

Baumgartner, POLI 203 Fall 2014

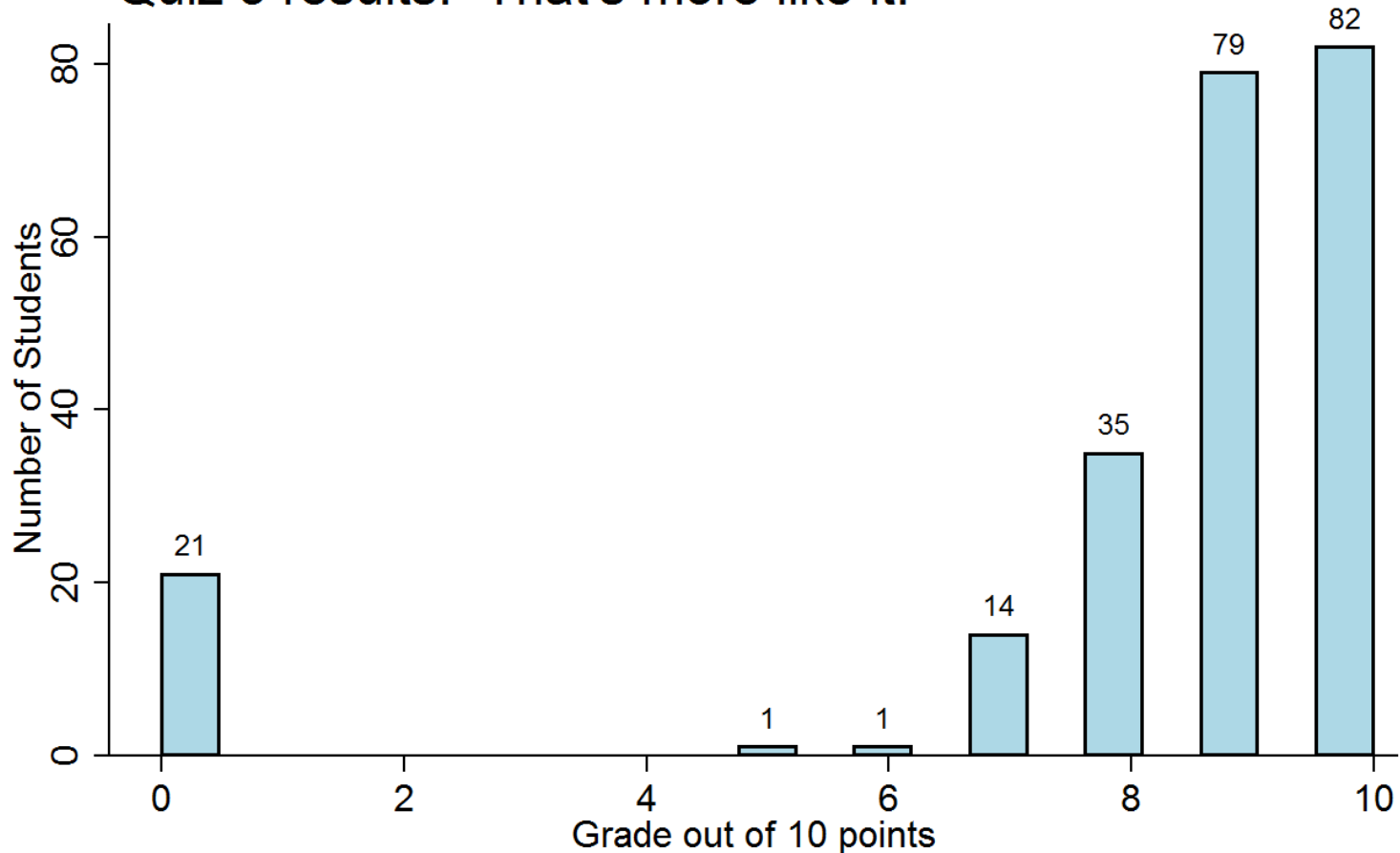
Catch-up on LWOP, then public
opinion

Reading: Chapter 6 of Decline of DP
and Discovery of Innocence

October 6, 2014

Quiz from last week: decent!

Quiz 3 results. That's more like it.



If you took the test, the average grade was 9, and the mode was a perfect 10. Unfortunately, 21 people did not come that day.

Catching up / Clarifying from the lecture

- Death as bargaining chip in a plea agreement.
 - Think about that. Not everyone agrees with the DA's on that one.
- “One and done” appeals if LWOP
 - Not true
 - Reduced scrutiny compared to Capital sentence, for sure
 - But you can appeal

“Finality” and “Endless Appeals”

- Some key concepts
- Presumption of innocence
 - Changes to presumption of guilt after the trial!
- Right to a “fair trial” – not a “perfect trial”
 - Fair: your lawyer has the opportunity to raise issues
 - Perfect: your lawyer does a good job, and so does the DA. No assumption of this.

Grounds for appeal: Procedural errors

- Judge should not have ruled in a certain way
- Prosecutor should not have been allowed to do something
- Instructions to the jury were faulty
- Etc.: Some error was made in the administration of the trial

Not grounds for appeal: Your lawyer failed to raise an issue

- The first trial finds the facts.
- Subsequent courts do not “re-try the facts.”
- Rather, they review that the original trial was fair.
- Fair does not mean perfect.

Motions v. appeals

- Inmates in prison can write letters (motions) to judges asking for a hearing on an issue.
- These are routinely turned down, but can sometimes be successful.
- Need to point out a legally relevant issue.
Not: You made a mistake, I'm innocent.

Two opposing values

- “Finality” – at some point the judicial system has to determine that the judgment rendered is “final.”
 - “endless appeals” “frivolous appeals” discouraged
- Problem is when new facts or new evidence become known after the trial is over.
 - Up to the judge to decide whether to allow a hearing on the matter. No guarantees.

Recanted testimony as an example

- Troy Davis case exemplifies this
- How would the judicial system go forward with that evidence?
 - Speaking to a journalist / advocate / signing a statement ≠ risking charges of perjury in court.
 - People have to be willing to testify
 - They must be more believable in the recantation than they were in the original statement

Finality in a death case

- When the execution occurs, there is no longer any legal case. The case is literally closed. The state of Georgia will never re-investigate whether Troy Davis was “truly guilty.” They have already determined, finally, that he was.
- Strong pressure in some cases to do this. Cameron Willingham in Texas, Carlos deLuna, Troy Davis. Never been done. But see this case:
- <http://www.nytimes.com/2014/01/23/us/family-of-s-carolina-boy-put-to-death-seeks-exoneration-70-years-later.html?ref=us&r=0>

Finality in a non-death case

- Theoretically it remains possible throughout the lifetime of the inmate.
- People have also been exonerated after having served a sentence.
- Practically speaking: Those under capital sentence have enhanced legal protections.
- So, there is a clear paradox in the system.
- However, it is not true that LWOP means “one and done” appeals.

Public Opinion

- Polls go back to 1930s, Gallup:
- <http://www.gallup.com/poll/1606/death-penalty.aspx>

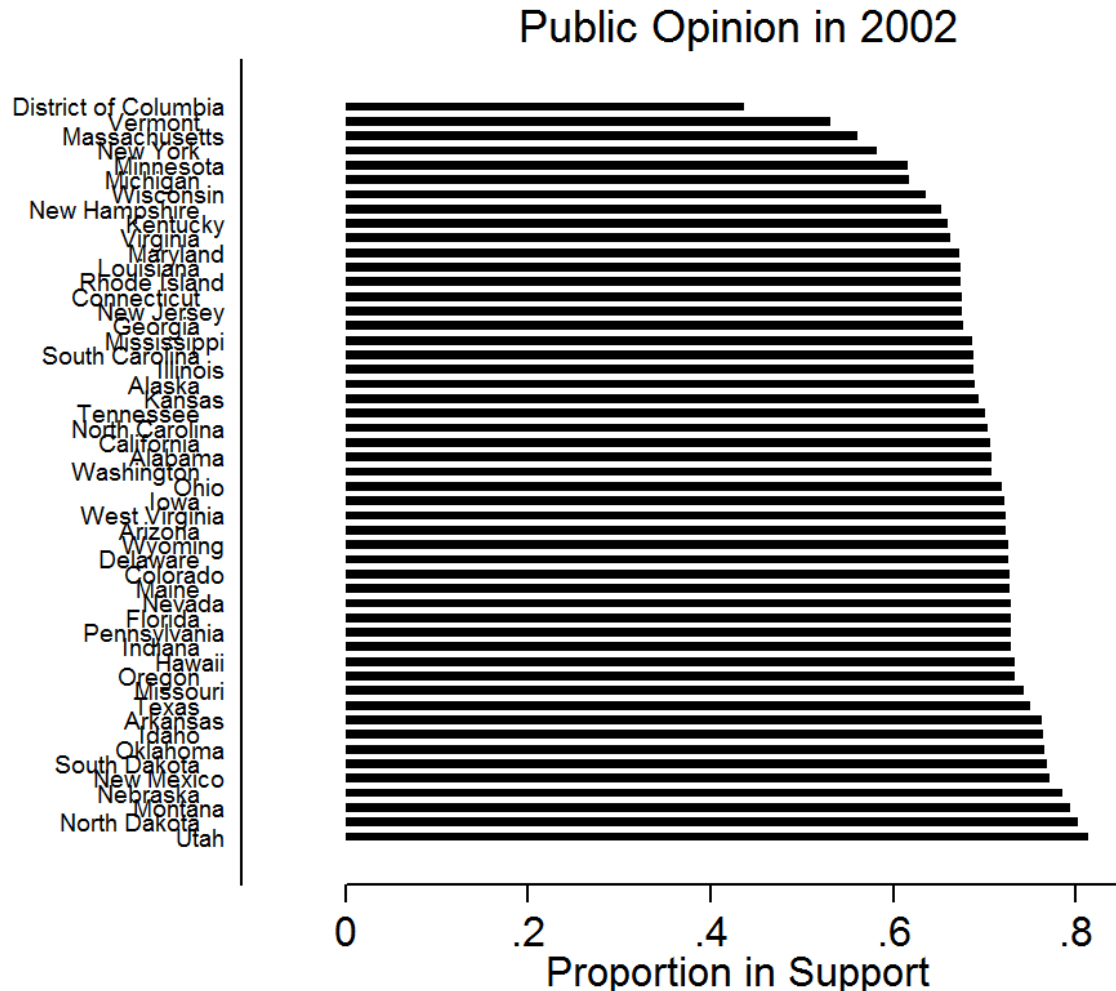
Who supports, who opposes?

- Support higher among:
 - Whites
 - Males
 - Southerners
 - High school education
 - Republicans
- But it also shows aggregate trends over time
 - That is our focus on the chapter

Depends on the question asked

- See the different results obtained from various questions from Gallup.
- At other times: do you support the death penalty for convicted terrorist bomber Timothy McVeigh? (Very high results)
- No “best way” to ask the question.
- So we look at trends across all questions.

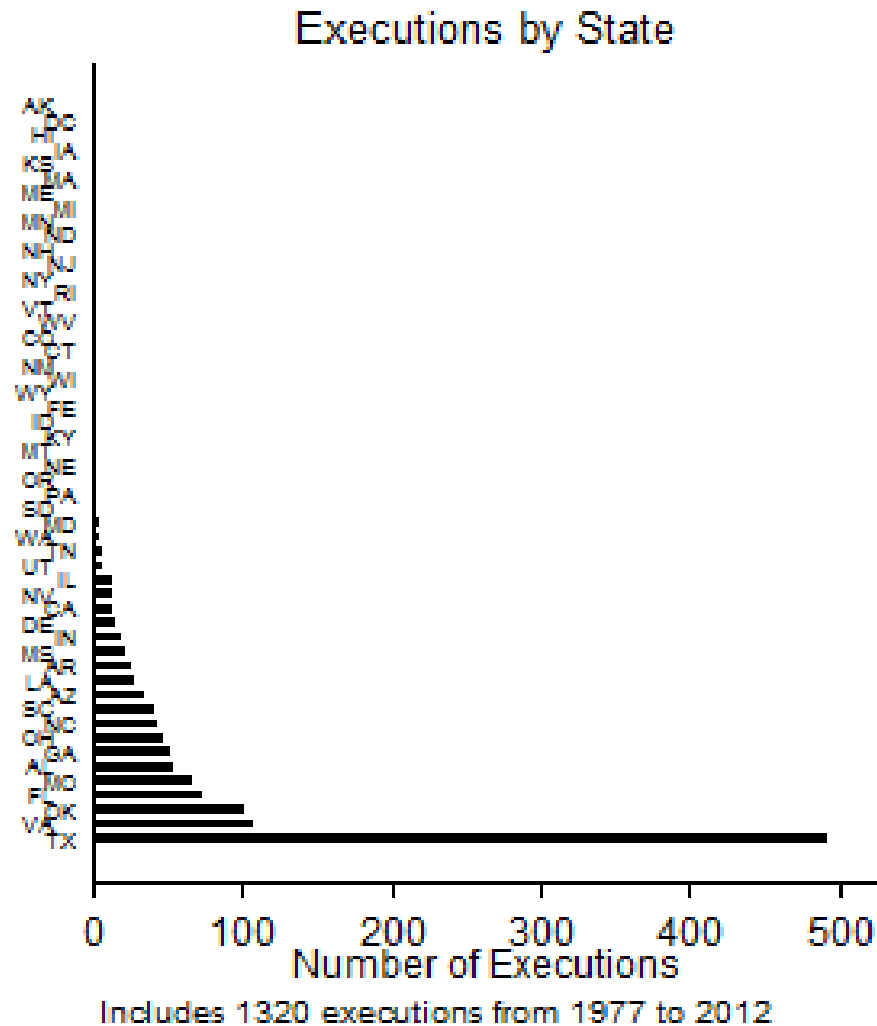
States Vary by Opinion, Obviously



Mean: 79, Min: 44, Max 81

Source: Pacheco, American Politics Research 2014

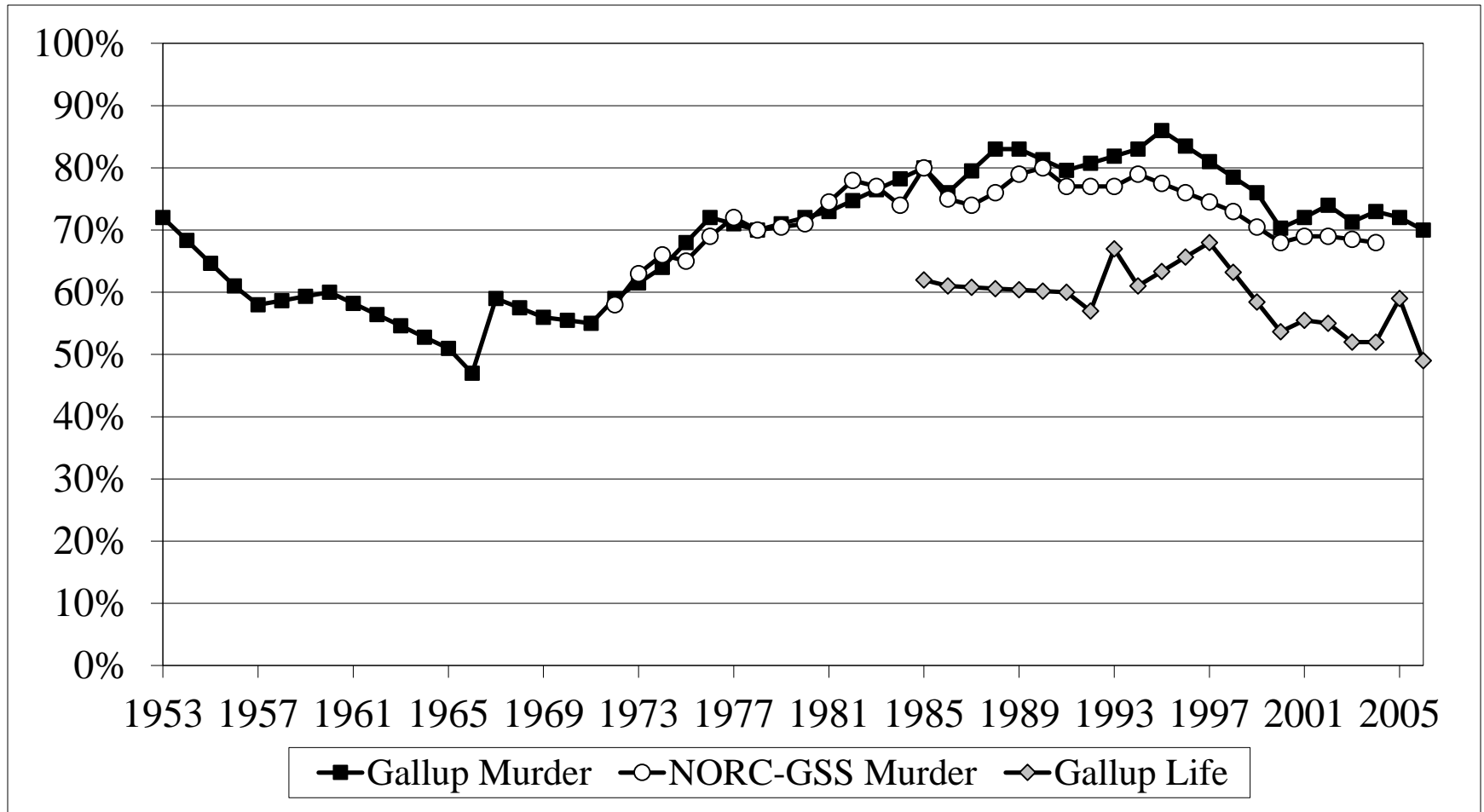
But they vary a lot more in executions!



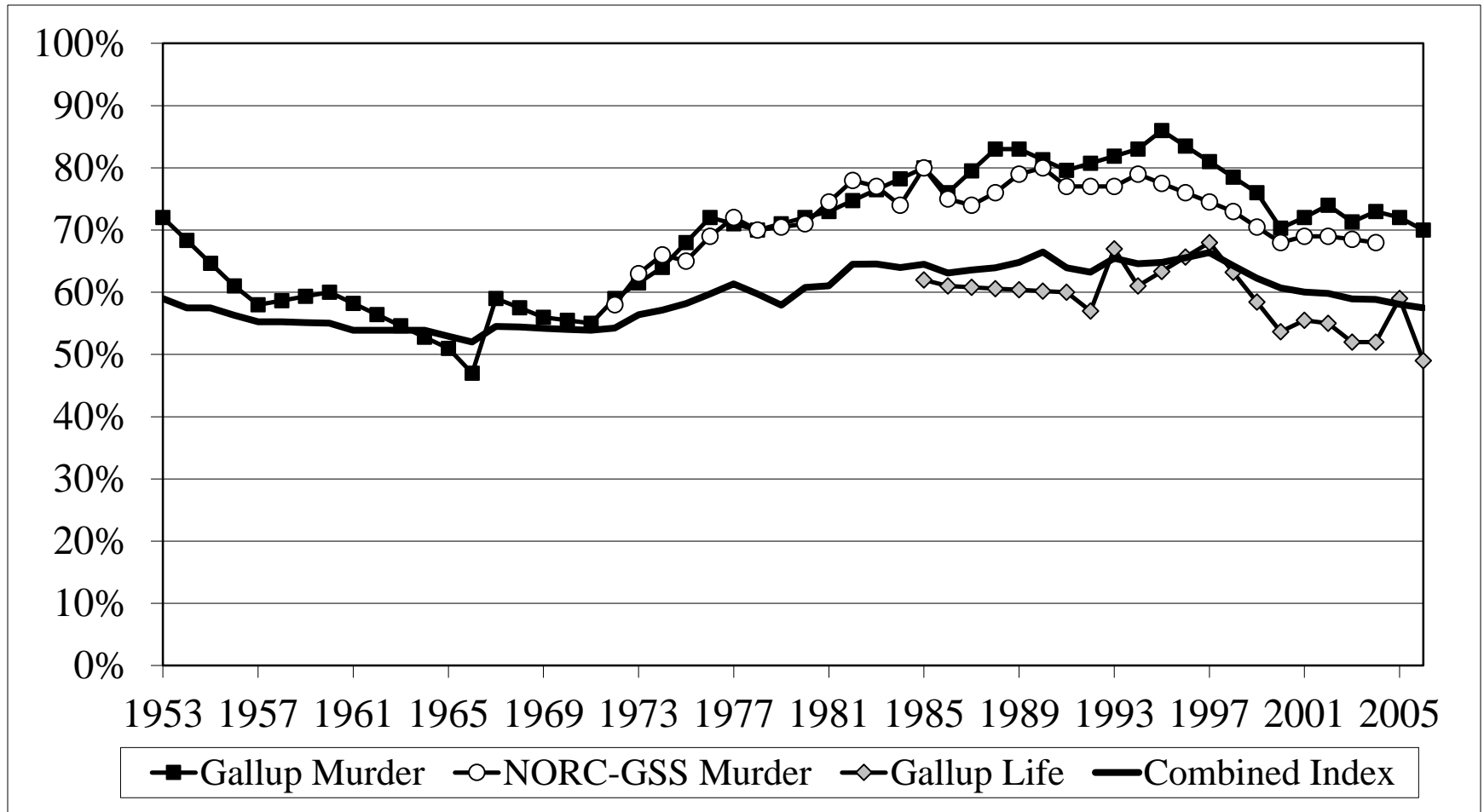
Our point: how this changes over time

- Depends on the question, of course:
- “Are you in favor of the death penalty for persons convicted of murder?”
 - (GALLUP, 42 administrations of this question)
- “If you could choose between the following two approaches, which do you think is the better penalty for murder – the death penalty or life imprisonment, with absolutely no possibility of parole?”
 - (GALLUP LIFE, 18 administrations)
- “Do you favor or oppose the death penalty for persons convicted of murder?”
 - (NORC-GSS MURDER, 25 administrations)

3 questions, different results, same trend



So we make an index



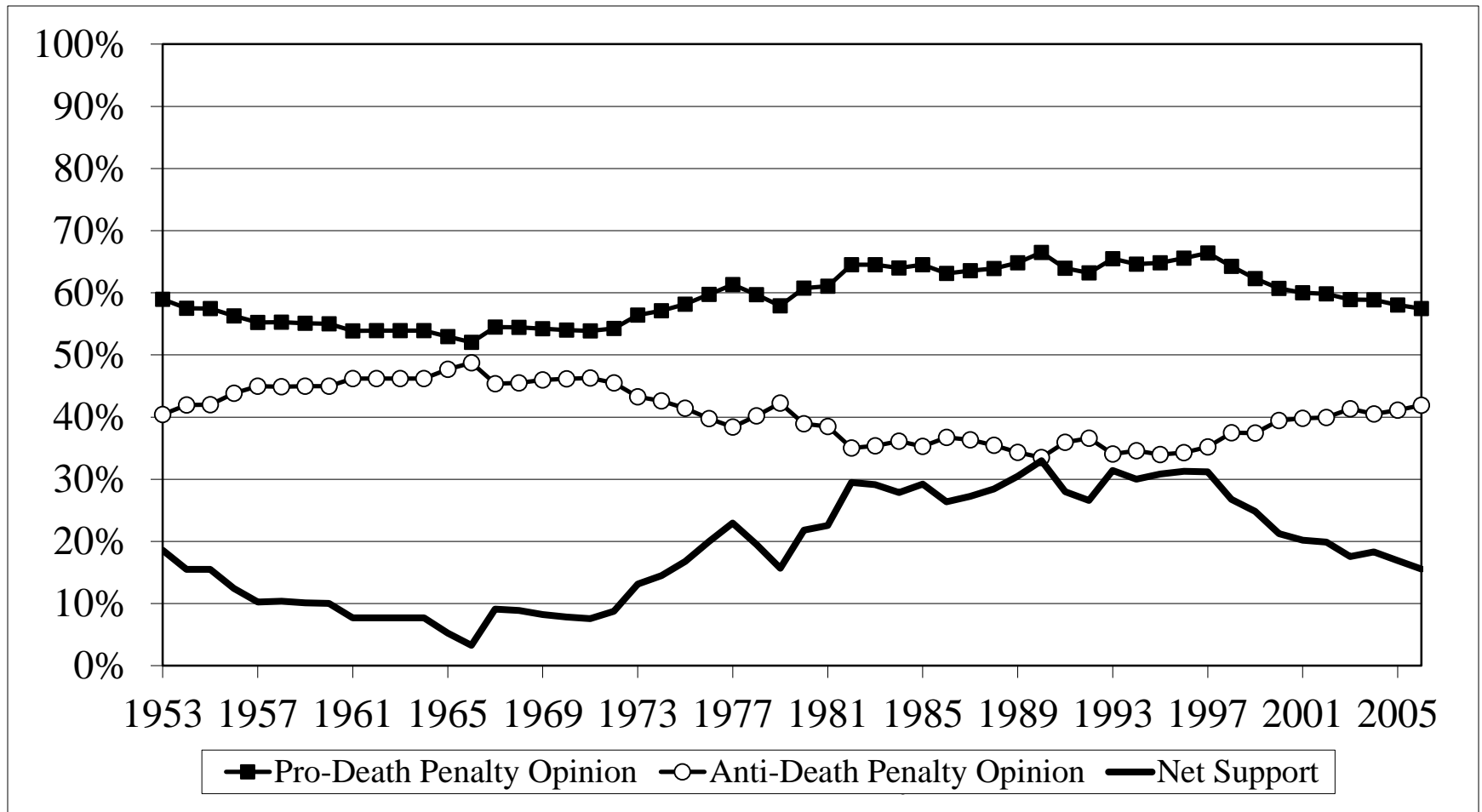
About the index

- See pp. 175 and following in the book
- Lots and lots of questions
 - 67 different survey companies
 - 350 different questions
 - 763 different administrations
- That is, we took all usable information
- Weighted average, shows trends

What does the index mean?

- It goes up or down.
- We can't very well interpret the raw numbers, however.
- The wording of the question matters a lot for the LEVEL of support.
- As it turns out, it has very little impact on the TRENDS of support over time.
- So we can look at trends but not really levels.
- Need to look back at the individual questions for that.

Pro-, Anti-, and Net Support



Net Support

- About 0 in 1965
- Rises to about +30 by 1980, stays there until 1995
- Declines to about +10 or so in 2006
- Most likely continuing down today, but I have not checked.

Explaining Net Opinion:

- Predicting that series, like we predicted Death sentences last week, same idea
- Table 6.1
- Homicides: 1,000 more homicides > 3.4 increase in net opinion support
- Net Tone: 10 more pro-death penalty stories > 1.5 shift in net opinion
- Very slow adjustments: just 17 percent of disequilibrium per quarter

What the heck is this professor saying?

- Opinion moves very slowly
 - No single event can be expected to cause shifts
 - People aren't paying attention
 - People have moral views on the issue and don't like to call those into question
 - Only the accumulation of years of similar events, shifting social norms over a decade or more, can be expected to shift opinion

Long-run trends, blips don't matter

- 1965-1995, one such period: lots of pro-death penalty events, opinion shifted, slowly became more accustomed, accepting of the death penalty
 - Note: some people will NEVER be moved by this.
 - But in the aggregate, opinion moves on average.
- 1995-present, another such period: lots of “bad news” relating to the death penalty
 - Innocence, costs, laws restricting use, less use, abolition by 5 states, botched executions

Remember your first quiz results

- People are not paying attention, obviously
- So, no single event will move national opinion
- But we see an accumulation over time, ever so slowly.

Should you die because of public opinion?

- It turns out, from Chapter 7 in the book and what I presented last week, that:
- We can predict the number of death sentences handed down by juries by:
 - Opinion
 - Tone of news coverage
 - (Homicides had no effect)
- So, timing matters. Same trial in 1993 v. in 2013 might or might not lead to death... Ouch!