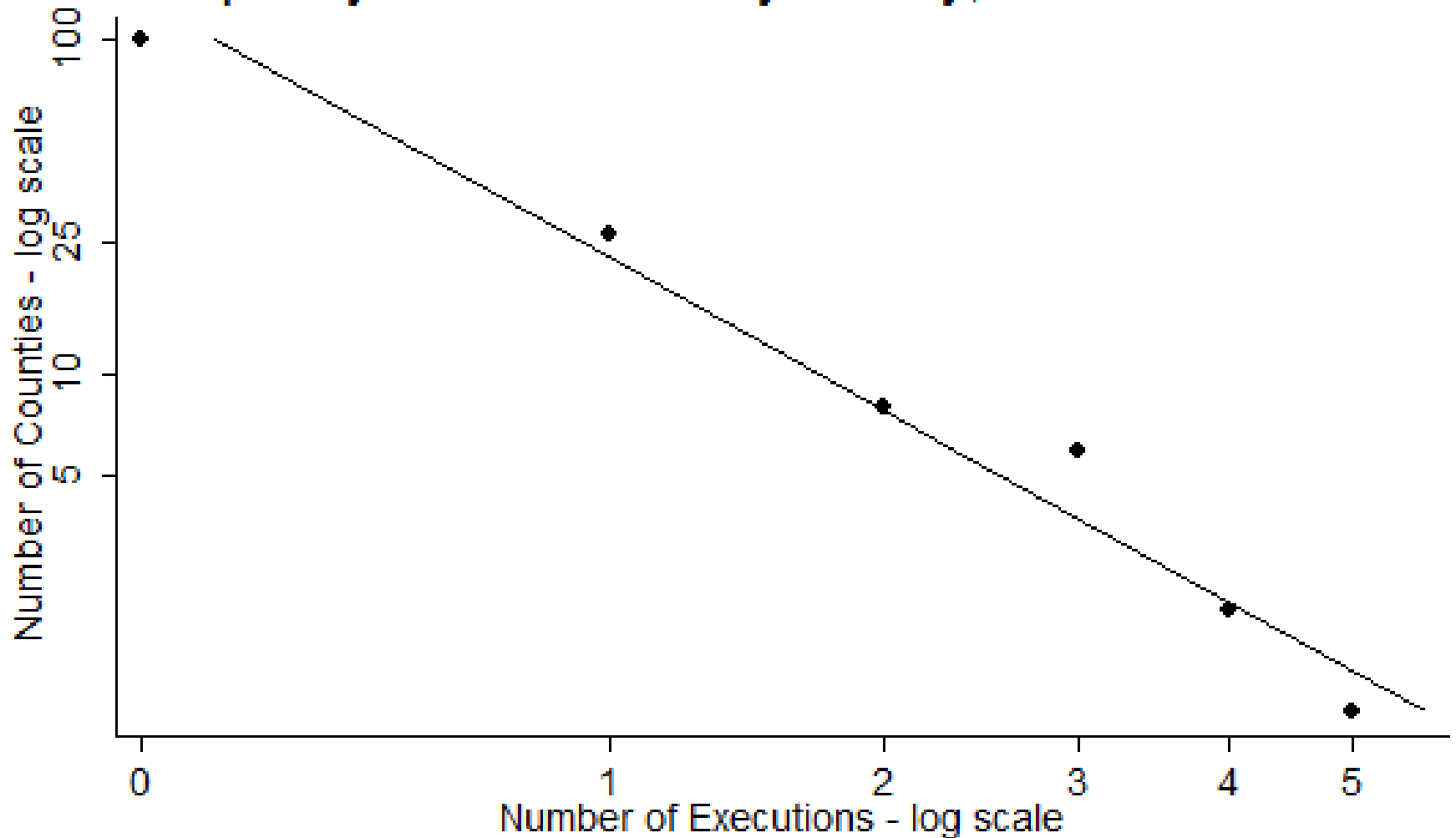
Among 254 counties in Texas, 90 have had one or more executions, 9 counties have executed 10 or more, and one (Harris) has executed 116.
 $\ln(\text{Frequency}) = 4.36 - 0.85(\ln(\text{Executions} + 1))$ Adj. R2 = 0.97

Executions by County in North Carolina 1977 to 2011



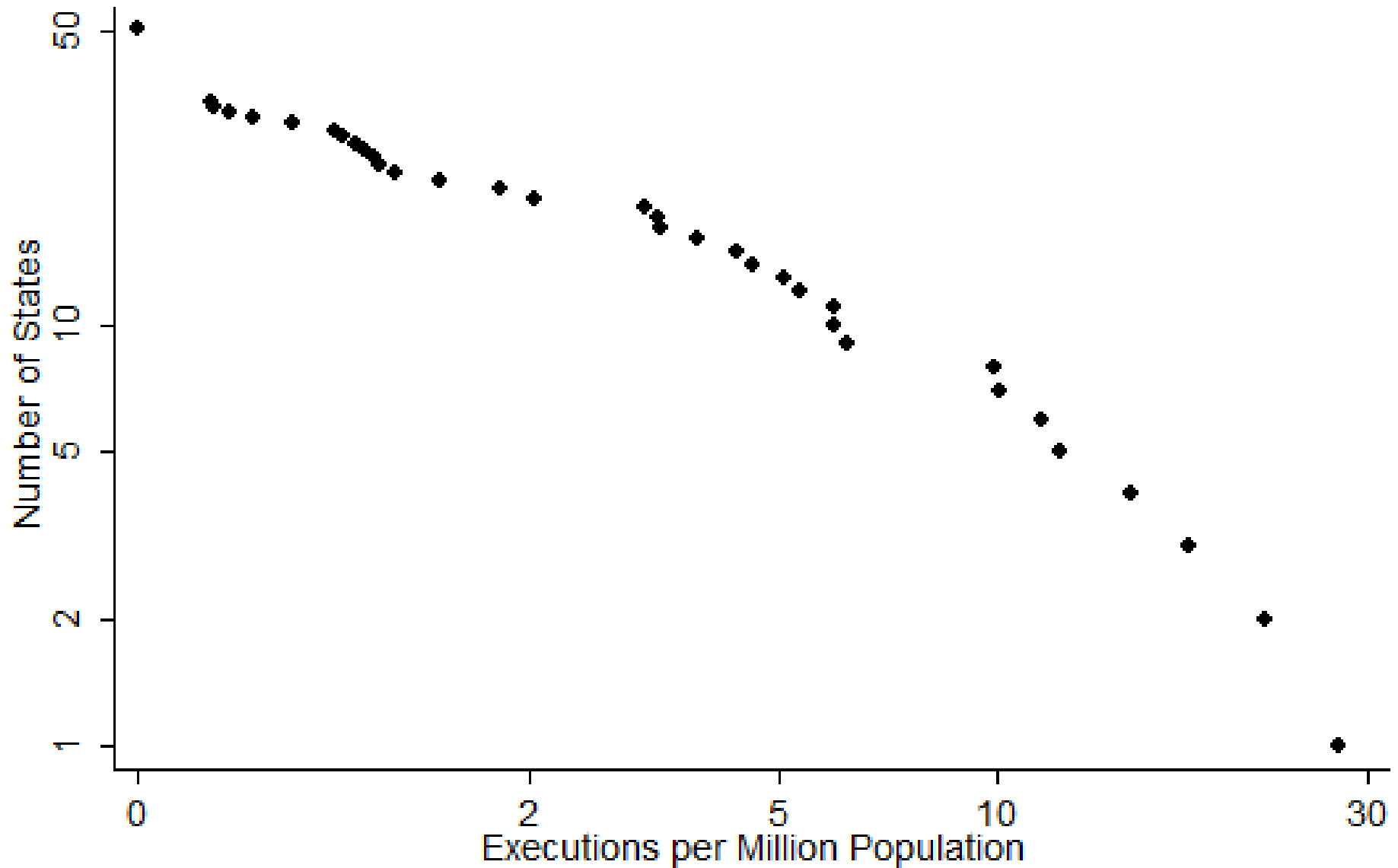
Note: 74 of the 100 counties in North Carolina have had no executions.

Frequency of Executions by County, North Carolina



Among North Carolina's 100 counties, 26 have had one or more executions, 8 counties have executed 2 or more, and one (Mecklenberg) has executed 5.
 $\text{Ln}(\text{Frequency}) = 1.8 - 0.34(\text{Ln}(\text{Executions}+1))$ Adj. $R^2 = 0.95$

Cumulative Execution Rates across the 50 States

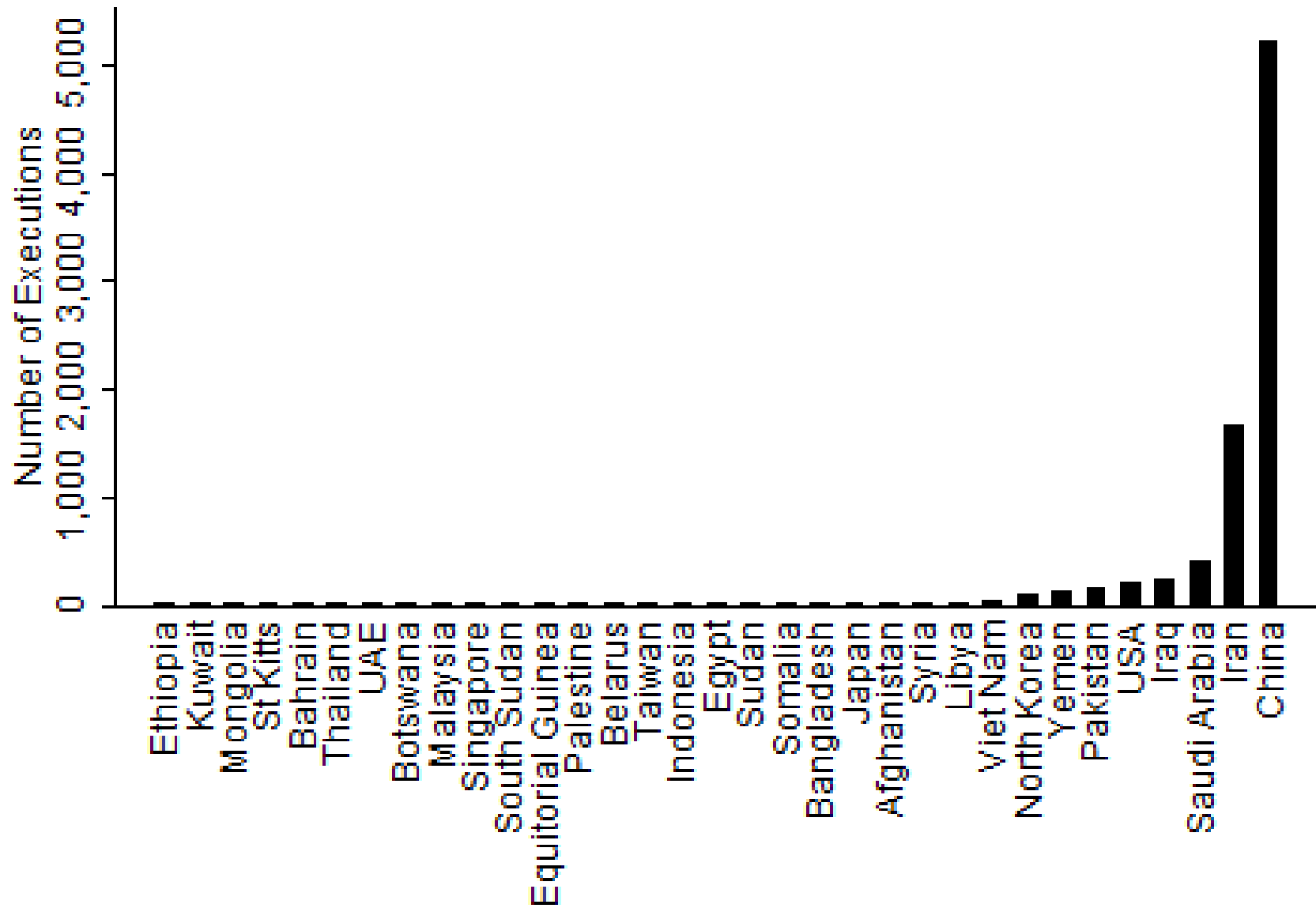


Based on 1,239 executions from 1976 to June 2011.

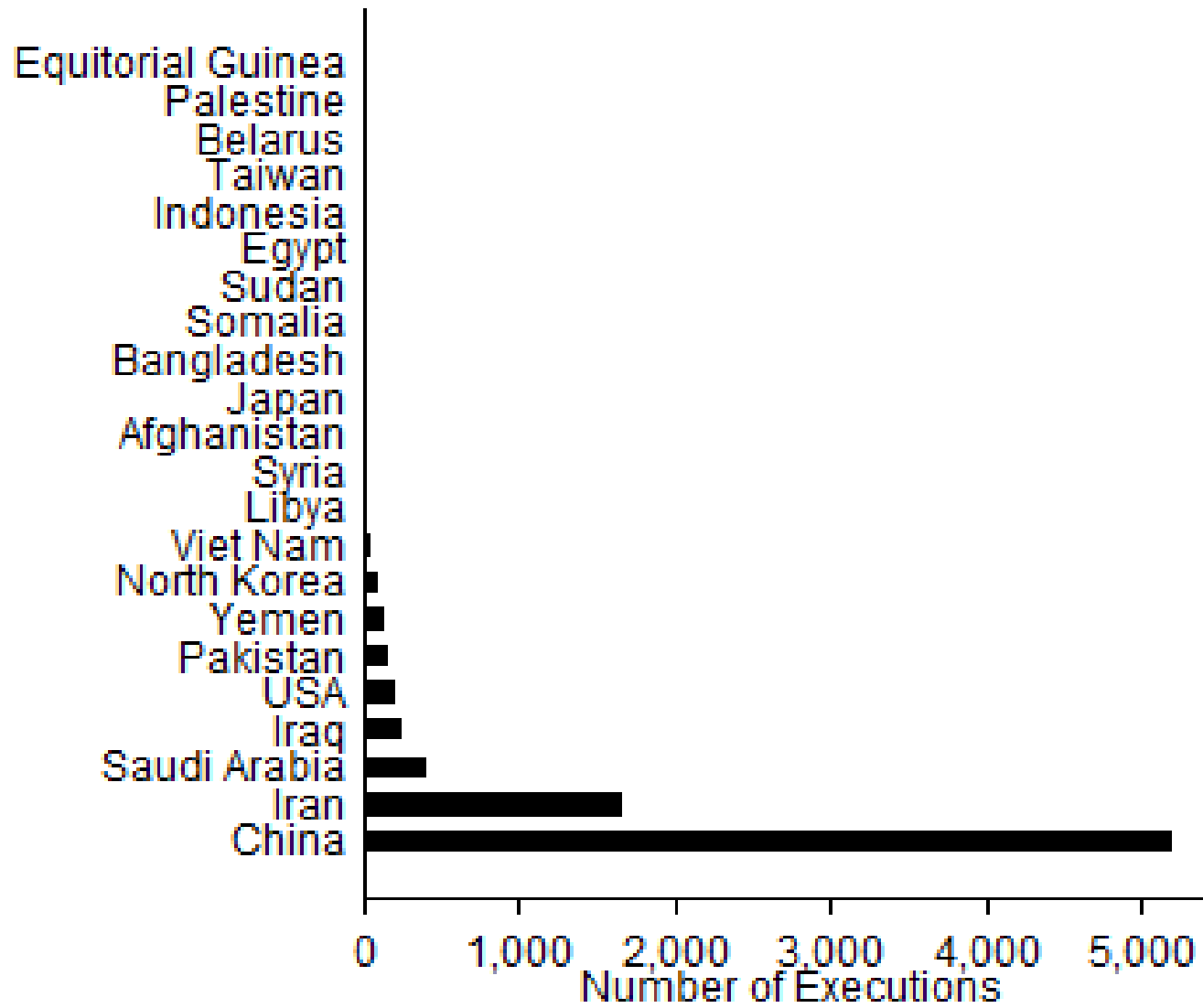
These trends also hold for countries across the world

- Since 2007, Amnesty International has published an annual review of capital punishment around the world:
<http://www.amnesty.org/en/death-penalty/numbers>
- Where they present a range, I use the lowest number in order to be conservative.
- Following charts combine 2007 through 2011.

Executions by Country, 2007-2011

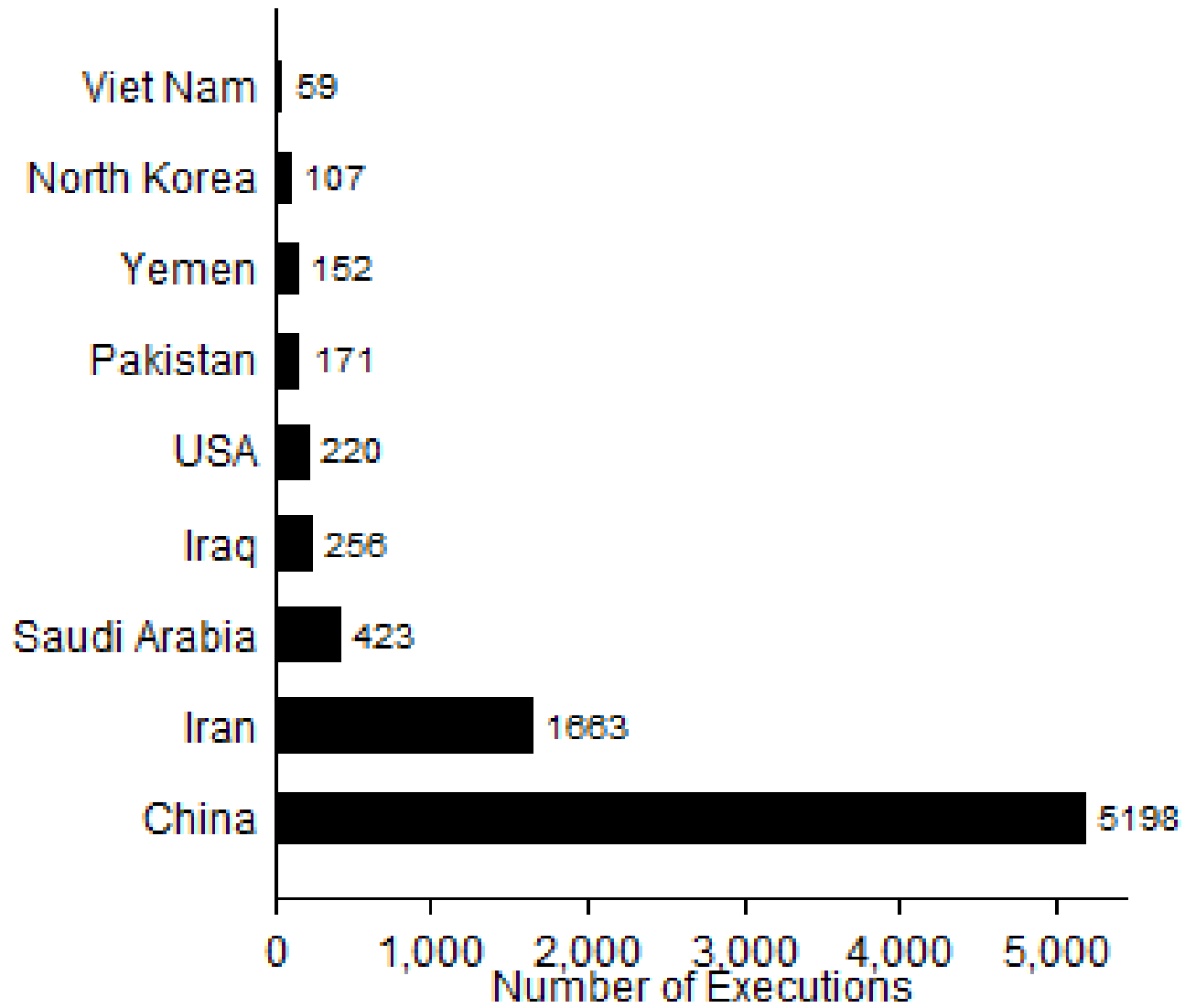


Executions by Country, 2007-2011



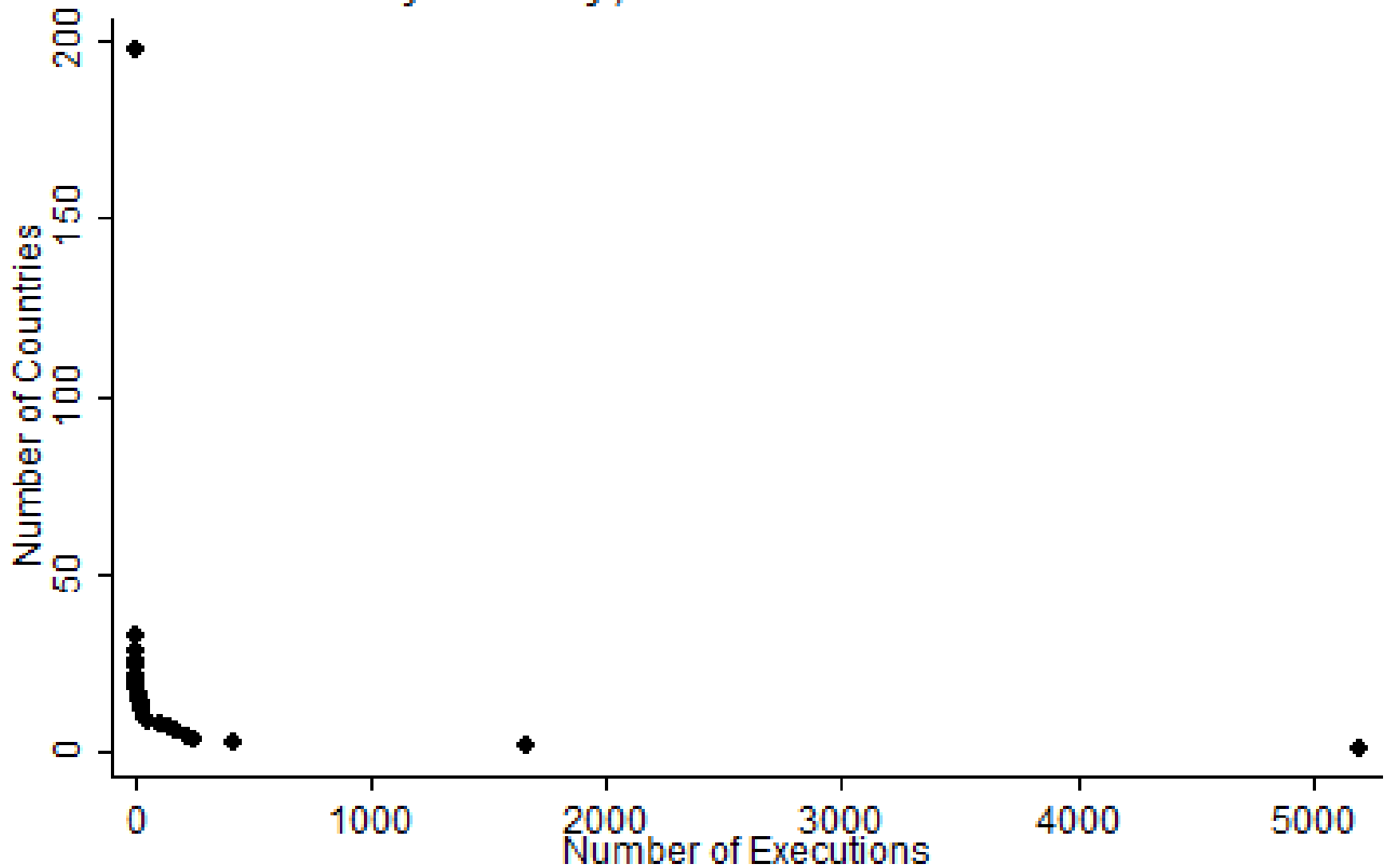
Includes only countries with six or more executions.

Executions by Country, 2007-2011



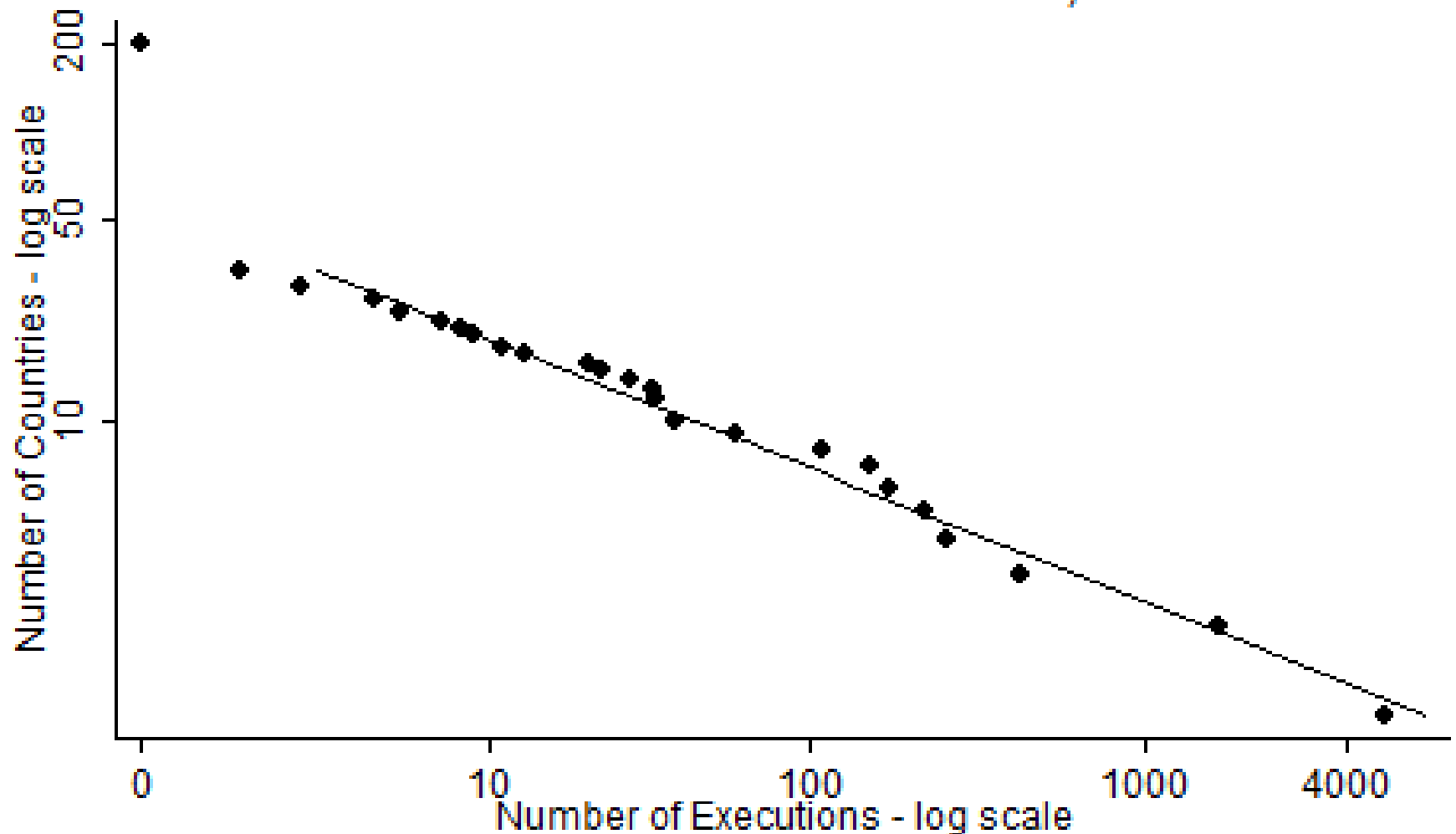
Includes only countries with 50 or more executions.

Executions by country, 2007-2011



Of 197 countries, 164 executed no one but China executed over 5,000.

A Power Law of Death Across the World, 2007 to 2011



Among 197 countries in the world, 164 have had no executions, 7 have executed 100 or more, and one (China) has executed over 5,000.

$$\ln(\text{Frequency}) = 8.86 - 2.19(\ln(\text{Executions}+1)) \text{ Adj. } R^2 = 0.98$$

In my dreams

- A statistical demonstration that no process except a “slippery slope” process could generate what we observe in the data.
- A logical demonstration that if we have a “slippery slope” process that this is, in itself, a demonstration of a constitutional violation.
- 14th amendment: No state shall deprive its citizens of the “equal protection” of the laws.
- Preferential attachment from a random start is unconstitutional, IMHO.