

REVIEWS

THE DECLINE OF THE DEATH PENALTY AND THE DISCOVERY OF INNOCENCE

Frank R. Baumgartner, Suzanna L. De Boeuf and Amber E. Boydston

Cambridge University Press, 2008, 308 pp., £19.99 (PB), ISBN 9780521715249

In this tightly argued, rigorously conceived study, Baumgartner, De Boeuf, and Boydston examine recent shifts in death penalty discourse and practice. Central to their discussion is the idea of innocence which, in the words of these authors, is 'an old argument made new again'. Although concern about wrongful convictions can be identified during earlier eras, since the 1980s it has emerged as a primary theme associated with changes in media coverage and public opinion on capital punishment, as well as a decline in executions themselves. By situating the death penalty debate in a broad political and cultural context – one concerned equally with fact and interpretation, reality and image – this book addresses questions of critical relevance to policy scholars, legal actors, journalists, and, not least, anti-capital punishment activists.

As Baumgartner, De Boeuf, and Boydston point out, 'Although Americans remain supportive of capital punishment *in theory*, they are increasingly concerned that the system might not work as intended *in practice*'. Similarly, while moral questions regarding the use of state violence continue to stimulate heated disagreement between those for and those against the death penalty, this debate has less and less to do with the actual use of executions as an instrument of criminal justice policy in the United States. The facts underlying what the authors cast as a stunning 'policy reversal' are plain enough. After peaking at 317 in 1996, the number of death sentences fell quite steadily to 128 in 2005. A corresponding decline, more moderate but still noteworthy, is also seen in the nation's death row population and executions.

Seeking to make sense of what has occurred, Baumgartner, De Boeuf, and Boydston focus on the innocence argument and its gathering strength over recent decades. In brief, their thesis is that all public policy issues, including the death penalty, are inherently multifaceted, yet not all such dimensions can be perceived simultaneously with the same emphasis. Rather, there is always a 'politics of attention' at work in which a panoply of influences combines to capture interest in certain facts, concerns, and perspectives, while relegating others to the margins. This process, known as 'framing,' has highlighted the problem of wrongful convictions in death penalty cases, elevating it to such prominence within legal circles, in the mass media, and among citizens and elected officials, that it is now discrediting capital punishment as an operational reality. As the authors explain, this sea change resulted from a highly complex interaction among myriad forces:

... [W]e find that the unprecedented level of attention paid to the innocence frame in recent years is the product of many independent but mutually reinforcing elements working in a positive feedback system. We see that events, organizational efforts, governmental actions, and media framing have moved in unintended tandem to break the death penalty wide open, exposing a new dimension of innocence and redefining

the debate. We offer a broad discussion of these many moving political parts, which together explain the rise of the innocence frame. None of these events alone would have been sufficient to create the momentum that we see. Rather, in a mutually reinforcing process in which each change made subsequent changes more likely, a cascade of social change has occurred, due not to any single factor but to the combination of many. (pp. 49–50)

Certainly one of this book's most significant contributions is its sophisticated methodology for documenting the ascendance of the innocence frame. Exploring the components of *salience*, *resonance*, and *persistence*, the authors undertake a modified form of factor analysis to trace the rise and fall of 'clusters of arguments' about the death penalty within a large database of newspaper stories. This approach allows them not only to observe the growing centrality of the innocence theme, but also the 'piggybacking' of other arguments, like racial injustice and inadequate legal representation, onto the dominant frame due to the compatibility of their messages. All in all, it's a model of scrupulous data analysis and presentation that should provide inspiration for many dissertation writers down the road who are interested in applying these same techniques to other issues.

While this book satisfies on many levels, there are a few gaps. Despite their strongly theoretical intent, the authors do not provide a sufficiently encompassing review of literature relevant to their project. This is so not only with regard to the multidisciplinary body of research on framing, but also the general topics of problem definition and agenda setting. As early as the 1980s, for example, Fay Lomax Cook was writing about a 'convergent voice' model of agenda access that foreshadows, in an interesting intellectual way, this current consideration of synergistic societal factors reshaping public debate on capital punishment.

One also detects a certain imprecision in use of the term 'public policy' within this work. Whereas the authors claim to be addressing the question of 'policy change,' their chief object of scrutiny is not legislative or even judicial action on the death penalty – and the extent to which policy makers in these institutional venues have been driven by, or have resisted, the innocence movement – but rather application of the death sentence. While it may be true, as Baumgartner, De Boeuf, and Boydston state, that 'death sentences are a very important indicator of public policy,' they are not that policy itself. More than anything else, this is a study of the changing implementation of the death penalty as public policy. It's a distinction worth making, lest the fascinating observations of this work regarding the impact of cultural beliefs on the process of policy implementation be obscured.

A substantial part of the last section of this book is devoted to demonstrating a determinative relationship between crime rates and media coverage of the death penalty, on the one hand, and public opinion shifts, on the other. Further, the authors put forward in quite precise terms the impact of small changes in public opinion upon the yearly number of death sentences in the country. Readers are likely to differ in their appraisal of such attempts to bag the elusive quarry of causation using aggregate quantitative data analysis within such an open field of events. Indeed, in several places, it is the authors themselves who underscore the reciprocal, spontaneous character of the dynamic they describe: 'In fact, it is virtually impossible to isolate the precise causes of the redefinition of the death penalty, or any redefinition for that matter. . . . So we can understand the process [of changing application of the death penalty] without understanding each of the individual factors that led to it. In fact, their interaction and mutual reinforcement is more

important than the strength of any one of the contributing factors. Such is the nature of a complex system' (p. 223).

This book tackles an intricate subject and handles it well. Building impressively on earlier scholarship by Frank Baumgartner and Bryan Jones, it approaches the death penalty controversy as a provocative case study of the role of ideas, public opinion, and cultural influence within the policy process. As nations struggle with the challenges of health care, public education, and welfare, systems that have undergone their own loss of credibility in the eyes of the public and key stakeholder groups, this could hardly be a more relevant work.

David A. Rochefort
Northeastern University