

Racial Resentment and the Death Penalty

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Abstract

We explore the annual number of death sentences imposed on black and white offenders within each US state from 1989 through 2017, with particular attention to the impact of aggregate levels of racial resentment in each state's population. Controlling for general ideological conservatism, homicides, population size, violent crime, and the inertial nature of death sentencing behavior, we find that racial hostility translates directly into more death sentences, particular for black offenders. Racial resentment itself reflects each state's history of racial strife; we show powerful indirect effects of a history of lynching and of racial population shares. These effects are mediated through contemporaneous levels of racial resentment. Our findings raise serious questions about the appropriateness of the ultimate punishment, as they show its deep historical connection to white racial hostility toward blacks.

Keywords: Capital punishment; death sentences; racial resentment; lynching

Submitted to *Journal of Race and Ethnic Politics*

March 18, 2022

The Racial Roots of the Death Penalty

When Anthony Ray Hinton, a black man, was taken in for questioning for a capital crime in Birmingham, Alabama in 1985, a police detective described the outcome he could expect: “I can give you five reasons why they are going to convict you... Number one, you’re black. Number two, a white man gonna say you shot him. Number three, you’re gonna have a white district attorney. Number four, you’re gonna have a white judge. And number five, you’re gonna have an all-white jury” (Hinton 2018, 51–52). Hinton was sentenced to death and served 29 years before being cleared of all charges.

The death penalty was once much more common than it is today, reaching its historic peak in the 1930s, and it was as common in the Northeast as it was elsewhere (see Banner 2002). In fact, from the beginning of the twentieth century to the Supreme Court’s invalidation of all existing state capital punishment laws in *Furman v. Georgia* (1972), New York ranked first in executions, Pennsylvania was third, and California was fifth. Since *Furman*, however, the “modern” death penalty has largely been a Southern phenomenon. The top executing states since the landmark ruling have been Texas, Oklahoma, Virginia, Florida, Missouri, Georgia, and Alabama (see Baumgartner et al. 2018, 338). States of the former Confederacy ramped up their death penalty systems much more quickly than those in the North as politicians throughout the region decried the “judicial activism” of the Court’s 1972 decision and vowed to protect “states’ rights” to enforce the laws as they saw fit (see Garland 2010).

In this article, we use aggregate statistical evidence about the dynamics of racial resentment at the state level to show that racial animosity is powerfully connected to levels of use of capital punishment. We base our analysis on public opinion, in particular racial resentment—that is, the level of animosity toward blacks. We document that in states with higher levels of racial resentment, more death sentences are handed down, particularly to black

offenders. These results withstand a full set of statistical controls, including for general ideological conservatism and for the number of homicides. And, we find that the legacy of historical lynchings partially motivates contemporary differences in death sentencing for black offenders because of its indirect effect through contemporary racial resentment. Our results therefore indicate that racial hostility drives state usage of the death penalty and that the policy is a continuation of racially motivated criminal justice practices and is closely connected to historical patterns of racial terror. Further, the linkage from darker chapters of our nation's history to today stems from public opinion.

Racial Resentment and the Death Penalty

Two recent reports illustrate the patterns on which we focus. One comes from the Death Penalty Information Center (DPIC, 2020) and reviews the history of the death penalty with a focus on race. In the 20th century through the 1972 *Furman* decision, blacks were uniquely targeted for execution for crimes less than homicide, and disproportionately so for murder. Virginia, for example, executed 48 blacks for rape, 20 for attempted rape, and five for armed robbery; whites were not eligible for the death penalty for such crimes. During the same period, 185 blacks and 46 whites were executed for murder (DPIC 2000, 19); national statistics showed blacks representing 90 percent of all those executed for rape from 1930 through 1968, and 49 percent of those executed for murder (DPIC 2020, 16). The report notes the substitution of the death penalty for lynchings in the early 20th century (5-16); the disproportionate use of the death penalty in crimes with white victims, particularly white females, and especially if the offender is black (29-32); and racial differences affecting all parts of the process, from homicide clearance rates to prosecutors' charging decisions to jury selection and judge / jury sentencing decisions (37-53).

In North Carolina, the Center for Death Penalty Litigation recently called the death penalty “another Confederate monument” (CDPL 2020, np) and provided a similarly complete historical overview of the racial roots of the death penalty in a single state. Scholarly work, too, finds a linkage between racial animus and death penalty support (Unnever and Cullen 2010, 2011), with Garland (2010) arguing that the localized nature of the American criminal justice system has enabled states with a history of racial oppression and conflict to retain the punishment long after it became extinct throughout most of the Western world.

Michael K. Brown (2009) reviews the connection between racial resentment among whites and a range of attitudes with regard both to criminal justice and to the welfare state. He notes that increased white concern that blacks were not supporting the “hard work” ethos of American values led to decreased white support for various social welfare policies as well as increased white support for harsh criminal justice policies including “three strikes” laws, the death penalty, and other punitive measures often extending beyond the criminal justice realm into policies such as drug-testing for those on public assistance and other policies designed to weaken the welfare state. In Brown’s view, racial resentment is a key element in a widening racial divide across a range of policy opinions, particularly those related to punishment and aid to the needy. His focus is on the rising view among many whites in the post-civil rights era that, with legal barriers to success for blacks removed by the reforms of the 1960s, any remaining racial inequalities can be ascribed to “individual choices”: Choices to stay in school or not, to marry or to have children out of wedlock, to work or be unemployed, and so on (see Brown 2009, 667). Brown builds on a large political science literature in exploring the impact of this “personal responsibility” ethos, an important part of the “post-civil rights racial order” that is closely connected to what we call here racial resentment. Such an ideology drove much of the

political agenda in the 1980s and 1990s, a period when criminal justice policies were at their most punitive and social welfare policies were cut back substantially.

Racial resentment is a concept developed by Donald Kinder and David Sears (1981) and further developed by Kinder and Lynn Sanders (1996). As noted by Christopher DeSante and Candis Watts Smith (2020), Kinder and Sears developed a new interpretation of the “race problem” based on whites’ perception that “blacks violate such traditional American values as individualism and self-reliance, the work ethic, obedience, and discipline” (Kinder and Sears 1981, 416, quoted in DeSante and Smith 2020). In this “post-civil rights” view, individual choices, not racial discrimination, explain racially disparate outcomes. Of course, only some whites have these attitudes, but those who do also tend to have a variety of other views hostile to the interests of blacks.

DeSante and Smith (2020) show that levels of racial resentment have stayed steady or grown more hostile to blacks over time, though they indicate that younger (or Millennial) white Americans report more progressive views on the scale than their elders (perhaps because they “see through” the effort of the question designers to avoid social desirability bias). In any case, racial resentment is a distinct psychological construct from support for the death penalty or general ideological left-right position, and, despite its limitations, continues to predict attitudes on a variety of criminal justice issues (Enns and Ramirez 2018; Kam and Burge 2019).

In a recent treatment of the question of the meaning of the racial resentment scale, Lafleur Stephens-Dougan (2020) writes: “Critics ... argue that [the scale] is actually capturing ‘principled conservatism’ ... while others argue that the scale means different things for liberals and conservatives.... But the scale still does a remarkably good job of distinguishing between white Americans who express hostility toward blacks and those who do not ...” (51). Because

we include a measure of general ideological conservatism in our models, we can be sure that the racial resentment measure is capturing something distinct, something about attitudes toward black Americans that goes beyond simple ideological preferences for smaller government. And we agree with Stephens-Dougan that an appropriate label for these ideas is hostility, though certainly those exposing the ideas would disagree. In any case, whether we call it hostility, resentment, or something else, the findings remain the same.

Consistent with our reasoning that racial resentment will motivate increased use of the death penalty, individual-level research reveals strong effects of racial attitudes on support for criminal justice policies. Unnever and Cullen (2007) explore black and white attitudes toward the death penalty as well as a separate measure of white anti-black racism. When they statistically control for racism, they find that non-racist whites have about the same level of support for the death penalty as do blacks. But in 2002, research showed that black and white support for the death penalty differed by 29 percentage points: 44 percent of blacks supported it, compared to 73 percent of whites (Unnever and Cullen 2007, 1281; see also Unnever and Cullen 2010 and 2011). There is strong reason, in other words, to believe that racial resentment is strongly connected to death penalty attitudes at the individual level.

A number of historical trends reinforce the idea that the modern foundations of the death penalty lie in the racial hostility of whites toward blacks. First, the judicial death penalty was expanded during the early 20th century in direct response to extra-judicial lynchings, as we explain in detail below. Second, the modern death penalty has become concentrated in the South, whereas historically it was more common in the Northeast (see Banner 2002; Baumgartner et al. 2018). Third, as we will show, the modern death penalty is connected at the local level to its deep historical connection with the history of racial violence by whites toward blacks. We can

see the association of use of the death penalty with white racial animosity by looking at poverty, racial demographics, and the legacy of lynchings during the Jim Crow period. While these effects are indirect, they remain powerful. In states with historical legacies of lynchings, we find higher levels of racial hostility still today. We explore these dynamics in the following section.

A Theory of Racial Hostility

We follow Acharya, Blackwell, and Sen (2018) in positing the possible influence of deep historical roots of public policy. Their focus was slavery, and they demonstrated powerful legacy effects enduring to modern times. Of course, their argument was not that the share of the population enslaved in 1860 directly causes any outcome variable today. Rather, they noted that factors leading to more historical use of slavery might endure and have other consequences, and that slavery itself could also affect the historical trajectories of local communities in subsequent periods of history. Racial attitudes that historically emerged to justify discrimination and racial subjugation reproduce themselves within the white population through the institutions and political cultures of a given area.

We develop a similar argument here with regard to the use of lynchings in the early 20th century. Previous scholars have suggested that the death penalty is deeply connected to the maintenance of racial hierarchy, especially in the South, and strongly associated with poverty. Communities with higher black population share, poverty, and historical connection to Jim-Crow era lynchings may be expected to have more death sentences, as may those in the South. Of course, poverty, black share of the population, being a former slave state, high numbers of lynchings, and being in the South are all themselves highly inter-correlated (see also Norrander 2000 and Lofquist 2002).

White racial hostility is a key driver in the process we describe, and it manifests in several ways throughout our analysis. First, historically, lynchings were a powerful indicator of the state of race relations, specifically white fear of the black population and whites' willingness to use extra-legal violence to enforce white dominance (Tolnay and Beck 1995). Second, use of the judicially sanctioned death penalty was a powerful judicial strategy to stop lynchings in the Jim-Crow era, and areas with a long history of vigilantism continue to be epicenters of capital punishment (Zimring 2003; Messner, Baumer, and Rosenfeld 2006; Jacobs, Carmichael, and Kent 2005; Baumgartner et al. 2020). Third, white fear of black crime persists today (see Duxbury 2021). This fear may be highest in counties with relatively large shares of non-white population, consistent with what Blalock (1967) referred to as "racial threat" theory. We avoid the label that Blalock assigned, since we see no threat from the black community. Rather, we interpret his theory in light of white hostility. If the black population is small, white fear, anxiety, and suppressive behavior toward blacks can be expected to be minimal. If the white population has only a smaller majority, however, whites' increased racial hostility may ultimately produce punitive criminal justice policy intended to maintain the existing racial order (e.g., Jacobs and Carmichael 2002). Our theory, then, is consistent with Blalock's and uses the share of the black population as a key indicator variable.

The direct connection between lynching and death sentencing is made clear by Carol and Jordan Steiker (2010). They describe the idea that the death penalty was needed as an antidote to lynching as one of the most powerful, but now forgotten, arguments for the retention of capital punishment around the turn of the 20th century. James Clarke (1998) documents the decline in southern lynchings in the early decades of the 20th century. By the 1920s, he writes:

... perhaps the most important reason that lynching declined is that it was replaced by a more palatable form of violence. For the first time, court-ordered executions supplanted lynching in the former slave states. Along with segregation and disfranchisement, such “legal lynchings,” as they were described by Southerners themselves, became the third legal component in the movement to limit mob violence while still maintaining white dominance. There was no longer any need for lynching, Southern leaders insisted; almost the same degree of control and intimidation could still be exerted over blacks with capital punishment (Clarke 1998, 284–285).

In a recent report, the Equal Justice Initiative corroborates some of this analysis: “As early as the 1920s, lynchings were disfavored because of the ‘bad press’ they garnered. Southern legislatures shifted to capital punishment so that legal and ostensibly unbiased court proceedings could serve the same purpose” (EJI 2017, 62). The country suffered a series of incidents of racial violence in the “red summer” of 1919, and black veterans returning from the battlefields of World War One were subjected to violent and sometimes fatal confrontations in many cities around the country, including Charleston; Washington, DC; Cleveland; and Chicago (see McWhirter 2011).

One of the larger such events took place in the rural area surrounding Elaine (Phillips County), Arkansas (see Whitaker 2008). In this event, hundreds of blacks were killed, many by federal troops, following an attempt to create a local union of sharecroppers to demand higher prices for their cotton. In the end, 300 were arrested, 100 were tried, and 74 were convicted, of whom 12 were sentenced to death (Whitaker 2008, 182); no whites were arrested, though whites killed untold numbers of blacks during the violence. The end result of the judicial process, however, was a surprise to many: The US Supreme Court recognized, in 1923, that a death

sentence imposed after a sham trial in order to avoid a violent mob was an unacceptable process. Writing for the majority in *Moore v. Dempsey* (1923), Justice Oliver Wendell Holmes reviewed the various threats of mob violence and promises that the Governor would not commute the death sentences in order to avoid immediate mob violence. Holmes concluded that if “the whole proceeding is a mask,” and the “counsel, jury and judge were swept to the fatal end by an irresistible wave of public passion,” (p. 261) then the death sentence must be overturned.

Moore v. Dempsey was important in many ways, but for our purposes it matters because it made explicit a practice of substituting “legal” lynchings for mob-based ones, and reminded local authorities that the legally sanctioned ones had to attain a higher standard of due process if they were to have constitutional validity. Of course, this remained contested; in fact, the case of the “Scottsboro Boys,” perhaps the most well-known example of such a “legal lynching,” did not take place until 1931 (see Acker 2008; EJI 2017). “The decline of lynching ... relied heavily on the increased use of capital punishment imposed by court order following an often accelerated trial. That the death penalty’s roots are sunk deep in the legacy of lynching is evidenced by the fact that public executions to mollify the mob continued after the practice was legally banned” (EJI 2017, 5). A quick public execution, sanctioned by the courts, could satisfy the crowd.

In sum, many studies propose a link between lynching and execution (see also Ogletree and Sarat 2006). But we should note the perspective is not universal; Tolnay and Beck (1995) do not find a statistical connection, or “substitution effect,” between the two, and Vandiver (2006) describes a variety of relations in different places in her study (see also Vandiver, Giacomassi, and Lofquist 2006). Lynchings declined from the late 1800s through to the Second World War and were rare after that. Executions reached a peak in 1935. As Vandiver (2006) notes, there could well be a substitution effect in some locations but not in others.

One possible explanation for this inconsistent evidence may be that historical lynchings are only indirectly related to the death penalty through contemporary racial resentment. Although substantial population shifts have occurred in various US counties since the lynching era, the cultural norms and racial dynamics that led to these events nearly a century ago may well continue to reflect in the local legal culture today. One sign that they do is in Table 1: Counties with no historical lynchings saw an average of 1.9 death sentences in the period from 1972 through 2019. Where there was one lynching, the number of death sentences more than doubles, to 2.96; it doubles again to over 5.6 in counties with two or more lynchings. The poverty rate is higher in counties that once saw more lynchings, and the black share of the local population is more than five times higher in the counties with three or more lynchings compared to those with none.

[Table 1 about here]

Of course, modern use of the death penalty may be related to modern-day racial dynamics, not only historical legacies. We therefore examine contemporary racial population shares as well. Following Blalock (1967), many scholars have used racial population shares as a source of hostility between racial groups (see Quillian and Pager 2001, 2010; Eitle et al. 2002; Jacobs and Carmichael 2002; Jacobs, Carmichael, and Kent 2005; Stults and Baumer 2007; Pickett et al. 2012; Pickett 2019; Ramey and Steidley 2019; Duxbury 2021). Duxbury (2021) corroborates our expectation that racial demographics are associated with white fear of crime and /or hostility toward blacks. In his analysis of state adoption of tough-on-crime laws, Duxbury writes:

[A]s the size of the minority group increases, majority racial groups must mobilize to a greater degree in support of new social policies that restrict the minority group's

competitive power. Thus, rather than influencing how criminal justice actors enforce existing criminal laws, minority group size may elicit large-scale shifts in dominant groups' policy interests that shape how new criminal law is constructed and the rate at which new criminal laws are adopted (Duxbury 2021, 126–127).

Threat theory predicts that threat to the white population's economic and political standing motivates them to support social policies that repress the ability of the black population to compete for economic and political resources (Duxbury 2021, 129).

Duxbury notes that Blalock used slavery and Jim Crow laws as legal systems that achieved the goal of maintaining majority group dominance, noting that many see the harsh-on-crime laws that he analyzes as modern forms of slavery or Jim Crow (e.g., Alexander 2010; Wacquant 2000). We can add the death penalty to this list. And we can be more straightforward in our language: policies that “repress the ability of the black population to compete for economic and political resources” can be called policies based on white racial hostility.

In addition to demographics and historical lynchings, a final factor that might influence racial resentment is the prevalence of poverty among whites. Blalock (1967) argues that resource competition and status anxiety are causes of white hostility, as disadvantaged white populations are more likely to blame racial minorities for their own economic precarity. Several prior studies have evaluated the impact of economic disadvantage among white populations, finding linkages between discriminatory legal practices and interracial economic competition (King, Messner, and Baller 2009; Wang and Mears 2010). We expand on upon these prior studies by evaluating whether white poverty rates indirectly contribute to death penalty use by increasing white racial resentment.

We are not the first to posit that racial resentment is key to understanding the modern death penalty. Indeed, an extensive literature in the field of public opinion finds that individual-level resentment shares a strong association with support for the death penalty, especially among whites (for example see Kinder and Sanders 1996; Peffley and Hurwitz 2007, 2010; Unnever and Cullen 2010; Brown and Socia 2017; Kam and Burge 2019). We add to this literature by shifting the unit of analysis away from the individual respondent in a public opinion survey and focusing instead on aggregate levels of resentment across the states and over time. More specifically, we investigate whether these aggregate differences predict the annual number of death sentences in a given state, controlling for ideological conservatism. Our findings at the state level are consistent with a long literature documenting this linkage at the individual level. We also add to the literature because we have a clear and substantively important dependent variable: The number of death sentences actually handed down.

Hypotheses

In sum, we propose that use of the death penalty against black offenders in a given state in a given year, net of controls, is directly related to racial resentment, conservative ideology, and institutional factors such as partisan control of government and partisan judicial elections. It should be indirectly related to racial population dynamics, poverty, and the historical legacy of lynching, as these factors induce racial resentment. For white offenders, we expect a smaller effect of racial resentment, largely because the same institutional and ideological factors that drive punitive policies toward blacks likely also affect punitive crime policies in general.

Data and Methods

Our analytic approach is to estimate a cross-sectional time-series model where the units are the US states and time is measured in years. Our dependent variable is the number of death

sentences imposed in a given state in a given year, for all years from 1989 to 2017. We include only those states having a legally valid death penalty statute in place in the year of analysis. Our analysis covers this time period because it corresponds with the availability of our measure of racial resentment, which we take from Smith, Kreitzer, and Suo (2020). The measure includes responses to an index of four questions related to beliefs about systemic racial inequality and governmental responsibility to address racial inequalities.¹ The resentment measure, which was computed using multilevel regression and poststratification, varies by state and is measured either biannually or only in presidential election years. We use linear interpolation to impute estimates of resentment for those years without a contemporaneous measurement.

Given documented connections between racial animus, racial resentment, and support for capital punishment at the micro-level (Peffley and Hurwitz 2007; Unnever and Cullen 2010, 2011, Brown and Socia 2017), we want to distinguish racial resentment, our key variable of interest, from simple ideological conservatism. Some individuals may support capital punishment, like other “tough-on-crime” policies, because they are ideological conservatives, not because of racial animosity toward blacks. To capture state-level variation in public opinion, we use Berry et al.’s (1998) measure of state policy mood, updated through 2016 by Fording (2018).²

Controls

We account for several potential determinants of death sentences beyond those which are our primary theoretical focus. Within any state, the share of all homicides likely to be capital-eligible is determined by law, and, in the aggregate, can be expected to be relatively constant; therefore, we use the number of homicides as a proxy for capital-eligible homicides. In addition, since the Republican Party has been more supportive of capital punishment, we expect that more death

sentences will be issued in states where the GOP controls the governorship and a higher proportion of legislative seats. The self-reinforcing nature of death penalty usage makes it necessary also to control for the cumulative number of death sentences a state has issued in the period from 1972 to the current year (e.g., Baumgartner, Box-Steffensmeier, and Campbell 2018; Baumgartner et al. 2020). Positive coefficients for this variable reflect the inertial component of the process. We expect, of course, that homicides might affect death sentences, and we control for violent crime as well. Because death sentences have been much more common in some periods than in others, we include a control for year. We also note the 11 Southern states that constituted the Confederacy, which may be confounding the effects of the racial variables, and the method of selecting judges at the trial level. Considerable previous research (e.g., Brace and Boyea 2008; Canes-Wrone et al. 2014) suggests that judicial elections generally incentivize appellate judges to uphold previously imposed death sentences. As our analysis is about the annual number of death sentences imposed at the trial court level, these models are not directly comparable to ours. However, we expect that the general finding that elected judges are more punitive than their appointed counterparts will generalize to the trial court level. Underlying this expectation is the fact that elected trial judges are less insulated from public opinion, which has generally favored the death penalty. In the case of trial judges, this punitiveness is likely to express itself in the form of deference to the prosecution and hostility to the defense when deciding which evidence to admit and exclude. We distinguish states that select trial judges by appointment from those that rely on elections with a dummy variable.³ Finally, we include variables that we expect to have a potential indirect effect, through their mediated impact on racial resentment: white poverty rate, percent black (and its squared term) in the state population, and the number of lynchings in the Jim Crow era.

Our question of interest is the size of the impact of the resentment variable controlling for these other factors. Note that the simplest rival hypothesis would be that, controlling for population as we do here, and with state random effects, death sentences should be largely driven by the number of homicides.

Analytic Strategy

We fit a negative binomial regression to account for over-dispersion in the number of death sentences each year. Since state death sentences are influenced by population density, we include the natural logarithm of the state population as an offset parameter (Osgood 2002). This specification alters the interpretation of negative binomial coefficients to one of the annual number of death sentences *per capita*. Death sentences may also be influenced by unobserved state-level heterogeneity. We address this by including a state-level frailty term in all models. Hence, the models are estimated as multilevel negative binomial models with state-years nested in states.⁴ Our mediation analyses use the methods developed by Imai, Keele, and Tingley (2010) and later extended to negative binomial models by Cheng et al. (2018) formally to test for indirect effects.

Results

Table 2 presents results from negative binomial mixed models predicting the death sentencing rate per capita for black (Models 1-3) and white (Models 4-6) offenders. As we have two opinion variables and want to assess the added value of the resentment measure after controlling for ideology, we present models with each opinion measure separately, then combined. Models 3 and 6 present the fully specified models.

[Table 2 about here]

Consistent with expectations, Models 1 through 3 reveal that the incidence rate of black death sentencing is particularly sensitive to variation in racial resentment and conservative ideology. Each one percent increase in the racial resentment measure is associated with an 8.1 percent increase in the incidence rate of black death sentences per capita. Conservative ideology is also positively associated with black death sentencing, but the relationship is weaker. Each one percent increase in conservative ideology corresponds with a 1.3 percent increase in the incidence rate of black death sentences per capita. Further, AIC and BIC are lower in the model that excludes conservative ideology and retains racial resentment (Model 1) than the model that excludes racial resentment and retains conservative ideology (Model 2). Consistent with expectations, this result reveals racial resentment is a stronger predictor of black death sentencing rates than conservative ideology.

Turning to the control variables, the percent black population, total number of lynchings, and white poverty rate are all non-significant. Although these results are in contrast to expectations, it is still possible for each variable to have a significant indirect effect if they produce a substantial change in racial resentment or conservative ideology, a possibility we assess below. Also of note is that the violent crime rate is positively associated with black death sentences, indicating that a greater number of black offenders are sentenced to death when violent crime increases. This result is consistent with a body of research describing how black populations and offenders are disproportionately punished when violent crime increases (e.g., Yates and Fording 2005).

In Models 4 to 6, we replicate model specifications but treat white death sentences as the dependent variable. Interestingly, racial resentment and conservative ideologies are both positive predictors of the white death sentence rate per capita. And, including racial resentment improves

model fit as compared to the model that only includes conservative ideology (Model 5). These results likely reflect “spillover” effects of death sentencing on white offenders, where racial resentment is associated with more liberal usage of the death penalty with implications for both black and white offenders (e.g., Garland 2010). In contrast to the black death sentence rate, white death sentences do not appear to be associated with violent crime rates and are more common in states that elect trial judges.

Because racial resentment and conservative ideology are associated with increased death sentencing rates for both black and white offenders, it is necessary to formally compare effect sizes to gauge whether the association is more pronounced for black offenders than for whites. Figure 1 plots these results.

[Figure 1 about here]

Figure 1 makes clear that blacks are much more likely to be sentenced to death than whites no matter the level of resentment or ideology. Moving from the low to the highest values on resentment leads to more than triple the predicted number of death sentences for both racial groups. Moving from low to high on conservative ideology leads to more than double the rate of death sentencing for blacks, but less so for whites.

Primary results from our negative binomial models support our hypotheses regarding how racial resentment translates into death sentencing, with pronounced effects for black offenders. However, we did not find positive effects for percent black population, history of lynchings, or the white poverty rate. We now turn to mediation analyses to formally test indirect effects from each of these variables. Table 3 presents results from mediation analyses predicting black death sentencing rates.

[Table 3 about here]

Consistent with expectations, there is a positive indirect effect from histories of lynchings acting through racial resentment, where each one-unit increase in historical lynchings is associated with a 1 percent ($\exp(.009)=1.009$) indirect increase in the rate of black death sentencing because of increases in racial resentment.⁵ Also consistent with expectations, there is a nonlinear indirect effect from the size of the black population. This result indicates that increases in the size of the black population are indirectly associated with black death sentences due to increases in racial resentment, but there is a threshold to this effect. Similarly, conservative ideology is, in part, indirectly associated, explaining roughly 22 percent of the direct effect of conservative ideology on black death sentences. These results are consistent with expectations that histories of racial conflict and conservative ideology indirectly contribute to black death sentences via their effect on racial resentment. However, we do not find an indirect effect from the white poverty rate.

Turning to indirect effects that treat conservative ideology as the mediator, the size of the black population does not have a significant indirect effect acting through conservative ideology, and nor does the white poverty rate. The total number of historical lynchings is associated with indirect increases in the number of black death sentences per capita due to increases in conservative ideology. Similarly, there is also an indirect effect of racial resentment acting through conservative ideology, but it is much weaker than the indirect effect of conservative ideology acting through racial resentment (percent mediated = 6.5). Consistent with expectations, these results suggest that most of the effect of racial conflict and conservative ideology can be explained by their indirect effects on racial resentment.

Table 4 replicates these analyses treating white death sentences as the dependent variable.

[Table 4 about here]

Consistent with primary models, the direction and significance of each indirect effect align with the indirect effects for death sentences with black offenders. Lynchings, the size of the black population, and conservative ideology all have positive indirect effects acting through racial resentment, while lynchings and racial resentment have smaller indirect effects acting through conservative ideology. These results reveal that histories of racial conflict and contemporary demographics have collateral consequences for white offenders by contributing to death sentence usage. The strongest effects, however, are targeted on black offenders.

In sum, results provide support for our expectation that racial resentment will motivate usage of the death penalty and that histories of racial conflict carry indirect consequences for death sentences by increasing racial resentment. We also found partial support for expectations that these effects would be concentrated on black offenders. We find that racial resentment has spillover consequences for white offenders, but the effects of racial resentment are strongest for black death sentences.

Conclusion

The modern death penalty is supposed to be reserved for the most heinous crimes and those who are the most deserving. The vast and complicated jurisprudence that has accumulated since *Gregg* mandates proportionality review, bars any death sentence where the culpability of the offender is not explicitly weighed against any possible mitigating factors, and is subject to extraordinary procedural safeguards. And yet, despite all these reforms mandated by the justices' rejection of the system they critiqued in *Furman*, the "new and improved" death penalty we analyze here appears to have the same flaws that Justice Stewart and others identified back in 1972. In fact, while the Justices suspected race but did not find it, and found capriciousness, we can verify both. The death penalty is imposed freakishly; in particular, once we control for

population size, homicides have no effect (though violent crime does). A heavy element of inertia affects the process, so that a strong predictor of death sentencing is simply previous death sentencing. But if any logic can be discerned, it is related to race, the legacy of lynchings, and public passions.

If deterrence were the goal of the death penalty, it might focus on the most common types of capital-eligible crimes. If retribution were the goal, it might target the most heinous homicides. But if we think of the death penalty as a continuation of historical practices based on the myth of protecting innocent (Southern) white women from predatory and dangerous black men, then the consistent patterns that we actually observe make more sense. Viewed from a perspective of the history of racial hierarchy, the clear patterns of who is sentenced to death (or executed) for which crimes become abundantly clear. This perspective is difficult for many to accept, since many would prefer to believe that America has “moved on” from its ugly racial past and that adequate safeguards are in place to ensure what the US Constitution guarantees: Equal protection of the law.

There are many ways in which attitudes and opinions can affect the death penalty. Eberhardt and colleagues (2006) analyzed court records of death sentencing decisions in Philadelphia. In the 44 cases with black offenders and white victims, they found that defendants with more “stereotypically Black” physical characteristics were sentenced to death at a higher rate; 57.5 percent of those with higher values on the index received a death sentence, compared to 24.4 percent of those with low values (2006, 384). (Note that Eberhardt and colleagues were studying actual judicial records; they had their coders evaluate photos of the defendants after the fact.) Eberhardt and colleagues’ troubling findings suggest a greater willingness of jury members to dehumanize or to “other” a defendant in cases with stereotypically black appearance. Public

opinion, then, can affect jury decisions, adding another element of the power of public opinion to what we have offered here.

Our results also carry implications for prior research tracing use of the death penalty to legacies of vigilantism. Zimring (2003), in particular, reasons that capital punishment is used most frequently in jurisdictions that have strong traditions of vigilantism. Prior research evaluating this hypothesis, however, has typically measured vigilantism using the number of historical lynchings, which conflates racial antipathy with reliance on vigilante justice. Our results suggest that the historical legacies of lynchings carry indirect effects for death sentencing through both pathways. On the one hand, lynchings indirectly increase death sentences as a function of contemporary racial resentment, consistent with a racial antipathy interpretation. On the other, there is also an indirect effect of historical lynchings through contemporary conservative ideologies reflective of anti-government intervention, consistent with the vigilantism hypothesis.

We would not argue that public opinion should be unrelated to a state's use of the death penalty. Indeed, responsiveness to public opinion is a fundamental goal of representative democracy. In this article, however, we have distinguished between mere political conservatism and a more sinister element: White resentment and hostility toward blacks. When we consider the micro-level evidence from previous studies showing a strong linkage between racial hostility and support for the death penalty, the accumulated legal literature showing disproportionate use of the death penalty against black offenders with white victims, and the evidence presented here showing a lack of correspondence between homicides and death sentences but a strong role for racial resentment, it is hard to conclude that the death penalty can withstand constitutional or moral scrutiny.

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Tables and Figures

Table 1. Historical Lynchings, Death Sentences, Poverty, and Percent Black Population across US Counties.

Lynchings	N	Death Sentences	Poverty Rate	Percent Black
None	1,458	1.90	5.51	5.14
One	536	2.96	6.06	9.08
Two	236	5.84	6.75	15.94
Three or more	402	5.67	7.82	26.05
Percent increase		198%	42%	407%

Sources: Lynchings: Tolnay and Beck, 1995, updated with Seguin and Rigby 2019; death sentences: Authors; Poverty and Percent Black: US Census. Death sentences are cumulative totals (averaged across counties) from 1972 to 2019; census data reflect the median annual value across the same time period.

Table 2. Negative Binomial Mixed Models with Variable Exposure of Death Sentences ($N = 1016$).

	Black Death Sentences			White Death Sentences		
	1. IRR (SE)	2. IRR (SE)	3. IRR (SE)	4. IRR (SE)	5. IRR (SE)	6. IRR (SE)
Racial resentment	1.086*** (.017)		1.081*** (.017)	1.058** (.015)		1.054*** (.015)
Conservative ideology		1.015** (.005)	1.013* (.005)		1.012** (.005)	1.010* (.005)
Total lynchings	.999 (.002)	.999 (.002)	.999 (.002)	.999 (.002)	.999 (.002)	.998 (.002)
Percent black	1.060 (.061)	1.097 (.061)	1.073 (.060)	.937 (.049)	.977 (.048)	.949 (.047)
Percent black squared	1.000 (.002)	1.000 (.002)	1.000 (.002)	1.002 (.001)	1.001 (.001)	1.002 (.001)
White poverty rate	.923 (.032)	.959 (.032)	.983 (.032)	.957 (.030)	.944 (.030)	.960 (.029)
Homicides	1.030 (.145)	.895 (.145)	1.035 (.142)	.898 (.133)	.833 (.130)	.899 (.129)
Violent crime rate per 100,000 capita	1.001** (.000)	1.001** (.000)	1.001* (.000)	1.001 (.003)	1.001 (.003)	1.001 (.003)
Republican governor	.987 (.065)	.986 (.066)	.964 (.065)	1.058 (.061)	1.044 (.061)	1.039 (.061)
Percent Republican legislature	.885 (.437)	.756 (.433)	.725 (.440)	1.388 (.407)	1.224 (.406)	1.189 (.408)
Elected judges	1.172 (.421)	1.371 (.433)	1.143 (.404)	2.328** (.334)	2.501** (.333)	2.275* (.319)
Cumulative death sentences	1.002*** (.000)	1.002*** (.000)	1.002*** (.000)	1.001** (.004)	1.001* (.003)	1.001* (.004)
South	1.181 (.650)	1.054 (.672)	1.102 (.624)	2.235 (.539)	2.010 (.537)	2.087 (.513)

Year	.904*** (.009)	.920*** (.009)	.905*** (.009)	.907*** (.008)	.917*** (.008)	.908*** (.008)
Variance component	.845	.871	.771	.585	.581	.525
AIC	2558	2574	2554	2906	2913	2903
BIC	2637	2653	2638	2985	2992	2987

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ (Two-tailed test). Intercept not shown.

Table 3. Mediation Analysis of Indirect Effects on Black Death Sentences per Capita ($N=1016$).

Direct effect	Resentment as Mediator		Ideology as Mediator	
	Indirect Effect	Proportion Mediated	Indirect Effect	Proportion Mediated
Total lynchings	.009* [.004, .030]	-.169	.027* [.003, .085]	-.210
Percent Black	.116*** [.017, .438]	.270	-.073 [-.477, .118]	-.031
Percent Black squared	-.036*** [-.291, -.003]	.254	-.007 [-.047, .005]	.018
White poverty rate	-.075 [-.246, .050]	.113	-.122 [-.424, .042]	.607
Ideology	.084*** [.033, .173]	.221		
Racial resentment			.001** [.000, .005]	.065

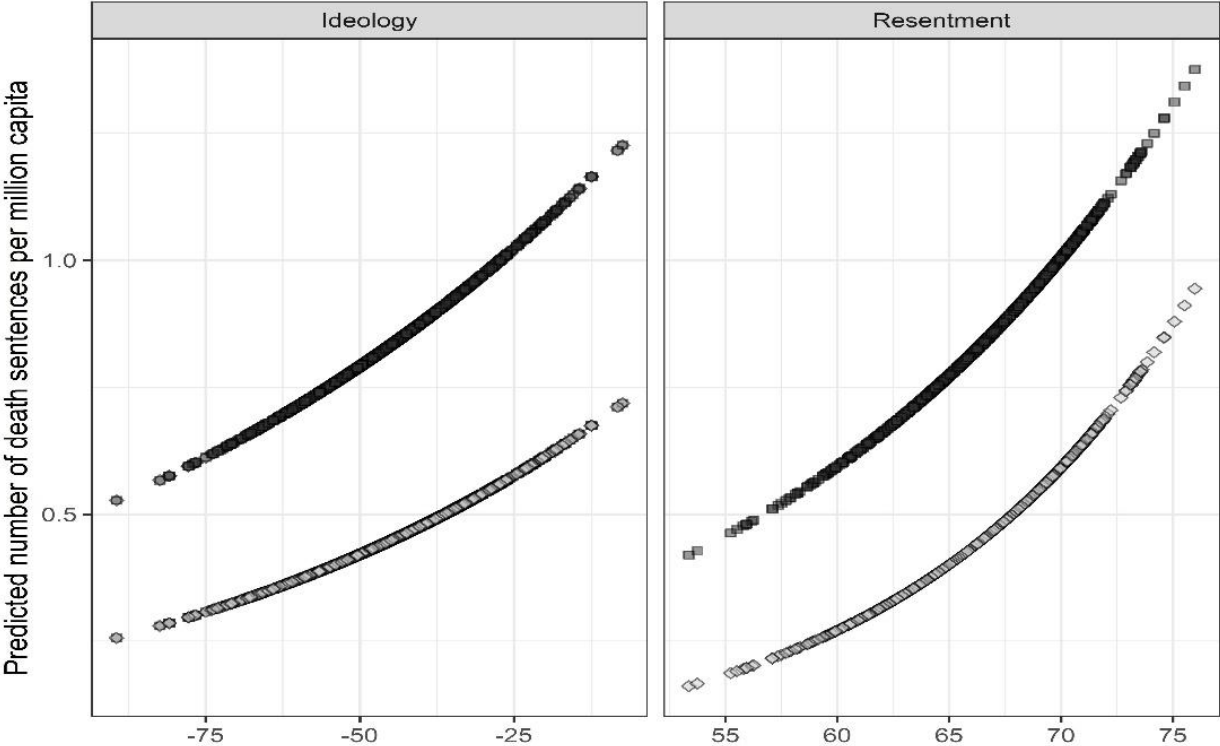
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ (Two-tailed test). p -values calculated using 10,000 Monte Carlo samples (Imai et al. 2010). Confidence intervals in brackets. Standard errors clustered on states. All indirect effects multiplied by 1,000,000 to be interpreted as effects per million capita.

Table 4. Mediation Analysis of Indirect Effects on White Death Sentences per Capita ($N=1016$).

Direct effect	Resentment as Mediator		Ideology as Mediator	
	Indirect Effect	Proportion Mediated	Indirect Effect	Proportion Mediated
Total lynchings	.012* [.000, .031]	-.181	.026* [.002, .072]	-.216
Percent Black	1.190 *** [.119, 6.171]	-.252	-.624 [-4.681, 1.002]	.032
Percent Black squared	-.010** [-.024, -.003]	-.296	-.003 [-.012, .003]	.038
White poverty rate	.105 [-.356, .079]	.062	-.150 [-.494, .068]	.044
Ideology	.081*** [.031, .158]	.186		
Racial resentment			.006* [.000, .026]	.078

* $p < 0.05$, ** $p < 0.01$ (Two-tailed test). p -values calculated using 10,000 Monte Carlo samples (Imai et al. 2010). Confidence intervals in brackets. Standard errors clustered on states. All indirect effects multiplied by 1,000,000 to be interpreted as effects per million capita.

Figure 1. Predicted death sentencing rates for black and white offenders, by levels of conservative ideology and racial resentment.



Note: Solid symbols refer to black offenders; hollow ones refer to white offenders.

Endnotes

¹ In particular, the measure includes responses to the following: “Do you agree strongly, agree somewhat, neither agree nor disagree, disagree somewhat, or disagree strongly with each of the following statements? (1) Irish, Italians, Jewish and many other minorities overcame prejudice and worked their way up. Blacks should do the same without any special favors. (2) Generations of slavery and discrimination have created conditions that make it difficult for blacks to work their way out of the lower class. (3) Over the past few years, blacks have gotten less than they deserve. (4) It’s really a matter of some people not trying hard enough; if blacks would only try harder they could be just as well off as whites.”

² We explored three additional opinion measures but do not use them for the following reasons. Drawing on Stimson’s (1999) dyadic ratio’s algorithm, Baumgartner et al. (2008) created a summary of national public opinion support for the death penalty, drawing on hundreds of national surveys from 1976 to 2006, and we have updated the measure through 2020. This variable, however, does not vary by state, and during the period from 1988 to 2016, the period of our analysis here, generally follows a steep downward trend. Inclusion of the variable in models also including the two opinion measures we use adds little predictive power and does not substantially change the results for the variables of theoretical interest. Similarly, Peter Enns (2014, 2016) developed aggregate measures of public opinion “punitiveness” including the death penalty as well as other criminal justice policies. This variable correlates highly with the Baumgartner et al. death penalty opinion index just described, and is available for a shorter time period. Finally, Shirley and Gelman (2015) estimate death-penalty support for each state during the period of 1976 through 2006. When used as the only measure of opinion, this variable provides strong results consistent with our own. However, since our goal is to assess the impact

of racial resentment, and to assess this impact separately from general ideological conservatism, we prefer the resentment measure. Inclusion of both reduces the N significantly because of the limited time frame when both are available.

³ Canes-Wrone et al. (2014) argue that nonpartisan elected judges should be most punitive, but we found that the specific method the state used to elect trial judges had little impact on death sentences. Instead, the distinction that mattered was simply whether trial judges were appointed or elected. Thus, to keep the models as parsimonious as possible, we employ just one indicator variable for judicial selection method.

⁴ Random effects models for pooled time series data can be inconsistent when the level 2 frailty term correlates with the level 1 variables. We adjudicated between alternative modeling strategies, such as fixed effects models and between-within models, using comparisons of model fit, as per Bollen and Brand (2010). Our evaluations revealed that random effects was a better fitting model than alternative specifications. Between-within model results are consistent with our primary modeling results for all substantive relationships of interest (see our on-line Appendix for more detail).

⁵ Because the lynchings variable is time invariant, this indirect effect can be interpreted as states where lynchings were historically more common have higher mean levels of racial resentment and, consequently, experience higher mean levels of death sentencing.