

The Politics of the Death Penalty

The Decline of the Death Penalty and the Discovery of Innocence. By Frank R. Baumgartner, Suzanna L. De Boef, and Amber E. Boydston. New York, NY: Cambridge University Press, 2008. 308p. \$75.00 cloth, \$23.99 paper.

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Sixteen avuncular men stare at the camera in the book's epilogue. One clutches a Bible, two smile, 11 are black or Hispanic, and all are among the 127 men and women released from death row after reformers uncovered evidence of their innocence. Frank Baumgartner, Suzanna De Boef, and Amber Boydston will be speaking for many readers when they start their book by writing simply, "It has been shocking" (p. xiii). The phenomenon is also a stunning public policy mystery.

A group of students and legal do-gooders—without much money, influence, or power—stand up for some of the most despised men and women in America and, within a decade, entirely reframe the long, fierce debate about the death penalty. Baumgartner, De Boef, and Boydston have written an extraordinary book about the death penalty, policy framing, methodology and—ultimately—American culture. How did the unlikely reformers meet such success? The authors offer wise and sophisticated answers. But even they underestimate how the new frame touches the deepest currents in American culture.

Few nations—and no democracies—punish lawbreaking as energetically as the United States. We have put 2.3 million people behind bars; one in 32 adults is caught in the criminal justice system—in prison, on parole, or under probation. At the controversial heart of this carceral state lies the death penalty. No European nation except Belarus executes; in fact, 87 nations have no death penalty (abolishing executions is a condition for entry into the European Union), and 28 more have not executed anyone in a decade or more. American courts, in dramatic contrast, oversaw 1,057 executions between 1977 and 2006, and by October 2006 had 3,344 more men and women lined up on death row.

Americans have engaged in a long and loud debate about whether the United States should join the rest of the world and stop executing. Baumgartner, De Boef, and Boydston

reel off 19 arguments for or against the death penalty. Ultimately, each side rests on a moral vision. Proponents invoke the Old Testament injunction of an eye for an eye and a tooth for a tooth; from this perspective, people who commit terrible acts should be punished—in the name of both justice and deterrence. Opponents of the death penalty counter with an alternative morality based on forgiveness and redemption. The activists on each side long fought to a rough impasse, impervious to one another's arguments. American public opinion generally tipped toward the death penalty and, after a court-imposed moratorium ended in the early 1970s, executions rose for 25 years. Then, in the mid-1990s, everything changed. Executions, death sentences, and public support all plummeted. Why?

A small band of legal projects honed in on an inevitable feature of any social system—mistakes. The volunteers researched death penalty cases, discovered innocent people who had been condemned to death, and publicized the errors. In roughly half of the cases, they could rest their conclusion on the hard science of DNA tests. In Chicago, lurid stories of police corruption and torture fed the story. So did occasional revelations of "dry labbing"—fake lab tests designed to smooth the road to convictions. The first discoveries of innocence seemed anomalous and prompted light media coverage—an average of three newspaper stories each. As the cases began to add up, however, a new frame emerged: The judicial system was riddled with bureaucratic incompetence, error, and occasional malfeasance. The media plugged each new case into the increasingly familiar narrative, and by 2000 each exoneration was stimulating an average of 40 stories apiece. Innocence projects proliferated. That, in turn, led to more discoveries, each amplified by more media stories. Public officials inevitably took notice as the cases added up and the publicity spread. By 2007, 123 men and women had been cleared. The new frame had reached a tipping point, pushed aside the old moral arguments, and replaced them with an apparently irresistible new story: American courts were condemning innocent men and women to death by the dozens.

The authors do an extraordinary job of capturing the power of the movement. Case after case—they describe dozens in one long table—seem to add up to a mighty

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wave of incompetence and injustice. They carefully analyze and describe the cascade of news stories, the ways they reinforce each other, and the sheer persistence of the frame.

The Decline of the Death Penalty delivers the most vivid and nuanced account of policy framing in the literature. The authors constantly remind the reader that there is nothing inevitable about the innocence frame that now shuts out alternative interpretations. The innocence frame packs a wallop, but a list of murderers and their victims would dwarf the roster of the unjustly convicted. For now, however, the interlocking features of the innocence frame—the regular discovery of mistaken convictions, the rise of DNA testing, the proliferation of media stories filtered through the new frame, dramatic revelations of criminal shortcuts taken by police or crime labs, the spread of innocence projects—all fit together and dominate the debate. The cascade of innocence stories has begun to reshape public opinion (support for the death penalty has dropped dramatically) and public policy (fewer death sentences and executions).

Baumgartner, De Boef, and Boydston offer a robust and satisfying analysis of the declining death penalty. But after they have answered question after question, the mystery remains. Few policy frames are as successful as the innocence frame—it completely dominates every alternative in the death penalty debate. Why is this formulation so powerful? What are the lessons for advocates seeking to reframe other issues?

The questions turn us to the enduring traditions running through American political culture. All of the major frames in this analysis—including, especially, the innocence frame—tap enduring canons of American politics.

The story begins with a stalemate between two venerable moral traditions. The insistence on firmly punishing evildoers is part of the American Puritan legacy. A strict moral streak, rooted in evangelical faith, presses the United States to remain an international outlier when it comes to punishing criminals (read, as sinners).

Across American history, the old Puritan tradition wrestles with a social gospel of morality that promotes forgiveness, redemption, and communal responsibility for sins. The social gospel frame had been brilliantly championed by reformers like Martin Luther King, Jr., in the 1960s; a generation later, it was skillfully countered by President Ronald Reagan, who scoffed at the notion of collective guilt and insisted on holding individuals responsible for their behavior (“just say no”) as he ramped up a war on crime and drugs.¹

The entire debate about punishment and the death penalty drew force from another familiar American theme: race. While African Americans make up just 12% of the population, they constitute between 25% and 50% of the defendants who are sentenced to death. The death penalty generally involves a black defendant and a white victim.

What cultural theme could possibly stand up to morality and race? The innocence project managed to find one with a provenance almost as long and powerful: the American distrust of government.

In the context of American culture, few frames are more potent than one that draws attention to an incompetent, inefficient, bungling, bureaucratic, and (especially in Chicago) corrupt government. As Tocqueville put it in 1835, “nothing strikes a European traveler in the United States more than the absence of what we would call government or administration.”² The people resisted that encroachment. Perhaps we can add another lesson to the ones that Baumgartner, De Boef, and Boydston discover: New frames are more likely to succeed if they strike familiar cultural themes. The charge at the heart of the innocence frame—that the government has been incompetent, corrupt, and unjust—stretches all the way back to the Boston Tea Party.

The authors raise still another fascinating story that future researchers ought to revisit and extend: the regional angle. The death penalty is not so much an American phenomenon as another one of Dixie’s peculiar institutions. Of the 1,057 executions in the past three decades, 899 were accounted for by 11 former slave states (with Texas at 379). In those 30 years, 17 states executed no one; all of New England executed just one person, and the median state executed two. Discovering that Americans had accepted the death penalty only tells us part of the strange regional story: American public opinion has supported, in effect, a southern racial policy.

In sum, Baumgartner, De Boef, and Boydston have written a superb book. They explain the American death penalty debate, offer a definitive account of policy framing, push the methodological envelope, open a new window on American popular culture, and leave future researchers important questions to ponder.

Notes

- 1 For the dueling American moral traditions, see Morone 2003. Chapter 15 develops the link to contemporary crime policy.
- 2 Alexis de Tocqueville [1835] 1969, 72.

References

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