The Discovery of Innocence

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Penn State University

Public Policy Institute of California
October 27, 2006
A Government Program Run by Bureaucrats, Prone to Cost-Overruns, Inefficiencies, and Mistakes

-Peter Loge on the Death Penalty
The Discovery of Innocence
Americans and the Death Penalty, 1960–2005

- Book project, nearly complete
- Frank R. Baumgartner
- Suzie De Boef, Associate Professor
- Amber E. Boydstun, Graduate Student

Due to Cambridge University Press,
December 2006 for review
1. Introduction
2. History and Background
3. A Chronology of the “Innocence Movement”
4. The Changing Tone of Media Coverage
5. The Evolution of Public Discourse
6. Changing Public Opinion
7. Changing Public Policy
8. Conclusion
Today’s Talk

Some background
  death penalty in general
  the “innocence movement”
Media coding, documenting the shifting nature of public discourse on this issue
Statistical models
  1. Predicting aggregate public opinion
  2. Predicting annual death sentences
These show the substantive impact of framing effects
Executions in the US, 1800-2002

Executions, 1800-2002
Number of Countries Having Abolished the Death Penalty

![Chart showing the number of countries having abolished the death penalty over time from 1860 to 2000.]
Executions by State, 1976-2004

State Executions since 1976

- Texas: 276
- Virginia: 55
- Georgia: 52
- Oklahoma: 45
- Florida: 35
- Missouri: 25
- Connecticut: 6

Other states have fewer executions.
### Death Row Population v. Executions (since 1976)

<table>
<thead>
<tr>
<th>State</th>
<th>Death Row</th>
<th>Executions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>454</td>
<td>276</td>
</tr>
<tr>
<td>Florida</td>
<td>381</td>
<td>52</td>
</tr>
<tr>
<td>Calif.</td>
<td>635</td>
<td>10</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>235</td>
<td>3</td>
</tr>
</tbody>
</table>

Many states, like California, have a “virtual” death penalty system. This could change as time passes however and appeals are exhausted.
Death Sentences, Executions, and the Size of Death Row, 1953-2005

The graph shows the number of death sentences, executions, and the size of death row from 1950 to 2005. The y-axis on the left represents sentences and executions, while the y-axis on the right represents the size of death row. The x-axis represents the years from 1950 to 2005.

Key:
- Sentences (left scale)
- Executions (left scale)
- Death Row (right scale)
Exonerations, 1973-2005

- Cumulative (left scale)
- Yearly (right scale)
The Discovery of Innocence

- Exonerations have been consistent, a few every year since 1976.
- Innocence Project, Justice Project, work of advocates such as Barry Scheck, Larry Marshall, and Richard Dieter have illustrated serious flaws.
- These were probably always there.
- Public attention never focused on them.
- This “discovery of innocence” may put an end to the Death Penalty.
- It has already had a huge impact.
The Innocence Movement

- Journalism schools, law schools, foundations
- A most unlikely social movement …
- Beginnings in the 1980s, acceleration in the 1990s
- Continuation, perhaps surprisingly, after 9/11/01. Bush Administration, War on Terror, restrictions on civil liberties
- This movement keeps on going. How? Why?
Exonerees: From Human Interest to Confirmation of an Established Theme

Rolando Cruz
Anthony Porter
Alejandro Hernandez
Earl Washington
Aaron Peterson
Wilbert Lee
Freddie Pitts
Delbert Tibbs
## A Framing Multiplier Effect

<table>
<thead>
<tr>
<th>Time</th>
<th>Average Exonerations</th>
<th>Average Stories</th>
<th>Stories per Exon.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>73-91</td>
<td>3</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>92-98</td>
<td>4</td>
<td>84</td>
<td>33</td>
</tr>
<tr>
<td>99-05</td>
<td>7</td>
<td>212</td>
<td>40</td>
</tr>
</tbody>
</table>
A Social Cascade

Somehow, the concept of innocence has entered the social discourse. People understand a new way of thinking about the death penalty.

Old issue-definition: Morality / constitutionality

New issue-definition: Innocence / system is broken / human institutions cannot be perfect

Documenting these trends and this cascade effect is our goal.
Two Views on the Death Penalty

• Morality:
  • 1) State Killing is Wrong
  • 2) Eye-for-an-eye
  • (Most Americans support #2)
  • Religious, moral nature of this debate

• Innocence
  • The system is not perfect and can make mistakes. Innocents may be killed.
New York Times Coding

- Every article since 1960
- Almost 4,000 articles
- Exhaustive list of 67 arguments
- Count attention to each argument over time
- Dynamic Factor Analysis: shows rise of new issues
<table>
<thead>
<tr>
<th>Dimensions of Debate</th>
<th>300 Fairness/Process</th>
<th>400 Const/PopControl</th>
<th>500 Cost</th>
<th>600 Mode</th>
<th>700 International</th>
</tr>
</thead>
<tbody>
<tr>
<td>101 Deterrence</td>
<td>301 Aro Fair</td>
<td>401 Not Cruel</td>
<td>501 Worth It</td>
<td>601 Mode Just</td>
<td>705 General Pro</td>
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<tr>
<td>102 Incapacitation</td>
<td>302 Abbreviated Process</td>
<td>402 Process Upheld</td>
<td>502 Prison Exp</td>
<td>605 General Pro</td>
<td>710 Int Complaints</td>
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<td>103 Race</td>
<td>303 Flaws Overstated</td>
<td>403 Pop Support Pro</td>
<td>508 General Pro</td>
<td>610 Mode Questioned</td>
<td>711 Extration Probs</td>
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<tr>
<td>109 General Pro</td>
<td>304 No Blank of Rags</td>
<td>404 States Rights Pro</td>
<td>510 Not Worth It</td>
<td>615 General Anti</td>
<td>712 Foreign Natts</td>
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<td>110 retaliation</td>
<td>305 General Pro</td>
<td>405 Fed Lius Pro</td>
<td>511 Prison Cheaper</td>
<td>619 General Anti</td>
<td>715 General Anti</td>
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<tr>
<td>111 Alt Systems Pro</td>
<td>310 Inadequate Rep</td>
<td>409 General Pro</td>
<td>519 General Anti</td>
<td></td>
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<tr>
<td>119 General Anti</td>
<td>311 Arbitrary</td>
<td>410 Cruel Unusual</td>
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<tr>
<td>200 Moral</td>
<td>312a Racist</td>
<td>411 Via Due Proces</td>
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<tr>
<td>201 Retribution</td>
<td>312b Classist</td>
<td>412 Pop Support Anti</td>
<td></td>
<td></td>
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<tr>
<td>202 Vengeance</td>
<td>312c Other Demographic</td>
<td>413 State Rights Anti</td>
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<tr>
<td>203 Type Crime/Extension</td>
<td>313a Vulnerable Popul</td>
<td>414 Fed Lius Anti</td>
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<tr>
<td>209 General Pro</td>
<td>313b Mitigating</td>
<td>419 General Anti</td>
<td></td>
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<tr>
<td>210 Killing Vengeance</td>
<td>314 Mandatory Sent Bad</td>
<td>420 Constitution</td>
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<td>211 Family Opposed</td>
<td>315 No Alt Punish</td>
<td>421 Pop Support Anti</td>
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<tr>
<td>219 General Anti</td>
<td>316 Evidence</td>
<td>422 State Rights Anti</td>
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<td></td>
<td>317 Innocence</td>
<td>423 State Rights Anti</td>
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<td>318 Broken</td>
<td>424 State Rights Anti</td>
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<td></td>
<td>319 General Anti</td>
<td>425 State Rights Anti</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Nature of Crime/Mode of Execution</th>
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<tbody>
<tr>
<td>100 Efficacy</td>
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<tr>
<td>Mode of execution discussed</td>
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</table>
Major Dimensions of Death Penalty Debate

- **Efficacy** - Does the punishment serve a functional purpose?
- **Moral** - Should we use the death penalty at all?
- **Fairness** - Is the capital punishment process fair?
- **Constitutionality/Judiciary** - Is the penalty constitutional and how much power do the courts have?
- **Cost** - Is the death penalty cost-effective?
- **Mode of Execution** - Which modes of execution should be permitted?
- **International** - We should consider the many complaints from abroad regarding our death penalty system
The Rise of the “Innocence” Frame

Includes: Innocence; Evidence; System-is-Broken; Mention of the Defendant
The “Net Tone” of NYT Coverage, 1960–2003

Shows the number of pro- minus the number of anti-death penalty stories per year
Conclusions from *NYT* analysis

- Innocence frame is the single most powerful media frame in history
- It equals the constitutionality focus of the 1960s and 1970s
- It surpasses that frame in amount of coverage
- It brings together previously existing arguments, such as the racial disparity argument, but puts it in a new context
- Most important: How people respond to it…
Public Opinion

- Consistently supportive, over most of history
- Survey questions are highly theoretical, abstract
- Slow movement in aggregate numbers, highly inertial or autoregressive series
  - (Moral nature of the question, for most people)
  - Low level of stimulus, as compared to Presidential approval or the War on Terror, for example)
- Our method: Combine all available survey data
Predicting Net Support

Net Public Support for the Death Penalty =
2.033 (2.334) +
0.732 x Opinion_{t-1} (0.67) +
0.058 x Net Tone of *New York Times*_{t-1} (0.032) +
1.11 x Homicides (thousands)_{t-1} (0.51) +
1.205 x major events_{t-1} (0.843)

R² = .887 (N=79)

Note: Analysis is quarterly from 1985 q 1 to 2004 q 3.
Predicting Quarterly Opinion
(“Net Opinion” = Approve – Disapprove)

Percent

Actual - - - Predicted
Interpretation

0.732 \times \text{Opinion}_{t-1} (0.67)

Public opinion is highly inertial

73\% of the value carries forward to the next period.

Any stimulus will therefore take many periods to have its full effect. The entire public is never affected by stimuli that are so strong that all people simultaneously move. Rather, opinion moves slowly as information percolates.
Interpretation

0.058 \times \text{Net Tone of } \textit{New York Times}_{t-1} (0.032)

Net tone in fact has shifted by over 60 points over the years.

Impact of a 50 point shift in Net Tone: 11 points

(Total impact = immediate impact + subsequent impact, 73% less in each future period...)
Interpretation

1.11 x Homicides (thousands)_{t-1} (0.51)

Actual quarterly range in homicides is over 2,000

Impact of a shift by 2,000 in homicides: 8.6

Both media coverage and homicides have strong effects. Media coverage is stronger, in fact.
Interpretation

No significant effects for events

One individual event, modeled separately, had an impact: The mass commutation of all death row inmates in January 2003 by Gov. Ryan in Illinois.

Events are mostly mediated through news coverage.
Policy Impact

Annual Death Sentences as the most appropriate dependant variable

Juries not faced with a hypothetical question as posed in surveys
Juries presented with strong stimulus, not like aggregate public opinion
May be different, should definitely be less inertial
Reminder, Death Sentences, Death Row, and Executions
Homicides: decline from 24,500 in 1993 to 15,500 in 2000
Net Public Opinion, 1960-2004
Predicting Annual Death Sentences

Annual Number of Death Sentences = 
40.43 (22.25) +
0.344 x Sentences$_{t-1}$ (0.099) +
0.427 x Net Tone of *New York Times*$_{t-1}$ (0.147) +
0.7 x Homicides (thousands)$_{t-1}$ (1.5) +
4.267 x Opinion$_{t-1}$ (0.966) +
-66.83 x 1973 dummy (26.74) +
127.15 x 1975 dummy (40.43)

$R^2 = .928 \text{ (N=41)}$

Note: Analysis is annual from 1963 to 2003.
Interpretation

0.344 x Sentences\textsubscript{t-1} (0.099)

The series has some inertia to it.

34\% of each value carries forward.

This is significantly less than what we saw for public opinion.

Each factor also has some inertial impact into the future as well. \((1 / (1-.344) = 1.52 \times \text{immediate effect})\)
Interpretation

0.427 x Net Tone of *New York Times*$_{t-1}$ (0.147)

A 10-point shift in news coverage: 4.3 fewer death sentences in the following time period, with a longer term, eventual impact of 6.5 fewer.

Shift of 50 points: 33 fewer death sentences
Interpretation

\[0.7 \times \text{Homicides (thousands)}_{t-1} (1.5)\]

Move homicides by 8,000:

Decline in death sentences: 9 per year

(Effect is small, and statistically insignificant)
Interpretation

$4.267 \times \text{Opinion}_{t-1} (0.966)$

This is a big impact:

In the long term, after inertia plays out:

15 point shift in opinion: 99 fewer death sentences
Interpretation

Inertia affects results, but much less so than for public opinion.

Homicides have no direct effect, after public opinion is included.

The tone of media coverage affects both aggregate public opinion and, separately, jury and prosecutor behavior.

Public opinion changes slowly but has a strong impact on jury behavior.

Substantive effect of shift in media tone is greater than the slowly shifting nature of public opinion.
Conclusions

- Exonerations have always been with us. Errors have always been made.
- These were previously considered to be “one-off” events. Of concern, of course, but not symptomatic of anything more general.
- The innocence movement has changed all that.
Lethal Injection Debates

- Current discussion in California is all about lethal injection.
- We have not coded 2005 media coverage (will do so for final version of book)
- Coverage of the lethal injection debate: All negative so will affect net tone
- Scenarios: 1) make DP extremely rare, and therefore constitutionally “unusual”
- 2) cause a backlash and reinstate the firing squad?
- This itself would affect public opinion. Strange constitutional quandary. Actual incidence of use of the Death penalty has gained constitutional meaning.
A Shift in Focus

- Policy changes typically do not come from changing social preferences.
- Rather, all policies are multidimensional, complex, as is the death penalty.
- A shift in focus from morality / constitutionality to the new innocence focus has reversed a trend going back a generation.
- It may well lead to the abolition of the death penalty.
Two Points to this Project

- Death Penalty by itself is an important issue to explain. Seeing significant policy change, as we have, on a deep moral issue, is surprising. Also note that these movements have all occurred, or continued, during a period when the broad political mood, and many social trends, have been anything but propitious.

- So the substantive puzzle itself is of interest, and we can discuss what may happen next, especially here in California where it is a major issue.
Two Points to this Project

- An example of Attention-Shifting model of Policy Change

- In *The Politics of Attention*, Bryan Jones and I developed this model and we argue that all complex public policies are subject to periods of focus of attention on a subset of relevant dimensions, and that this inevitably makes possible a destabilizing shift in focus.

- This project is therefore partly a detailed test, at the micro-level, of the broader theory we developed there.