

The Decline of the Death Penalty  
As seen through a Legislative Perspective

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## Introduction

In the late 1970s, many Americans supported the death penalty because they believed it would maintain law and order. Not only did the media reinforce this public sentiment, but there also arose pro-death penalty legislation, expansive judicial decisions, and a rising number of death sentences.<sup>1</sup> Yet, this trend shifted following the late 1990s, when there was a rise of anti-death penalty sentiment within America. News articles no longer focused on describing the necessity of the death penalty while painting a picture of the horrific acts of serial murderers.<sup>2</sup> Instead, the nation openly criticized the capital justice system. Even more notably, there began a sharp decline in the number of death sentences. After peaking at over 300 sentences in 1999, there were only 104 in 2010.<sup>3</sup>

The judiciary and legislative position on capital punishment also changed after the late 1990s. Not only did the use of the death penalty diminish, but also the U.S. Supreme Court continued to redefine it. Following the 1990s, the Court restricted the definition of those who were eligible for the death penalty multiple times, while in the previous decade, it only did so once. Furthermore, it was also obvious that state legislatures contributed to this movement. In fact, six states abolished the penalty in the 2000s.<sup>4</sup>

This change in America's sentiment toward the death penalty arose from a variety of sources. Ever since the U.S. Supreme Court began allowing the use of DNA evidence in capital trials, and the nation's first Innocence Projects started within major universities, people became concerned that the capital punishment system was broken.<sup>5</sup> International criticism of the American death penalty also peaked, while a common feeling percolated

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<sup>1</sup> Frank R. Baumgartner, Suzanna L. De Boef, and Amber E. Boydston, *The Decline of the Death Penalty and the Discovery of Innocence* (New York: Cambridge University Press, 2008), 148.

<sup>2</sup> David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Cambridge: The Belknap Press of Harvard University Press, 2010), 63.

<sup>3</sup> Baumgartner, *The Decline of the Death Penalty and the Discovery of Innocence*, 7.

<sup>4</sup> *Ibid*, 38.

<sup>5</sup> *Ibid*, 51.

among citizens that this punishment contradicted a culture of humanism.<sup>67</sup> The public also became aware that expensive executions did not necessarily deter future crime.<sup>8</sup> All along, the media painted a vivid picture of these criticisms for the American public.

In this thesis, I examine the alteration in America's treatment of the death penalty since the late 1990s. The majority of the current scholarship on the death penalty focuses upon recent changes in public opinion polls, judicial decisions, death sentences, and media framing. I provide a unique analysis by studying the national trend of legislative action. I examine all bills introduced within state legislatures, from 1990 to 2011.

This thesis contains four chapters. The first chapter illustrates an extensive history of the death penalty, beginning in the late nineteenth century and ending in 2011. I illustrate the differences in America's treatment of capital punishment in four periods: 1890 to 1940; 1940 to 1972; 1972 to 1990; and 1990 to 2010. I particularly demonstrate that, between 1890 and 1940, America often employed the death penalty, but the public was also very concerned about the relationship between capital punishment and Southern lynching. This resulted in legislation and judicial decisions centralizing executions.<sup>9</sup>

I also show that, in the period between 1940 and 1972, America's support for the death penalty diminished as WWII, the Civil Rights Movement, and the Vietnam War caused many people to feel bitter towards state sanctioned punishment.<sup>10</sup> This period of disfavor ended with the Supreme Court's decision in *Furman v. Georgia* (1976), which banned states from employing capital punishment after the Court determined that states

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<sup>6</sup> Stuart Banner, *The Death Penalty: An American History* (Cambridge: Harvard University Press, 2003), 302.

<sup>7</sup> Garland, *Peculiar Institution*, 256.

<sup>8</sup> Michael L. Radelet and Marian J. Borg, "The Changing Nature of the Death Penalty Debates," *Annual Review of Sociology* 26 (2000): 50.

<sup>9</sup> Garland, *Peculiar Institution*, 123.

<sup>10</sup> *Ibid*, 223.

were applying the penalty arbitrarily. The decision noted that black defendants received death sentences more frequently than white defendants did in cases with similar fact patterns. In other words, it concluded that there was too much discrepancy between judicial decisions for almost identical murders.<sup>11</sup>

Nonetheless, the death penalty made a savage return in 1976, when the Supreme Court ruled in *Gregg v. Georgia* that a complex system of controlling discretion would guarantee fair capital trials. This coincided with the belief that capital punishment was necessary toward deterring crime. High crime rates in the 1970s disturbed many people who now believed that this problem had resulted from the lack of capital punishment.<sup>12</sup>

Lastly, I focus on the sudden change of public sentiment in the 1990s. I explain how the rise of DNA evidence, Innocence Projects, international criticism, humanistic sentiments, and concerns regarding cost all contributed to this change.

The second chapter of this thesis presents my research. I describe the quantitative trends in bills regulating the death penalty from 1990 to 2011. I organize these bills based upon whether they restrict or expand the use of the death penalty or both. I illustrate which restrictions increased during this period and which expansions decreased. Overall, I show that the number of restrictions has surpassed the number of expansions, beginning in the late 1990s; however, in the past few years the number of restrictions has decreased.

I focus upon bills, rather than statutes, because a minimal number of capital punishment-related legislation becomes statutes. I estimate that out of the 1223 bills introduced between 1990 and 2011, only about 100 passed and became statutes.

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<sup>11</sup> Ibid, 225.

<sup>12</sup> Ibid, 246.

Obviously, examining bills provides a larger database for analysis. Furthermore, there is no reason to expect that statutes, rather than bills, would reflect a more accurate portrayal of legislative action since the 1990s. I note that the number of bills has changed along the same terms as statutes. In fact, the ratio of bills, which expanded the likelihood of receiving a death sentence, to bills, which restricted the likelihood of receiving a death sentence, followed the same trend.

Since 1999, the ratio of the number of expansions to number of restrictions within statutes has more than halved from 1.1 to 0.42. This means that, before 1999, for every provision within a statute that restricted the likelihood of receiving a death sentence, there was about one expansion. Yet, after then, there was twice the number of restrictions than expansions. As for bills, the ratio of expansions to expansions, prior to 1999, was 2.91, but it decrease to 0.71 since 1999. This means that, as with statutes, the number of expansions was less than half the number of restrictions from 1999 onward.

One can see that the alteration between expansions and restrictions followed the same trend within bills and statutes. However, it is important to note that the ratio since 1999 was larger within bills. Nonetheless, one can expect this, considering that statutes tend to be less progressive than bills because they often result from compromises between opposing parties. Therefore, the only difference between the trend in statutes and bills was that the difference between expansions and restrictions might be larger within bills, but they still alternate in the same direction. As with statutes, we should expect to see that the number of restrictions in bills surpassed expansions since 1999.

In fact, measuring bills should not only show a similar trend as measuring statues, but, rather, measuring bills allows for a less filtered study of legislative action. This is

true, considering that many statutes reflect judicial mandates rather than independent decisions by the legislature. Analyzing bills instead of statutes provides the most accurate information for how legislatures independently responded during this period.

The third chapter introduces possible intervening variables. I illustrate that location did not affect the trend in death penalty legislation. In fact, Southern states introduced more restrictions than expansions, just as the states from other regions. In addition, states that abandoned the death penalty in recent years did not restrict the penalty more sharply than other states. I conclude that I have documented a national trend when I declare that the number of restrictions outnumbered expansions since 1999.

The last chapter provides a qualitative overview of the legislative debate surrounding the death penalty within one state between 1990 and 2011. This chapter looks to add to this thesis by not only illustrating a trend, but also verifying its origin. Even though I illustrate that the actions of the state legislatures were consistent with an increase in anti-death penalty sentiment in the public, media, and judiciary, my quantitative analysis does not indicate why the legislatures decided to restrict the death penalty. The only way to determine this information is to conduct a qualitative analysis of legislative debates. However, because providing an adequate description of the debates occurring within all states would be unmanageable, this thesis focuses on North Carolina as a case study. North Carolina is a reasonable choice because its legislative actions mirrored the rest of the nation in most issues involving the penalty. For instance, the state

increased its use of the capital punishment up to the late 1990s, which means that North Carolina was not an outlier in its policy-making.<sup>13</sup>

Aside from providing an overview of the legislative history in North Carolina, I look to determine the motivation behind the recent legislative action. I examine whether the North Carolina legislature was aware of the changes around it. Did it act out of reasons consistent with those causing the negative public opinion, restrictive judicial decisions, and critical media framing in the same years? I analyze debate transcripts and interviews with legislators, who played a role in passing recent statutes.

I study three debates regarding statutes, which were influential in restricting the death penalty following 1999: the Indigent Defense Services Act, the State Bureau of Investigation reforms, and the Racial Justice Act. This section not only overviews the debate that occurred prior to the passage of each statute, but it also examines the difference within each debate. In this section, I analyze debates about statutes, rather than debates about failed bills, because documentation regarding the legislative debates on passed legislation is much more detailed than it is for failed bills.

I determine that the North Carolina legislature was aware of the problems with the death penalty as enumerated by the public, the media, and the judiciary. This occurred for the debates surrounding the IDS Act and the SBI reforms. During both these debates, the legislature cited a particular argument against the death penalty, which was popular with the public, media, and judiciary: a concern over the execution of the innocent.

Finally, I also examine why the legislature abandoned the Racial Justice Act at the end of the decade. I recognize that these debates were pursuant to a national legislative

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<sup>13</sup> Frank Baumgartner and Isaac Unah, “The Decline of Capital Punishment in North Carolina” (paper presented at the annual meetings of the American Society of Criminology, November 17-20, 2010, San Francisco).

trend marking a sharper increase in the number of expansions than restrictions at the end of the decade. My analysis suggests that state politicians viewed the RJA as a means for one party to assert dominance over the other, rather than as a statute that would ensure fair capital trials. Similarly, they introduced and voted to pass a bill that gutted the RJA due to the political motivations. However, I recognize that the debate on the RJA may be unique to North Carolina. Because of this, I am hesitant to say that the newfound desire to expand the death penalty, through legislative action, has resulted from politicized debates. An example of only one debate is not enough to confirm a reason for a national legislative trend, but it is a possibility, which requires further research.

In summary, I conclude that change in public opinion, media framing, and judicial decisions regarding the death penalty, as well as the reduction of death sentences in the late 1990s, coincided with an alteration in the type of legislative bills. As suggested by the debates within the North Carolina legislature, all these changes were connected. In other words, in the debates that I examined, the legislators cited a similar reason to limit the death penalty, which was also percolating within the media, judiciary, and the public. However, I also recognize that legislatures recently introduced expansions at a greater rate than restrictions. I note that North Carolina follows this trend by limiting the RJA, and I suggest that the North Carolina legislature acted out of political reasons, but this was not necessarily indicative of the national legislative trend as a whole.



**Chapter 1**  
**History of Capital Punishment**  
*1890-1940*

For many years, local municipalities had complete control over executions, but following the United States Civil War, state governments worked to curtail the ability of local communities to act in this capacity. As part of post-war Reconstruction, the reunited Union wished to distance itself from the antebellum Southern culture. In regards to capital punishment, this meant curtailing any connection between state sponsored capital punishment and lynching.<sup>14</sup> The primary means by which the government attempted to dissolve this connection was by centralizing executions. Between 1890 and 1940, states administered legislative reforms that transferred the control of executions from the county to the state level.<sup>15</sup> Even though the prosecution, trial, and sentencing remained in the hands of the municipalities, only state officials could administer executions. Therefore, executions only occurred within state prisons.<sup>16</sup>

However, there was much variation between states. In fact, many Southern states continued to tolerate public displays of lynching. An estimated 3000 instances of lynching occurred between 1890 and 1940.<sup>17</sup> From the 1890s onward, the Southern legislatures and the federal Congress worked to prevent such occurrences by passing anti-lynching laws, but none of these laws would be very effective.<sup>18</sup> With the rise of the Jim Crow Laws, not only did extralegal lynching continue to occur, but also state sponsored capital punishment often targeted black defendants that killed white victims. Even in the moderate state of North Carolina, 78% of the people executed between 1910 and 1960

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<sup>14</sup> Garland, *Peculiar Institute*, 31.

<sup>15</sup> *Ibid*, 123.

<sup>16</sup> *Ibid*, 123.

<sup>17</sup> *Ibid*, 124.

<sup>18</sup> *Ibid*, 125.

were black.<sup>19</sup> In fact, this discrepancy continued to occur despite a 25% decline in the black population during this period.<sup>20</sup> Executions also took place for crimes other than first-degree murder, and these executions resulted from racist intentions. In North Carolina, 67% of those that received executions for rape were African American.<sup>21</sup> All 12 executions for burglary between 1910 and 1961 were of black defendants.<sup>22</sup>

#### *1940-1972*

Despite the heavy reliance on the death penalty in the previous half-century, the number of executions began to decrease in parallel with other countries, starting in the 1940s, and especially following the end of both world wars. This precipitous decrease resulted from the fact that the public was beginning to disfavor the use of state sponsored executions.<sup>23</sup> A period of intense wars and the knowledge of the Third Reich's brutal execution policies during the Holocaust had struck Americans as unacceptable.<sup>24</sup>

This mindset would set the stage for many Americans to become receptive to the messages promoted through the Civil Rights Movement.<sup>25</sup> The populace began to fear the government's right to commission the deaths of its own citizens. Citizens adopted leftist stances, while the media was increasingly critical of the capital justice system, and criminologists, as well as American churches, declared themselves against the death penalty.<sup>26</sup> Soon protests arose, and state legislatures enacted statutes to eliminate or

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<sup>19</sup> Seth Kotch and Robert P. Mosteller, "The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina," *North Carolina Law Review* 88 (2010): 2039.

<sup>20</sup> *Ibid.*, 2056.

<sup>21</sup> *Ibid.*, 2066.

<sup>22</sup> *Ibid.*, 2067.

<sup>23</sup> Garland, *Peculiar Institution*, 223.

<sup>24</sup> Banner, *The Death Penalty: An American History*, 239.

<sup>25</sup> Garland, *Peculiar Institution*, 223.

<sup>26</sup> *Ibid.*, 210-211.

curtail executions.<sup>2728</sup> From 1940 onward, the juries became increasingly less willing to employ the death penalty.

Up until the end of the 1970s, the United States government led the Western world in its progressive capital punishment policies. In fact, after the 1930s, there was a sustained thirty-year decline in executions. Toward the end of the Civil Rights Movement, the number of executions dropped from 148 in 1948, to below 50 in 1960, and, eventually, 0 in 1967.<sup>29</sup> By all indications, the United States was moving toward a national abolition of the death penalty.

*1972: Furman v. Georgia*

Not surprisingly, the Supreme Court eliminated capital punishment soon after the Civil Rights Movement. Billed as a civil rights decision similar to *Brown v. Board*, the ruling in *Furman v. Georgia* (1972) intended to prevent egregious civil rights violations against minority citizens.<sup>30</sup> With a 5-4 decision, the Supreme Court decided that the administration of the death penalty constituted a cruel and unusual punishment, due to the high level of arbitrariness involved. The Court believed that capital trials resulted in random death sentences, particularly against minority defendants. In other words, the Court determined that while some defendants had received death sentences, others in identical cases had received less severe punishments.<sup>31</sup>

In actuality, the Court's decision was a nightmare for abolitionists. Following *Furman v. Georgia* (1972), there was a mandatory de facto moratorium on the use of capital punishment within the United States. However, just four years later, capital

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<sup>27</sup> Banner, *The Death Penalty: An American History*, 200.

<sup>28</sup> Garland, *Peculiar Institution*, 118.

<sup>29</sup> *Ibid*, 120.

<sup>30</sup> *Ibid*, 216.

<sup>31</sup> *Ibid*, 225.

punishment returned with strong popular support. By examining the social landscape, we can see that the Court did not adequately respond to public opinion. By the late 1960s, any sympathy toward defendants had disappeared.

The rise of urban riots, black street crime, and an increasing militant stance of black leaders had caused some Americans to look unfavorably upon the Civil Rights Movement. Many conservative working class whites saw the Civil Rights Movement as an attempt by liberal well-to-do Democrats to transfer wealth, power, and status to blacks.<sup>32</sup> Many within the public saw the ruling in *Furman v. Georgia* as an unwarranted involvement by the federal government to regulate the states. After petitions by legislatures to reenact the punishment, the Court quickly reinstated the death penalty.<sup>33</sup>

#### *1976: Gregg v. Georgia*

*Gregg v. Georgia* provided four solutions toward eliminating arbitrariness from capital trials. The Court called for bifurcated capital trials. This meant that there would be two separate trials to determine, first, the guilt and then, second, the sentence of the defendant. Additionally, the Supreme Court mandated automatic appeals of all death sentences. As part of this requirement, the highest appellate court in the state had to review each case.<sup>34</sup>

The third provision required state courts to review all death sentences for disproportionality. In other words, judges needed to determine whether identical cases had received different punishments, perhaps due to extralegal factors such as ethnicity, race, or income. Lastly, the courts had to instruct the jury on aggravating and mitigating

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<sup>32</sup> Ibid, 237.

<sup>33</sup> Ibid, 270.

<sup>34</sup> Stacy L. Mallicoat, "Politics and Capital Punishment: The Role of Judicial, Legislative, and Executive Decisions in the Practice of Death" in *Invitation to an Execution*, ed. Goron Morris Bakken (Albuquerque: University of New Mexico Press, 2010), 10.

circumstances. A court could only impose death when statutory aggravating factors outweighed the mitigating factors.<sup>35</sup> An aggravating factor is “any circumstance that increases the severity of the crime, such as torture, excessive violence, or premeditation.”<sup>36</sup> A mitigating factor “includes references to the defendant’s background which may explain the defendant’s behavior, but which does not constitute a legal defense.”<sup>37</sup> One potential statutory factor that can aggravate a murder in the eye of the court is “a capital offense that was committed for pecuniary gain or pursuant to an agreement that the defendant would receive something of value.”<sup>38</sup> On the other hand, a potential mitigating factor could be that “the defendant has no significant history of criminal activity.”<sup>39</sup> These are just two out of a vast array of statutory mitigating and aggravating factors.

#### *1976-1990*

From the 1976 to 1990, support for capital punishment remained at a high level. Public opinion polls suggest that support only fluctuated slightly from 77 percent.<sup>40</sup> However, despite this overwhelming support for the penalty, the state legislatures fought for executions to take place in private and by lethal injection, rather than by the electrocution, hanging, or firing squad.<sup>41</sup> Executions remained high during this period, but they did not increase to the highest levels until the late 1990s. During the 70s and 80s, people began to support the death penalty more as a policy rather than a practice by enacting statutes to show support to the victims’ families, rather than by steadily increasing executions every year.

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<sup>35</sup> Ibid, 10.

<sup>36</sup> Ibid, 10.

<sup>37</sup> Ibid, 11.

<sup>38</sup> “Aggravating Factors for Capital Punishment by State,” last modified 2013, <http://www.deathpenaltyinfo.org/aggravating-factors-capital-punishment-state>

<sup>39</sup> “Terry Lenmon’s List of State Death Penalty Mitigation Statutu,” last modified on May 5, 2010, <http://www.jdsupra.com/post/documentViewer.aspx?fid=d61d8c7b-896b-4c1a-bd87-f86425206b45>

<sup>40</sup> Banner, *The Death Penalty: An American History*, 275.

<sup>41</sup> Baumgartner, *The Decline of the Death Penalty and the Discovery of Innocence*, 147.

When Ronald Reagan won the presidency in 1981, he made the expansion of victims' rights a federal initiative. He immediately created the National Crime Victims Week and the Task Force on Victims of Crime, which detailed 65 recommendations to protect victims. The Task Force also campaigned for an addition to the sixth amendment that would mandate that the Court had to treat victims as equal to the defendant at critical stages of judicial proceedings. Even though this change to the amendment would never pass, Congress created the Crime Victim Fund in 1984, a financial resource for both compensation and legal services.<sup>42</sup> State governments were very receptive to this movement as well, and the actions of state legislatures closely mirrored those of the federal legislature. In the 1980s, 14 states required victim impact statements during sentencing, and 32 states passed a statutory bill of rights for victims.<sup>43</sup>

Even though many states maintained the death penalty in order to show support for victims' families, states carried out fewer executions than prior to 1976. In fact, 43 states performed either less or an equal number of executions, as compared to before 1976. On the other hand, only five states increased the number of executions.<sup>44</sup> In other words, people supported the punishment mostly because they wanted to appear strict on crime during a period of high murder rates, and legislators saw the political benefits of making sure that public policy aligned with this sentiment.<sup>45</sup>

The Supreme Court also supported the death penalty as a policy rather than a practice by limiting the application of executions. In 1977, the Court ruled out executions

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<sup>42</sup> Jeanna M. Mastrocinque, "An Overview of the Victim's Rights Movement: Historical, Legislative, and Research Developments," *Sociology Compass* 4/2 (2010): 95-110.

<sup>43</sup> Thomas K. Maher, "Worst of Times, and Best of Times: The Eighth Amendment Implication of Increased Procedural Reliability on Existing Death Sentences." *Elon Law Review* 1/95 (2010): 96.

<sup>44</sup> Baumgartner, *The Decline of the Death Penalty and the Discovery of Innocence*, 146.

<sup>45</sup> Garland, *Peculiar Institution*, 245.

for child rape in *Coker v. Georgia*. Likewise, in 1986, the Court prevented the execution of the insane in *Ford v. Wainwright*, and, in 1988, *Thomas v. Oklahoma* ruled out death sentences for minors. Yet, the Court was not always consistent in this practice. For example, in *Stanford v. Kentucky* (1989) and *Wilkins v. Missouri* (1989), the Court allowed the execution of defendants who were sixteen or seventeen at the time of their crimes. Similarly, *Penry v. Lynaugh* (1989) allowed governments to execute mentally retarded defendants without violating the Constitution.

#### *1990-2011*

In the 1990s, public support for the death penalty remained high, as the United States conducted the highest number of executions ever during the modern era at 98 in 1999.<sup>46</sup> At this time, the public supported the death penalty more as a practice than a policy. Yet, public support drastically dropped between 1999 and 2002. In fact, by 2000, support for the death penalty fell to 66%, which was the lowest level since 1981.<sup>47</sup>

From the end of the 1990s to 2011, the change in public sentiment accounted for a decline of more than 100 death sentences per year.<sup>48</sup> The populace also became more willing to impose the punishment of Life Without Parole (LWOP) than the death penalty. In fact, in 1999, a Gallop Poll determined that only 56% of citizens supported the penalty over LWOP. Citizens began to see LWOP as a means of reducing “the friction between modern executions and civilized and humanitarian sensibilities.”<sup>49</sup>

The Supreme Court also continued to limit the death penalty with this period. In *Ring v. Arizona* (2002), the Court ruled that a judge had to leave the determination of aggravating factors up to the jury. In addition, *Atkins v. Virginia* (2002) ruled out the

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<sup>46</sup> Baumgartner, *The Decline of the Death Penalty and the Discovery of Innocence*, 24.

<sup>47</sup> *Ibid*, 45.

<sup>48</sup> *Ibid*, 8.

<sup>49</sup> Garland, *Peculiar Institution*, 257.

execution of retarded defendants, and, in *Roper v. Arizona* (2005), the Court decided that the execution of minors was unconstitutional.

This continued decline in support for the death penalty resulted from a highly multifaceted debate. One aspect involved increased perception of innocence claims. Beginning in 1999, media outlets commonly reported on the execution of innocent people, resulting from unfair trials, inefficient defense counsel, and biased juries. At the same time that overall support reached a low in 2000, 91% of people believed that the innocent often received death.<sup>50</sup> The public was receptive to these media reports because the debate no longer revolved around arguments regarding constitutionality or morality. Instead, the presence of DNA evidence provided irrefutable and objective evidence of injustice. DNA was not the whole story, as Innocence Projects also brought attention to unfair trials and the mistreatment of defendants. The public felt inclined to support these Innocence Projects since the main actors were not self-serving defense attorneys, but rather independent scholars and students.<sup>51</sup>

Aside from concerns over uncertainty of executions, the media also focused upon the substantial costs of carrying out death sentences. When academic research became available to the public, media outlets began reporting that it “cost \$3.2 million for every electrocution versus \$600,000 for life imprisonment.” Soon critics were arguing that if the states abolished the death penalty, then legislatures could devote more funds to lowering crime rates.<sup>52</sup>

Another reason for low popular support was the public’s perception of international criticism. Corresponding directly with the sharp decrease in public support

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<sup>50</sup> Banner *The Death Penalty: An American History*, 304.

<sup>51</sup> Baumgartner, *The Decline of the Death Penalty and the Discovery of Innocence*, 51.

<sup>52</sup> Radelet, “The Changing Nature of the Death Penalty Debates,” 50.



between 1998 and 2002, there was a large international outcry against the death penalty. In fact, in 1998, South Africa banned the death penalty after conducting a review of it within America and rejecting the practice outright. Additionally, in January 1999, Pope John Paul II called for the end of the death penalty while visiting St. Louis MO., and, on April 1999, the United Nations created a Human Rights Commission Resolution supporting a worldwide moratorium on executions.<sup>53</sup>

Below, I will determine through a series of statistical tests that these changes in public support, media framing, judicial decisions, and the number of death sentences coincided with a change in legislation relating to the death penalty. I illustrate that, following the late 1990s, the percentage of proposed bills restricting the application death penalty outnumbered the percentage of bills expanding the application of death penalty. Prior to then, the percentage of expansions outnumbered the restrictions.

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<sup>53</sup> Banner, *The Death Penalty: An American History*, 302.

## Chapter 2

The purpose of this study is to examine whether the recent change in national sentiment regarding the death penalty coincided with an increased amount of anti-death penalty legislation. I predict that as the years progressed from 1990 to 2011, there was an increase in the number of bills restricting the penalty and a decrease in the number of bills expanding the death penalty.

### Methodology

This study analyzes 1223 state bills taken from LexisNexis State Capital, a searchable database on state legislation from all 50 states. I organized these bills by the information provided from LexisNexis State Capital on Synopsis, Year, and State.

I initially coded these bills based on their intended purpose. This process left me with an expansive list of 103 different purposes, as many bills had multiple purposes. In order to categorize these bills by purpose, I used the information listed under Synopsis when searching for a bill in LexisNexis State Capital. This was a short abstract consisting of roughly 50 to 75 words describing the bill. I have listed a portion of these purposes below in Table 1. The column on the left lists the bill's intended purpose, and the column on the right provides an example of an abstract from LexisNexis State Capital.

Table 1  
Examples of state legislative bills coded

Purpose	Abstract
Abolishes the death penalty/ ends executions/ repeals previous acts and laws regulating the death penalty	Abolishes the death penalty for Class I felonies committed on or after 07/01/2002; mandates the punishment upon conviction as life imprisonment with the possibility of parole; leaves the majority of death penalty-related statutes in fact for the prosecution or appeal of a death sentence occurring prior to the change in the law
Expands aggravating circumstances for DP based upon defendant type/crime type	Relates to the punishment for murder; includes as a separate statutory aggravating

	circumstance which may be considered in the determination of whether the death penalty may be imposed, a murder committed while in the commission of stalking or aggravated stalking.
Restricts death eligibility for first degree murder based upon defendant type	Prohibits the imposition of the death penalty upon a mentally retarded defendant. The bill makes it clear that the prohibition does not prevent a defendant from being charged with or tried for a capital offense, convicted of a Class 1 felony or prevent the court from sentencing the defendant to imprisonment for life pursuant to 18.2-10
Moratorium or Execution Stays for all Capital Cases	Provides a two-year moratorium on executions of prisoners sentences to death. All other matters of law relating to the death penalty, such as bringing and trying capital charges, sentencing proceedings, appeals and habeas review are not affected by the bill
Requires notice by prosecutor of intention to seek the death penalty  Creates uniform minimal procedures to ensure fundamental fairness during pretrial preparation	Amends the Code of Criminal Procedure of 1963. Provides that the State's attorney or attorney general must file a notice of intention to seek or decline the death penalty within 120 days after arraignment, unless the court for good cause shown otherwise directs. Creates the State Death Penalty Review Committee to develop standards to assist State's Attorneys in the exercise of discretion in seeking the death penalty on a first degree murder charge
Mandatory LWOP for certain types of defendants/minors/ mentally retarded  Limits death eligibility based upon defendant type	Relates to youthful offenders convicted of capital offenses to eliminate the death penalty and replace it with life without parole or life without parole for a specified number of years

After I assigned purposes to each bill, I then clustered these bills based on commonality between the purposes. The bills that I placed together all shared one characteristic, which I called a dimension. I allowed bills that had more than one purpose to fit into more than one dimension. In Table 2, the left column describes each dimension,

particularly which characteristics belong within in each dimension, and the right column lists all the purposes that fit into each dimension.

Table 2  
Object of Legislation

Dimension	Purposes
<b>Creates DP-</b> These bills legalize the death penalty or beg for its legalization through either popular referendum or federal constitutional amendment	<ul style="list-style-type: none"> <li>A) Creates/ Legalizes/Reinstates/ Codifies/ Preserves Capital Punishment for First-Degree Murder</li> <li>B) Creates Capital Punishment for only one type of first degree murder</li> <li>C) Creates Constitutional Amendment supporting DP</li> <li>D) Referendum, creating DP</li> </ul>
<b>Abolish DP-</b> These bills abolish the state death penalty statute or beg for its abolishment through either popular referendum or federal constitutional amendment	<ul style="list-style-type: none"> <li>A) Referendum, disposing of DP</li> <li>B) Expresses intent to dispose of DP</li> <li>C) Abolishes the death penalty</li> <li>D) LWOP replaces DP for all Capital Cases</li> <li>E) Changes DP Sentences to LWOP</li> </ul>
<b><u>Pro:</u> Mitigating or Aggravating Circumstances-</b> These bills either expand aggravating factors or limit mitigating factors	<ul style="list-style-type: none"> <li>A) Expands aggravating circumstances based upon victim type</li> <li>B) Expands aggravating circumstances for DP based upon defendant type/crime type</li> <li>C) Limits Mitigating Factors</li> </ul>
<b><u>Anti:</u> Mitigating or Aggravating Circumstances-</b> These bills either expand mitigating factors or limit aggravating factors	<ul style="list-style-type: none"> <li>A) Mental Health used as Mitigation</li> <li>B) Expands Mitigating Factors or Reduces Aggravating Factors</li> </ul>
<b><u>Pro:</u> Death Eligibility-</b> These bills expand death eligibility based upon either defendant, crime, or victim type	<ul style="list-style-type: none"> <li>A) Expands Death eligibility for murder type/ defendant type</li> <li>B) Enhanced Penalties for Felonies</li> <li>C) DP for crimes other than capital murder</li> <li>D) Death penalty mandatory for case type</li> <li>E) DP Possible for Minors</li> <li>F) Limits death eligibility for crimes other than first degree murder</li> </ul>
<b><u>Anti:</u> Death Eligibility-</b> These bills limit death eligibility based upon either defendant, crime, or victim type	<ul style="list-style-type: none"> <li>A) Limits death eligibility based on defendant type</li> <li>B) DP Not Possible for Minors</li> <li>C) Mentally Retarded Defendants Excluded from DP, Moratorium/Execution Stays for All Capital Cases</li> <li>D) Eliminates Triggerman Rule</li> </ul>
<b><u>Pro:</u> Trial or Pre-Trial Regulation-</b> These bills introduce regulations in	<ul style="list-style-type: none"> <li>A) Increases or places burden of proof on defendant</li> <li>B) Increases the rights or discretion of the</li> </ul>

<p>death penalty trials or pre-trial preparation requirements that create an environment more conducive to applying the death penalty by reducing the rights of the defendant or increasing the discretion of the prosecutor</p>	<p>prosecution in a capital trial or appeal</p> <ul style="list-style-type: none"> <li>C) Notice not required</li> <li>D) Grant Reprieve</li> <li>E) Less Jurors needed for Verdict</li> <li>F) Quickens Timeliness of Trial/Appeal</li> <li>G) Prior Criminal History Can be considered for Sentencing/Bail</li> </ul>
<p><b><u>Anti:-Trial or Pre-Trial Regulation-</u></b> These bills introduce regulations in death penalty trials or pre-trial preparation requirements that create an environment less conducive to applying the death penalty by increasing the rights of the defendant or decreasing the discretion of the prosecutor</p>	<ul style="list-style-type: none"> <li>A) Reduces the discretion, rights, and further regulates the prosecution in a capital trial</li> <li>B) Review Committee to review prosecutions for aggravated murder cases</li> <li>C) Notice by prosecutor of intention to seek DP to defense attorney</li> <li>D) Uniform minimal procedures to ensure fundamental fairness Sets up sentencing process</li> <li>E) Indictment Time Extension</li> <li>F) Allows to File a Motion for Removal of the Case</li> <li>G) Special Venire/Venire Limited to DP Cases</li> </ul>
<p><b><u>Pro: Appeal Regulation-</u></b> These bills introduce regulations in death penalty appeals that create an environment more conducive to applying the death penalty by restricting the defendant's access to an appeal, limiting record keeping regulations, or eliminating sentence reductions</p>	<ul style="list-style-type: none"> <li>A) Limits the Appeal Process/</li> <li>B) Eliminate/Limit Record Keeping</li> <li>C) Quickens Timeliness of Trial/Appeal</li> <li>D) Elimination of Sentence Reductions for Aggravated Murder</li> <li>E) Preserve Authority of State courts to exercise independent judgment in post conviction from federal government</li> <li>F) Governor cannot grant clemency</li> </ul>
<p><b><u>Anti: Appeal Regulations-</u></b> These bills introduce regulations in death penalty appeals that create an environment less conducive to applying the death penalty by increasing the defendant's access to an appeal, creating a new appeals office, or improving record keeping regulations.</p>	<ul style="list-style-type: none"> <li>A) Creates Appeal Process</li> <li>B) Automatic Appeal/Automatic Stay provisions</li> <li>C) Improves Record Keeping Regulations,</li> <li>D) SC Ruling Regulations</li> <li>E) Regulation regarding Supreme Court Jurisdiction</li> </ul>
<p><b><u>Pro: Execution and Death Row Regulation-</u></b> These bills introduce execution regulations that reflect increasing support for the death penalty in the legislature by reducing the quality of life for defendants awaiting executions, increase public perception of quicken the timeliness of an</p>	<ul style="list-style-type: none"> <li>A) Concerns public perception of executions</li> <li>B) Quickens the timeliness of execution</li> <li>C) Visitation Limitations for DP</li> <li>D) Determines execution oversight</li> <li>E) Lethal Injection Mandatory</li> </ul>

execution, or expanding form of execution	
<b>Anti: Execution and Death Row Regulation-</b> These bills introduce execution regulations that reflect decreasing support for the death penalty in the legislature by decreasing the timeliness of execution or mandate a certain form of execution	A) Decreases timeliness of execution B) Electrocutation Available
<b>Pro: Witness and Evidence Regulation -</b> These bills allow witnesses and evidence that solely benefit the prosecution, particularly victim impact statements	A) Victim Impact Statements allowed B) Requires that victims will be treated equally regardless of the position on DP
<b>Anti: Witness and Evidence Regulation-</b> These bills expand the type of witnesses or evidence that the defense can show a jury in trial	A) Bar imposition of testimony of in custody informant or single eyewitness if there is no other corroboration B) Allows for admissible evidence C) Allows DNA Testing D) Allows statistical evidence E) Investigators provided to defense
<b>Pro: Judge or Jury Regulation-</b> These bills increase the discretion of the jury to decide guilt and penalty in a death penalty trial	A) Gives judge more power or discretion in deciding verdicts B) Less jurors needed for verdict
<b>Anti: Judge or Jury Regulation-</b> These bills decrease the discretion of the jury or increase the power of the judge to decide the guilt and penalty in a death penalty trial	A) Removes judge power or discretion in death cases B) Increase jury control C) Unanimous jury required for DP D) Required judge instruction of jury E) Prohibits jury contact following trial F) Prevents a certain judge from hearing DP Cases G) Prevents DP if jury deadlock
<b>Creates Moratorium</b>	A) Creates a moratorium for all capital clients B) Creates a moratorium only for certain type of capital clients
<b>Creates a Study or Commission</b>	A) Creates commission to improve defense counsel for capital cases B) Creates commission to evaluate equity of capital punishment
<b>Other</b>	A) Honors for individual DP cases B) Provisions to avoid racial or demographic bias in capital cases C) Creates death penalty objectors registry D) Leaves DP sentencing proceedings unaffected by moratorium on executions

	E) Cannot be coded
<b>Creates LWOP</b>	A) Allows LWOP for crimes other than first-degree murder B) LWOP replaces DP for all capital cases C) Creates LWOP D) LWOP possible for minors E) Creates LWOP and DP dichotomy

I then grouped the dimensions together based on whether they expanded or restricted the death penalty. In general, a restriction is a bill that made it harder for defendants to receive a death sentence or an execution, while an expansion is a bill that made it easier for a defendant to receive death sentences or executions. I also intended for many of these dimensions to have a partner dimension. These dimensions had similar characteristics in common, but one restricted the death penalty, while the other expanded it. One example is Pro: Mitigating or Aggravating Circumstance and Anti: Mitigating or Aggravating Circumstance. The former dimension includes bills that either limited mitigating factors or expanded aggravating factors, while the latter dimension includes bills that expanded mitigating factors or limited aggravating factors.

In the Table 3, I have listed the dimensions based on whether they restrict or expand. The left column shows expansions and the right column illustrates restrictions.

One can see how partner dimensions split between expansions and restrictions.

Table 3  
Expansions and Restrictions to the Death Penalty

Expansions	Restrictions
1) Creates DP	1) Abolishes DP
2) Pro: Mitigating or Aggravating Circumstances	2) Anti: Mitigating or Aggravating Circumstances
3) Pro: Death Eligibility	3) Anti: Death Eligibility
4) Pro: Trial or Pre-Trial Regulation	4) Anti: Trial or Pre-Trial Regulation
5) Pro: Appeal Regulation	5) Anti: Appeal Regulation
6) Pro: Witness or Evidence Regulation	6) Anti: Witness or Evidence Regulation
7) Pro: Judge or Jury Regulation	7) Anti: Judge or Jury Regulation
8) Other	8) Creates Moratorium
9) Creates LWOP	9) Creates a Study or Commission
	10) Other
	11) Creates LWOP

Creating partner-dimensions not only allowed me to compare between dimensions, but I could see exactly how the legislature went about proposing to expand or restrict the application of the death penalty. In other words, I could see whether legislatures would be more likely to propose restrictions or expansions involving mitigating and aggravating circumstances in a certain year, rather than solely measuring the total number of bills that did both things.

Once I had placed all the bills into their respective dimensions and grouped these dimensions based on whether they expanded or restricted the death penalty, I calculated the total number of bills that fit into each dimension for each year between 1990 and 2011, inclusively. This also allowed me to calculate the total number of bills that were



either expansions or restrictions. I then could draw time-series graphs for the number of bills in each dimension as well as compare between expansions and restrictions.

The next section in this paper includes my analysis. It will focus on showing an alternation in the number of death penalty restrictions and expansions since 1999. In other words, I will illustrate that the number of restrictions surpasses the number of expansions, but there has been resurgence in the number of expansions since 2010.

### **Analysis**

From my extensive analysis of legislative bills relating to the death penalty from 1990 to 2011, I determine that the change in national sentiment, beginning in the late 1990s, not only corresponded with a sharp decrease in death sentences but also an increase in the number of restrictions and a decrease in the number of expansions. Prior to 1999, the total number of expansions surpassed the total number of restrictions, but, in this year, the restrictions began to surpass the total number of expansions.

This trend remained consistent across partner-dimensions. For instance, the number of anti-trial regulations surpassed the number of pro-trial regulations following 1999. Interestingly, I also notice that toward the end of the second decade, the number of restrictions and expansions got closer together. More specially, the number of expansions per year began to more sharply than the number of expansions has done.

### Total Bills

I begin my analysis by constructing a figure that displays the total number of bills per year and the total number of restrictions and expansions per year. Figure 1 displays the total number of death penalty bills, total number of expansions, and the total number of restrictions per year from 1990 to 2011 in all 50 states. To reiterate the point, expansions made it easier for defendants to receive a death sentence or execution, while restrictions made it harder for defendants to receive a death sentence or execution.

Figure 1: Total Bills

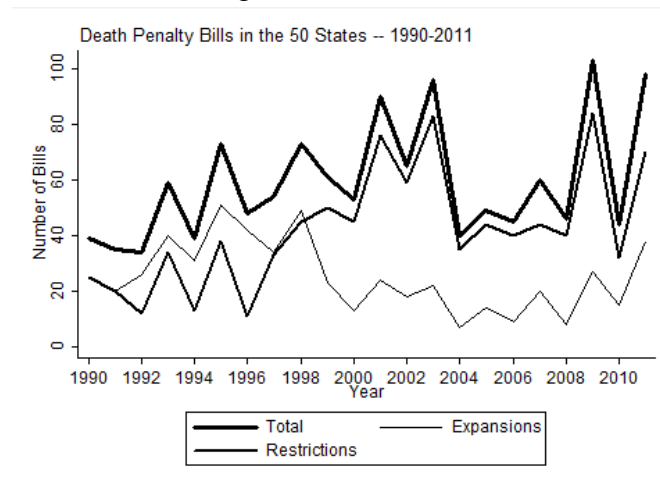


Figure 1 displays that, starting roughly in 1999, the number of expansions decreased, while the number of restrictions increased. In other words, the relationship between expansions and restrictions flipped. From 1990 to 1998, the number of expansions was either greater than restrictions or the number of both partner dimensions was equal. However, since 1999, there have been more restrictions than expansions.

I also discovered that that the total number of bills increased over the decades. The total number of bills for 1990-1998 increased from 538 to 685 for 1999-2011. The mean number of bills introduced per year was 49 for 1990-1998, while the mean was 62 for 1999-2011. Thus in the later decade, legislatures introduced more bills relating to the death penalty and, on average, introduced more bills per year. This suggests that when

working to restrict the death penalty, the legislatures paid more attention to the penalty than in the previous decade.

In addition, even with the increase in the total number of bills, the mean difference between restrictions and expansions was greater in this later decade than in the previous decade. The mean difference for 1990-1998 was 9.8, while the mean difference for 1999-2011 was 33.2. Therefore, there was not only an increase in action regarding the penalty since 1999, but there was a greater effort to restrict the penalty since 1999 than expand the penalty prior to 1999.

Lastly, since 1999, the number of restrictions and expansions was the closest in 2010 and 2011, as the number of expansions and restrictions began to equalize. This suggests that either the legislative debates ignored public opinion, the public opinion changed in the pro-death penalty direction, the framing legislature debate changed, or the legislature tried to abandon the death penalty altogether rather than restrict its application through bills. In a later section, I hypothesize that the reason for this decrease in restrictions and increase in expansions, was that the framing of the debate changed.

Figure 2: Expansions and Restrictions Percentages

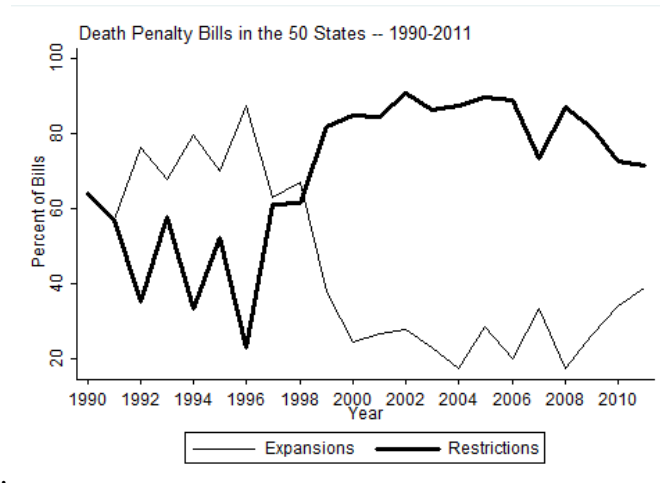


Figure 2 illustrates the ratio of the expansions to the total number of bills, and it does so for restrictions as well. I use Figure 2 as means to see more clearly how the percentage of restriction related to the percentage of expansions beginning 1999. In accordance with the previous graph, the percentage of restrictions surpassed expansions beginning 1999. The percentage of expansions and restrictions also expectedly fit closely together at the end of the second decade. In fact, the equalization of expansions and restrictions is even clearer in this graph.

Once can see that from years 1992 to 1998, the percentage of expansions always remained above the percentage of restrictions. However, the percentage of these bills equalized in 1998, and following 1998, the percentage of restrictions surpassed the percentage of expansions. This was a drastic equalization because, in 1996, the difference between expansions and restrictions was the greatest at roughly 60%. In 1997, the difference changed from 60% to less than 10%, and eventually equalized in 1998.

### *Creating the Death Penalty*

Upon viewing the trends in the total number of bills, I now examine each dimension separately. I start with bills under the dimension, Create DP. These bills legalized the death penalty or begged for its legalization through either referendum or constitutional amendment. Of the total number of bills, 84 of them fit into this dimension, which made up roughly 7% of all bills.

Figure 3: Bills to Create the Death Penalty

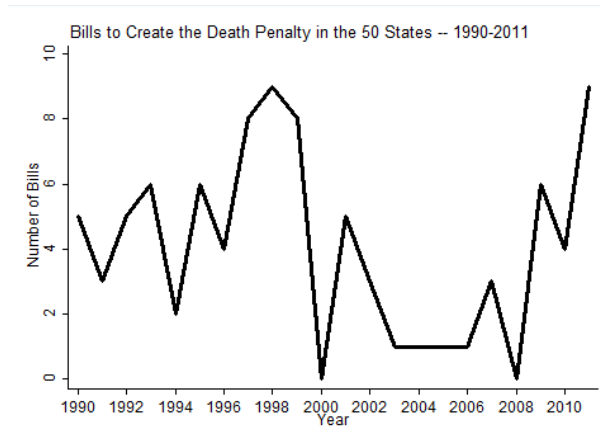


Figure 3 illustrates a decrease in creation bills beginning in the second decade. As in Figure 2, which displayed the total number expansions and restrictions, the large alteration began in 1999. This year marked a large drop in the number of bills creating the death penalty, and, following this year, the descriptive statistics remained consistently lower than the years before this time. For instance, the mean for 1990-1998 was 5.3, the mode was five, and the median was five; while the mean for 1999-2011 was 3.2, the median was three, and the mode was one. This trend in creation bills expectedly aligned with the trend of the total number of bills. As the number of expansions decreased following 1999, the number of creation bills also dropped.

The shape of the graph not only suggests that there was a decrease in legislative support for the death penalty beginning in 1999, but it also shows that there was a

resurgence of support at the end of the decade. As expected, the number of creation provisions decreased along with the number of expansions at the beginning of the decade, but it also increased at the end of the decade. The number of creation provisions at the end of the decade equaled the number of such bills before the late 1990s. This aligns with the trends displayed in Figure 2. Just as the number of expansions has approached those of restrictions, the number of creation provisions has increased.

#### *Abolishing the Death Penalty*

The second dimension includes bills that called for abolishment of the death penalty or proposed a popular referendum or a state constitutional amendment calling for abolition. There were 132 bills, which made up 16% of all the death penalty bills. I expect to see that this dimension closely followed the national trend, since it made up a significant proportion of all bills.

Figure 4: Bills to abolish the Death Penalty

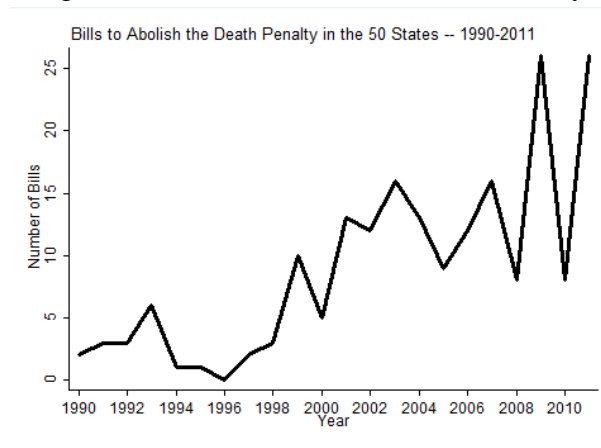


Figure 4 displays an increase in the number of abolishment bills through both decades; however, 1999 marks the year when the number of abolishment bills began to increase most drastically. In 1998, the number of abolishment bills was three, but it jumped all the way to 10 in 1999, and it never decreased to below three afterward.

In addition, since 1999, the descriptive statistics remained consistently higher than the years before this time. Through 1998, the mean number of abolishment bills was 2.3 per year, and, after 1999, the mean number was 13.6. More shockingly, in 1990, only two proposed bills abolished the death penalty, while 25 bills did so in 2011. This increase in abolishment bills aligned with the increase in the number of bills restricting the death penalty following 1999.

In addition, the number of abolishment bills decreased toward the end the decade, along with the total number of restrictions. In 2010 and 2008, the number of abolishment bills was only nine, which was below the mean number of abolishment bills for the period of 1999 to 2011. Therefore, this dimension sharply followed the national trend.

### *Mitigating and Aggravating Circumstances*

I then turned to the third dimension. This dimension includes bills that ruled on either expanding or limiting mitigating and aggravating factors. Figure 5 displays both expansions and restrictions for this dimension. There were 132 of these bills, which made up 9% of the total number of bills. Expansions were bills that either expanded aggravating factors or limited mitigating factors. Restrictions were bills that expanded mitigating factors or limited aggravating factors.

Figure 5: Bills regulating Mitigating and Aggravating Circumstances

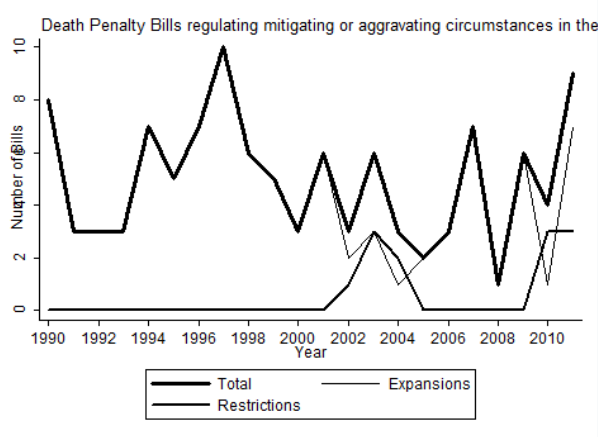


Figure 5 does not follow the trend of the lines displayed in the previous figures, since the number of restrictions did not stay consistently higher than the number of expansions following 1999. In fact, from 1999 to 2011, the number of restrictions remained below the number of expansions for most of the period. Only from 2003 to 2005, and in 2010, did the number of restrictions surpass the number of expansions.

Importantly, however, this graph does not completely contradict the previous ones. In fact, the number of restrictions increased in the late 1990s, even though this increase occurred later than in the previous figures. The number of restrictions did not begin to increase sharply in 1999 but rather increased instead in 2001. There was also a flip in the number of expansions toward the beginning of the 2000s, but this flip only

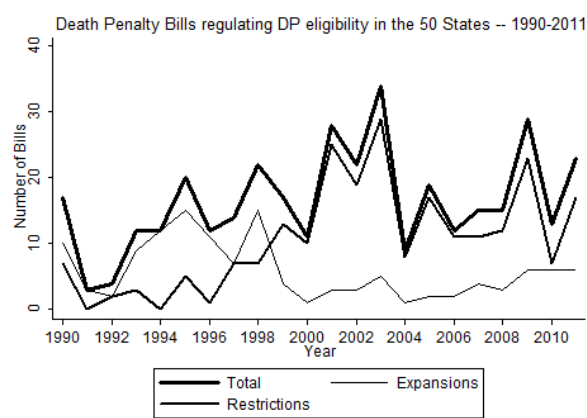


lasted for a minimal period. Therefore, this change affected these bills, but the effect was weak. Even though these bills did not exactly follow the trend, they made up only 9% of all the bills, so they did not have a large influence on the overall trend.

### *Death Eligibility*

Death eligibility bills defined which types of cases are suitable for the death penalty. Usually the legislature determined death eligibility based upon defendant, crime, or victim type. Expansion bills expanded death eligibility based upon defendant, crime, or victim type. Restriction bills limited death eligibility based upon defendant, crime, or victim type. There were 476 of these bills, which made up roughly 29% of all bills. This was the largest dimension of bills, so I expect to see that it closely followed the national trends displayed in Figure 1.

Figure 6: Bills regulating Death Penalty Eligibility



As with Figures 1, 2, and 3, this figure follows the same trends. Once again, in 1999, the number of expansions decreased while the number of restrictions increased. In other words, the relationship between expansions and restrictions flipped. From 1992 to 1998, the number of expansions was always greater than restrictions, but, beginning in 1999, there were suddenly more restrictions than expansions. This trend continued onward from 1999, and the mean difference between restrictions and expansions was

greater in this later decade than in the previous decade. The mean for 1990-1998 was 5.8, while the mean for 1999-2011 was 18.3, with a difference of 12.5. This dimension of bills obviously contributed to the overall trend.

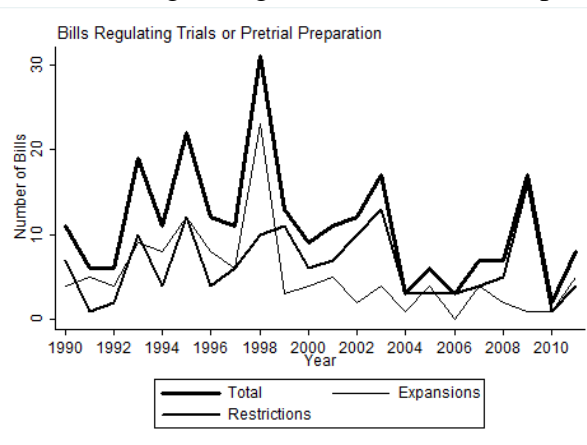
The gap between expansions and restrictions also decreased at the end of the decade in this dimension. In 2010, the gap decreased with a difference of 1 in 2010 and 9 in 2011, as opposed to differences of 25 in 2001 or 15 in 2005. This suggests that in the early 2000s, the legislatures moved toward restricting the death penalty by limiting death eligibility, and, at the end of the decade, this support diminished. As expected, this trend in death eligibility was the same trend that occurred in Figure 1. Therefore, death eligibility bills played a large role in driving the national trend, since this dimension included many bills, and it followed the national trend exactly.

### *Trial and Pre-Trial Regulation*

These bills regulated death penalty trials or pre-trial preparation requirements.

There were 314 bills, which made up 19% of all bills. The expansion bills introduced regulations in death penalty trials or pre-trial preparation requirements that created an environment more conducive to applying the death penalty by reducing the rights of the defendant or increasing the discretion of the prosecutor. The restriction bills introduced regulations in death penalty trials or pre-trial preparation requirements that created an environment less conducive to applying the death penalty by increasing the rights of the defendant or decreasing the discretion of the prosecutor.

Figure 7: Bills regulating Trials or Pretrial Preparation



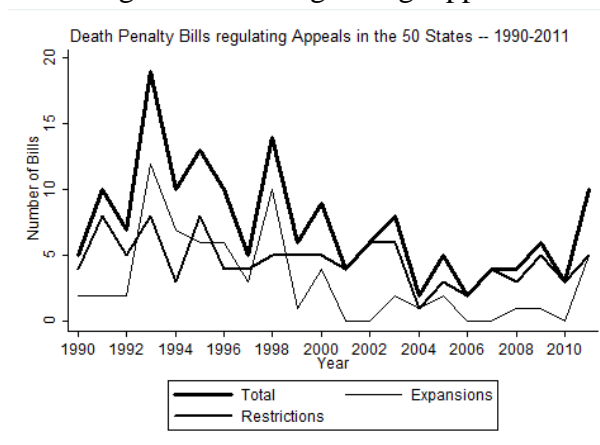
Because this dimension made up a large percentage of all bills, it should follow the national trend, and Figure 7 confirms this assumption. From 1992, the number of expansions was greater than restrictions, but following 1999, there were more restrictions than expansions. Even though the number of restrictions and expansions were equal in 2005, 2010, and 2011, the average difference between restrictions and expansions was higher than this difference in the previous decade, which followed the national trend. Between 1990 and 1998, the mean difference was 3.2, while it rose to 3.69 in the later decade. As with most other bills, the legislators more actively restricted this dimension in

the second decade more than it expanded it in the previous decade. Similar to the other figures, the gap decreased toward the end of the decade. In fact, by 2011, the number of expansions surpassed the number of restrictions. However, it is important to note that these bills did not completely follow the national trend because the restrictions sometimes surpassed the expansions in the first decade, while the expansions sometimes surpassed restrictions in the second decade. Thus, even though trial bills were one of the most common bills, they did not exactly follow the national trend at all points.

### *Appeal Regulations*

These bills regulated death penalty appeals. There were 256 bills, which made up 13% of the total bills. The restrictions were bills that introduced regulations in death penalty appeals that created an environment more conducive to applying the death penalty by restricting the defendant's access to an appeal, limiting record keeping, or eliminating sentence reductions. The expansions were bills that introduced regulations in death penalty appeals that created an environment less conducive to applying the death penalty by increasing the defendant's access to an appeal, creating a new appeals office, or improving record keeping regulations

Figure 8: Bills regulating Appeals



The state legislatures regulated appeals very similarly to trials. Up to 1998, the number of expansions mostly remained higher than the number of restrictions, but beginning in 1999, the number of restrictions surpassed expansions. Interestingly, the average difference in expansions and restrictions was smaller in the second decade than in the first decade. In the first decade, the mean difference was 3.2, but only 2.7. In the second decade, nonetheless, expansions never consistently outnumbered restrictions in the previous decade, and in the second decade, the restrictions and expansions sometimes

equalized. Thus, these bills never exactly followed the national trend, but since 1999, the restrictions usually remained above restrictions.

Similar to most other types of bills, the number of restrictions and expansions again equaled each other toward the end of the decade in 2011. For instance, in 2010, the difference was only three, while it dropped to zero in 2011. Previously, the difference was as great as six bills in both 2002 and 2003. Thus, once again, this bill type followed almost all of the national trends, other than the fact that the restrictions sometimes outnumbered the expansions prior to 1999, and the restrictions did not always outnumber the expansions since 1999. Therefore, these bills contributed to the national trend, but they did not monopolize it.

### *Executions and Death Row*

These bills regulated executions for the death penalty. The expansion bills were regulations that reflected increasing support for the death penalty in the legislature. These bills reduced the quality of life for defendants awaiting executions, increased public perception of an execution, decreased one's allotted time on death row before an execution, or expanded the forms of execution. The restriction bills were regulations that reflected decreasing support for the death penalty in the legislature. These bills increased the allotted time allowed on death row before an execution or reduced the forms of execution. There were 179 bills, which made up 9% of all bills, so I expect that these bills did not necessarily follow the national trend.

Figure 9: Bills regulating Executions

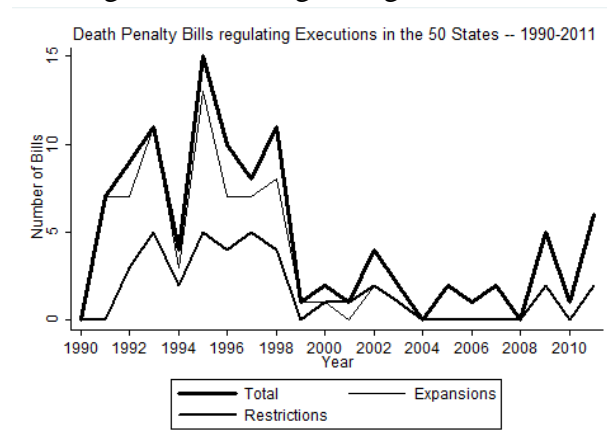


Figure 9 is interesting because it does not follow the general trends of most bills. Instead of the restrictions surpassing the number of restrictions following 1999, the number of expansions always surpassed the number of restrictions, and only in 2001 has the number of restrictions been greater than the number of expansions. Even though the trend for execution bills differed greatly from the other bills, this dimension was so slight that it did not seem to significantly alter the national trend portrayed in Figure 1.

In addition, in 1999, there was a sharp decrease in the total number of bills regulating executions between 1990 and 2011. This decline in execution bills suggests that legislators were more concerned with restricting the death penalty through other means than through execution bills after 1999. In fact, regulating executions was not a high priority, most likely because many states had created moratoriums on executions following 1999, which is a different dimension in my analysis.

*Attorney Regulations*

These bills regulated attorney appointment and funding for defense counsel. There were 185 bills, which made up 10% of all bills. Expansions lowered the quality of defense counsel by not guaranteeing defense counsel, allowing waiver of counsel, or decreasing the funding for counsel. Restrictions increased the quality of defense counsel by guaranteeing defense counsel, increasing education and experience requirements for attorneys, or increasing the funding for attorneys.

Figure 10: Bills regulating attorneys

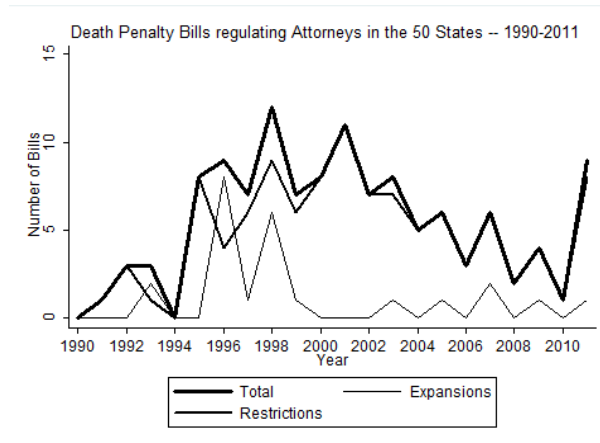


Figure 10 displays a similar trend as the total bills displayed in Figure 1. Beginning in 1999, the number of proposed restrictions was much greater than expansions, which never surpassed five. Prior to 1999, the number of expansions surpassed restrictions, but the difference was not great. This gap exploded following



1999, as the number of restraints vastly outnumbered the expansions. This suggests that, as with the total bills, the legislatures spent more effort restricting this dimension from 1999 onward than expanding it before 1999.

As the years progressed toward the end of the decade, the difference between expansions and restrictions diminished. This graph closely resembles the graph of total bills following 1999, but, interestingly, the number restrictions sometimes surpassed the number of expansions prior to 1999. However, the difference between restrictions and expansions increased in the years following 1999, as the number of restrictions vastly increased and surpassed the number of expansions. The mean difference was three in the first decade, and increased to 5.2 in the second decade. Additionally, like the national trend, the difference diminished to 1 in 2010. Therefore, even though this dimension slightly differed from the national trend prior to 1999, once anti-death penalty sentiment arose, it reacted exactly like the national trend, because the number of restrictions always vastly surpassed the number of expansions following 1999.

### *Witness Testimony and Evidence*

These bills regulated what type of witness or evidence could appear in a trial or appeal process. There were 39 bills, which made up 5% of all bills. Expansions allowed witness and evidence that solely benefited the prosecution, particularly victim impact statements. Restrictions expanded the type of witness or evidence that both the prosecution and defense could show a jury.

Figure 11: Bills regulating Witness Testimony or Evidence

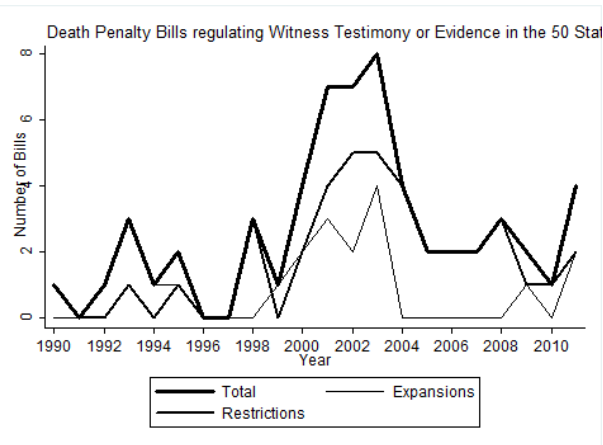


Figure 11 reflects the trend in Figure 1. As with Figure 1, the number of restrictions was usually greater than the number of expansions following 1999. The graphs are also similar since the number of expansions usually surpassed the number of restrictions before 1999. In addition, the number of restrictions was consistently greater than expansions in the second decade, and the difference was greater than in the previous decade. The mean difference was 0.9 in the first decade, while it was 1.6 in the second decade. Like most bills, this dimension did not completely follow the national trend because the number of restrictions sometimes surpassed the number of expansions prior to 1999, and, following 1999, the number of expansions sometimes equaled the number of restrictions. However, one can still categorize these bills as sharply following the

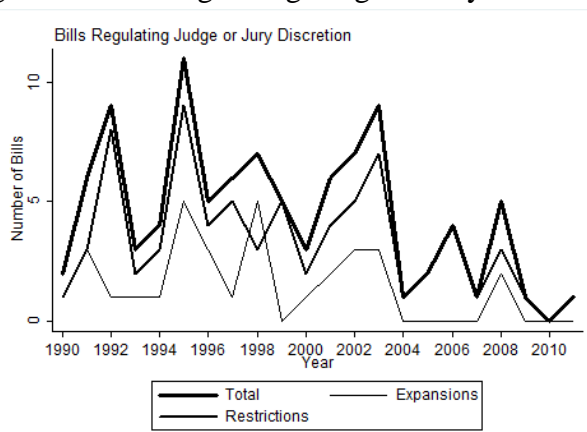
national trend because the expansions and restrictions only equalized at the end of the decade when most of the partner dimensions became closer at this time anyway.

The total number of bills in this dimension increased most sharply from 1999 to 2004, but declined at the end of the decade. Legislators increased the number of bills both expanding and restricting witness testimony and evidence, but they were more willing to pass restrictions. The general increase in restrictions may have been due to the increase in the number of bills allowing for the use of DNA evidence. On the other hand, the increase in expansions may have been due to the limitation on the number of experts allowed to testify for both sides, which was a relatively weak expansion and did not truly reflect a pro-death penalty stance by the legislature.

### *Jury or Judge Discretion*

These bills regulated the discretion of the judge or jury. They determined the ability of the judge and jury to decide the guilt and penalty in a death penalty trial. There were 133 such bills, which made up 7% of the total bills. The expansions increased the discretion of the jury to decide the guilt and penalty in death penalty trials. These restrictions decreased the discretion of the jury or increased the power of the judge to decide the guilt and penalty in death penalty trials.

Figure 12: Bills regulating Judge or Jury Discretion



The trend in restrictions and expansions for discretion bills did not follow the same trend as shown in Figure 1 because the number of restriction bills remained higher than the number of expansion bills. Importantly, both the number of expansions and restrictions decreased since 1999, which suggests that the legislatures lost interest in this type of reform. They especially were not concerned with introducing expansions.

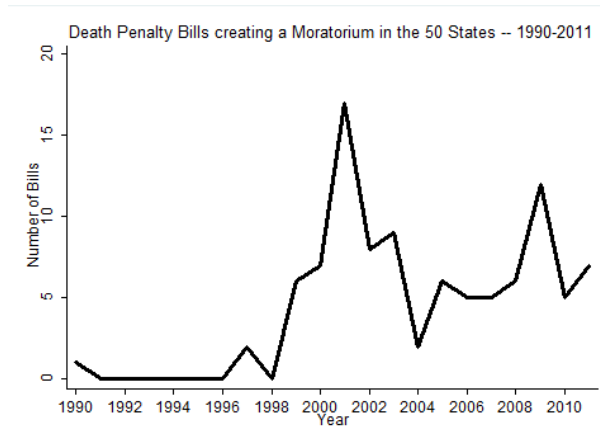
However, there is reason to believe that this dimension changed due to anti-death penalty sentiment. Particularly, after 1999, the number of restrictions remained high, while the expansions have decreased. In the first decade, the number of expansions never reached zero, but it did so five times between 1999 and 2011. The number of expansions remained at zero for 1999, 2004-2007, and once again reached zero between 2009 and

2010. This means that following 1999, even though the legislatures decided to restrict the death penalty mostly through other means, they definitely refused to expand it through these bills. Therefore, even though these bills did not follow the national trend, they changed after the alteration of death penalty sentiment, beginning in the late 1990s.

Noticeably, the number of expansions shot up in 1998, but then decreased below the number of restrictions afterward. This sudden increase in expansions in 1998 was due solely due to one state, Florida and, hence, did not represent a national trend.

## Moratorium

Figure 13: Bills creating a Moratorium



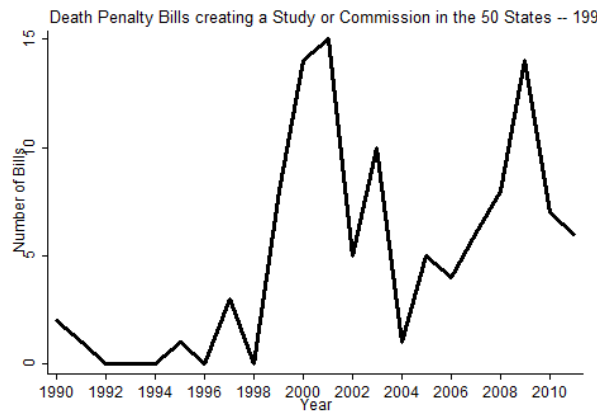
These bills created a moratorium on executions. These bills made up 9% of all the bills. The trend in these bills fit within the national trend for all bills. The total number of bills creating moratoriums increased beginning in 1999. From 1990 to 1998, barely any proposed moratoriums existed, except in 1997 when there were two.

Beginning in 1999, there was a great spike in the number of moratorium bills, resulting in a peak of seventeen proposed moratoriums in 2001. In the first decade, the average number of bills was only 0.3, but this drastically increased to 7.3 bills. The sharp increase in moratorium bills since 1999 followed the general trend for restrictions in Figure 1. Moratorium bills count as a restriction, so, as expected, they increased along with the total number of restrictions for all bills.

The number of moratorium proposals was lower from 2005 to 2011 than from 1999 to 2004. I believe this decrease in proposed moratoriums at the end of the decade was because many states had already created moratoriums. Importantly, the number of proposed moratoriums never declined below the number of those proposals before 1999.

*Studies and Commissions*

Figure 14: Bills creating a Study or Commission



These bills created a commission to study the efficacy of applying the death penalty. The number of proposed commissions increased following 1990. Beginning in 1999, the number of proposed studies increased and peaked in 2000. The average number of bills was 0.8, but from 1999 to 2011, the average number of bills was remarkably higher, at 7.9. After 2009, the number of proposed studies declined. The decline in proposed studies may be because many states were already conducting studies.

These bills follow the trend of total bills. Since the creation of commissions usually occurred in accordance with moratoriums, the number of introduced commissions increased as expected beginning in 1999, along with total restrictions.

Chapter Summary

I analyze general trends in bills relating to the death penalty from 1990 to 2011. The total number of bills and the number of restrictions increased following the late 1990s. I pinpoint the rise in restrictions to the year of 1999, and I discover that the number of restrictions surpassed the number of expansions following this year. Prior to 1999, expansions surpassed the number of restrictions.

In addition to studying the national trend for the total number of bills, I sort the bills into dimensions. I notice that these dimensions reflected the national trend with only

a few exceptions. The bills that showed the largest alteration following 1999 were abolishment bills, creation bills, study bills, moratorium bills, and bills regulating death eligibility, attorneys, evidence and testimony. Bills regulating trials, pretrial preparation, testimony and appeals also followed the national trend, but not as closely.

I categorize the first set of bills as sharply following the national trend because, for these bills, the number of expansions never surpassed the number of restrictions following 1999. The only exception was evidence and testimony, but I include this dimension because it only equalized at the end of the decade, when most states began to reduce the number of restrictions anyway. The second category includes bills that showed an increase in the difference between restrictions and expansions following 1999, but this difference was either not much larger than when expansions surpassed restrictions before 1999, or the expansions sometimes surpassed restrictions following 1999.

Both categories include bills that showed a greater difference in expansions and restrictions in the second decade than in the first decade, which suggests that the legislators worked more extensively to restrict the death penalty through these dimensions than expand them in the previous decade. The only bills that did not follow this trend were regulations for executions, mitigating or aggravating circumstances, and judge or jury discretion. In addition, I discover that the difference between expansions and restrictions began to get closer for all dimensions at the end of the 2000s decade. In the following section, I control for variables to make sure that my observations are consistent on a national level.



### Chapter 3:

This chapter examines the relationship between expansions and restrictions when controlling for potential intervening variables. The first tests control for regions, particularly the Southern states, while also controlling for those states that abolished the death penalty. The next tests will control for murder rate and execution rate. Controlling for these variables illustrates that the rise of restrictions was consistent nationally.

#### *Death Penalty Bills per State*

Figure 15: States with more than 20 death penalty bills

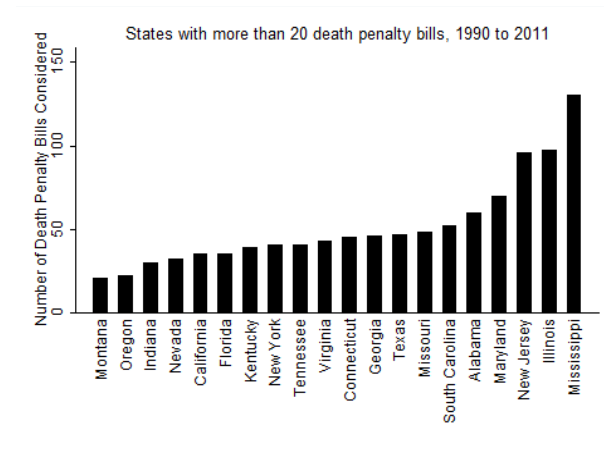


Figure 15 displays the number of death penalty bills considered by states. The graph only illustrates those states that considered more than 20 death penalty bills over the period, 1990 to 2011. Mississippi introduced roughly 125 bills, which was about 25 more bills than New Jersey and Illinois. These two states considered roughly twenty more bills than the next highest state, which was Maryland. Of the twenty states in this graph, twelve of them were Southern states, and eight non-Southern states. Four of these Southern states were also part of the Deep South<sup>54</sup>.

The states that introduced the most death penalty bills were members of the Deep South, but, interestingly, the two states that considered the second most bills, New Jersey

<sup>54</sup> Alabama, Georgia, Louisiana, Mississippi, and South Carolina.

and Illinois, were not located in the South. However, there was a higher concentration of Southern states than non-Southern states in this graph. In addition, if one was to consider only those states with forty or more bills introduced, this list would include only four non-Southern states as compared to ten Southern states. Thus, only one of the Southern states had less than forty bills introduced while four of the non-Southern states did so. Therefore, one can rightfully say that Southern states introduced the most bills.

Obviously, one is inclined to believe that Southern states were the primary reason for the overall national trends. I test this hypothesis by determining whether the trends I observed in the previous chapter occurred both on the national level and in Southern states. I graph the bills independently based upon region and state, so I can see whether the relationship between expansions and restrictions was the same despite the location. In other words, I determine whether the number of restrictions began to increase, while expansions decreased, following 1999, for all regions.

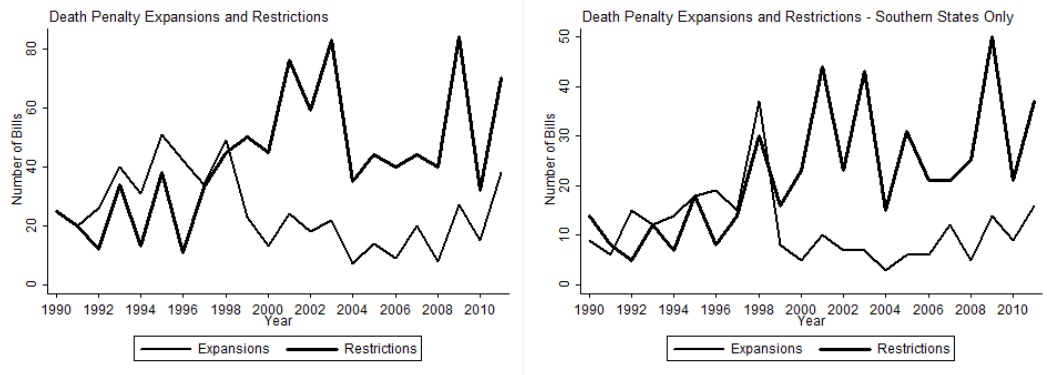
#### Southern States

This section examines the alteration between expansions and restrictions in 1990-2011 in different regions across the country. As I have already illustrated, for the graph displaying total bills, the ratio of the number restriction to expansions tended to flip beginning in 1999. In the years following 1999, the number of bills restricting the death penalty was always greater than the number of bills expanding the death penalty. The number of expansions and restrictions also equalized at the end of the decade. In this section, I particularly examine bills that created the death penalty, abolished the death penalty, and those regulating trials and appeals.

I compare the trend in restrictions and expansions for Southern states with non-Southern states. I show that, even though Southern states introduced more death penalty

bills than other states, they followed the same trend as the other states in regards to the number of expansions and restrictions. The Southern states included Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

*Expansions and Restrictions in Southern States*  
**Figure 16: Expansions and Restrictions Comparison**

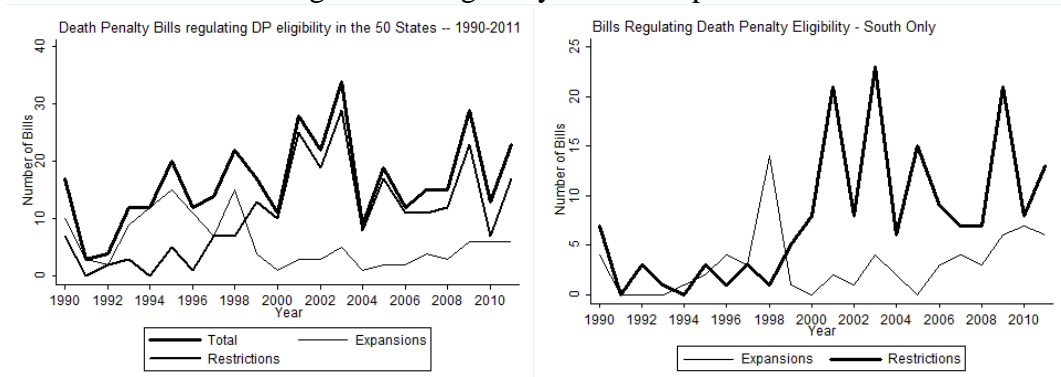


The figure on the left illustrates the total number of expansions and restrictions for all states. The figure on the right illustrates the total number of expansions and restrictions for Southern states. The trend is consistent in the number of expansions and restrictions between the two graphs. While the number of expansions typically outnumbered the restrictions or equalized with them prior to 1999, the number of restrictions remained above the number of expansions from 1999 to 2011. In addition, the number of expansions and restrictions got closer at the end of the decade in both graphs. Therefore, even though the southern states introduced more bills, the ratio of restrictions to expansions remained similar to the national trend.

The Southern states also peaked in expansions in 1998 at roughly 40 bills, which was two-thirds of the total expansions. Thus, directly before the alternation in the number of restrictions and expansions in 1999, the Southern states peaked in the number of death penalty expansions. This rise in expansions before the reversal also occurred in the graph

for total bills in all states, and was especially true for bills regulating trial and appeals, discretion bills, and attorney. This comparison suggests that Southern states were primarily behind the rise of expansions directly before the reversal in 1998.

*Death Eligibility in Southern States*  
Figure 17: Eligibility Bills Comparison

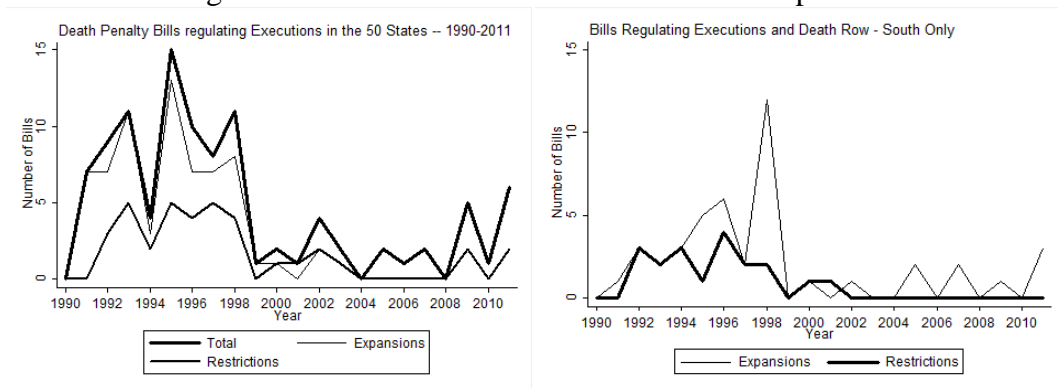


After testing the other dimensions, I realized that they all followed the national trend; however, there were two outliers: bills dealing with death eligibility and executions. I now explain these differences. The graph on the left illustrates the number of bills regulating death eligibility in all states, while the graph on the right illustrates the number of bills regulating death eligibility in Southern states. These two graphs look relatively similarly. Beginning in 1999 in both graphs, the number of restrictions steadily surpassed the number of expansions. Once again, toward the end of the second decade, the number expansions grew more sharply than the number of restrictions, until the numbers were practically equal in 2009.

When considering only the bills for the Southern states, the number of expansions did not consistently surpass the number of restrictions before 1999, unlike in the graph for all states. When considering all states, the number of restrictions never surpassed the number of expansions prior to 1999, but in the Southern states, the number of restrictions sometimes surpassed the number of expansions prior to 1999. This is not a significant

difference, but it suggests that most of these expansions prior to 1999 came from non-Southern states. However, this trend drastically changed in 1998 when there was a sharp increase in the number of expansions, but these came entirely from the South. The total number of expansions in 1998 was 15, and there were 15 expansions from Southern states in 1998. Therefore, Southern states not only lead the national trend after 1999, but also they were the most eager to expand directly before then.

*Executions and Death Row in Southern States*  
**Figure 18: Execution and Death Row Bills Comparison**



The graph on the left illustrates all death penalty bills that regulated executions in all states. The graph on the right illustrates all death penalty bills that regulated executions in the Southern states. These graphs are interesting because they show that before 1999, the majority of bills introducing execution expansions and restrictions occurred in the Southern states. The line representing the number of restrictions is relatively similar between the graphs before 1999. This means that the majority of these restrictions came from Southern states. On the other hand, the line representing the number of expansions is twice the height of the line in the graph representing Southern states. This means that roughly half of expansions came from the Southern states, which was significant because there were twelve Southern states and thirty-eight other states. Interestingly, in 1998, there was once again a spike in the number of expansions directly

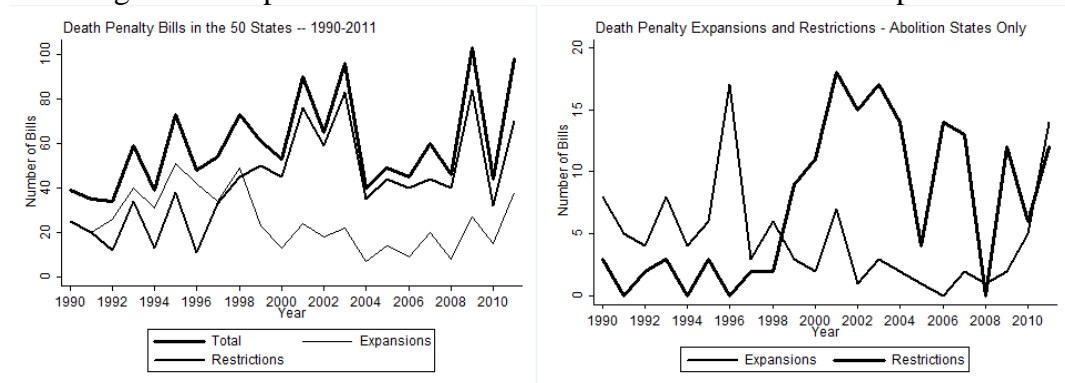
before a drastic decrease in expansions. This spike resulted from the Southern states, but this surge drastically subsided during the immediate year following. Therefore, prior to 1999, the majority of execution expansions came from the Southern states

This trend continued into the second decade. From 1999 to 2000, the number of restrictions remained the same between Southern and non-Southern states. In fact, from 2004 to 2008, there were no restrictions in either set of states. In the Southern states, there were no restrictions at all from 2002 to 2011, but only expansions. On the other hand, in the non-Southern states, from 2002 to 2011, there were no expansions, but only restrictions. This suggests that, the Southern states viewed executions differently. The South continued to expand executions after 1999, while the non-Southern states completely stopped doing so.

### Bills Expansions and Restrictions in Abolition States

In the second section of this chapter, I control for those states that abolished the death penalty in the past decade. These states were Connecticut, New Jersey, New Mexico, New York, and Illinois. Only New York did not abolish the death penalty by legislative statute, but, rather, the New York Supreme Court ruled out executions. I control for these states because potentially they could have served as outliers, considering that the Southern states were the primary cause behind the national trend toward restrictions. I determine whether, since these states were already on the path toward abolition, they did not see a large alteration of restrictions and expansions in 1999.

*Expansions and Restrictions in Abolition States; excluding NY*  
Figure 19: Expansions and Restriction in Abolition States Comparison

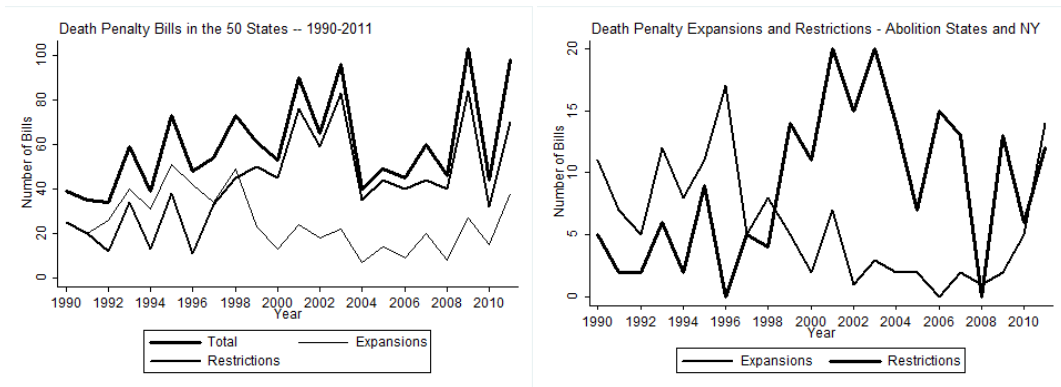


The graph on the left illustrates the number of death penalty bills that restricted or expanded the death penalty in all states. The graph on the right illustrates the number of bills that restricted or expanded the death penalty in all states that abolished the death penalty, excluding New York. The trend in expansions and restrictions, beginning in 1999, remained relatively consistent in both types of states. In other words, after 1999, the number of restrictions surpassed the number of expansions. Only in 2008 and 2011 did the number of restrictions dip below the number of expansions for the abolition states. According to the graph displaying abolition states, the number of restrictions and expansions also tended to be very similar since 2009. Therefore, even though the

abolition states followed the national trend through the two decades, the general trend of restrictions and expansions equalizing toward the end of the second decade may have been more closely driven by the actions of the abolition states.

*Death Penalty Expansions and Restrictions in Abolition States; including NY*

Figure 20: Expansion and Restriction Comparison including NY



The graph on the left illustrates the number of expansions and restrictions in all states, while the graph on the right illustrates the number of expansions and restrictions in all states that abolished the death penalty, including New York. One can see that states that abolished the death penalty tended to show no significant difference in legislative trends, as compared to all the states that abolished the death penalty. When including New York, the trends remained similar, but, in the year 2008, the number of expansions surpassed the number of restrictions; however, this year was irregular, and it should not reflect the trend as a whole. Therefore, the trend in the abolition states, including New York, almost exactly followed the national trend. This means that that no abolition states, include New York, were outliers.

Other than the number of restrictions, the abolition states and New York followed the same trend as all the other states. The only difference occurred at the end of the decade when the number of expansions and restrictions equalized, and, in certain years, the percent of expansions surpassed the percent of restrictions. This suggests that the

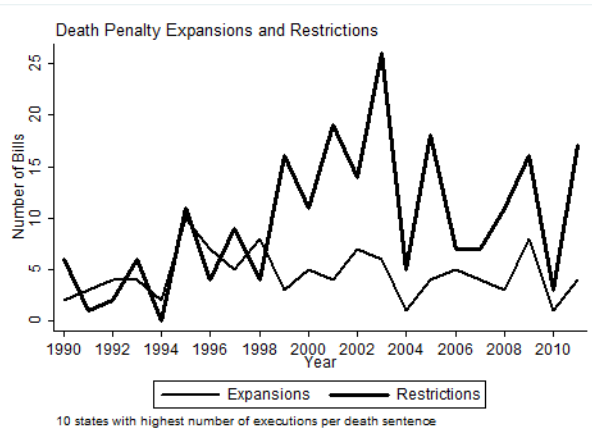


equalization of restrictions and expansions was closely driven by the trends in the abolition states, including New York.

### Murder and Execution Rate

This section examines whether the murder rate and the execution rate affected legislative trends between states. I control for these variables by graphing the states with the highest murder rates and execution rates in multiple ways. I examine the legislative trends of the ten states with the highest number of executions per death sentence and the ten states with the highest murder rates. The purpose of graphing these states is to see whether execution rate affected legislative tendencies. These states were those that were most likely to carry out an execution after assigning a death sentence, and they were, theoretically, the strongest supporters of the death penalty.

Figure 21: Controlling for Executions per death sentence.

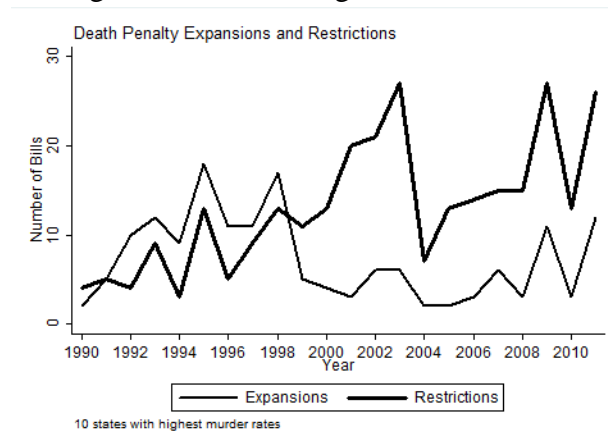


This graph illustrates the yearly number of expansions and restrictions in those states that had the highest number of executions per death sentence. These states included Arkansas, Delaware, Indiana, Missouri, Montana, Oklahoma, South Carolina, Texas, Utah, and Virginia. I recognize that these states did not necessarily need to follow the same trends as the Southern states did. These states may have been less inclined to introduce restrictions because they historically were more inclined to rely on the death penalty.

Nonetheless, Figure 21 allows me to measure the expansiveness of the change in public sentiment. If there were truly a national change toward restricting the death penalty, then Figure 21 would resemble the trends displayed in Figure 1.

After examining Figure 21, one can see that states with a high number of executions followed the same trend as the national average, since the number of restrictions always surpassed the number of expansions beginning in 1999. In addition, the number of expansions and restrictions got closer at the end of the second decade. For instance, the difference between expansions and restrictions was roughly one bill in both 2009 and 2010, but it was as high as 10 bills in 2000 and 20 bills in 2002.

Figure 22: Controlling for Murder Rate



This graph illustrates the total number of expansions and restrictions in the ten states with the highest murder rates in 2010. These states included Alabama, Arizona, Georgia, Louisiana, Maryland, Missouri, and Mississippi, Nevada, New Mexico, and South Carolina. I control for murder rate because I expect that states with the highest murder rates tended to strongly support the death penalty, since its citizens could have been more likely to feel frustrated with violent crime.

The murder rate seemed to have not had a significant effect on the likelihood to support the death penalty through legislative trends. These states followed the national

trend. Before 1999, the number of restrictions never surpassed the number of expansions, except for one year, and following 1999, the number of restrictions always surpassed the number of expansions. In addition, the equalization of expansions and restrictions occurred for these states, as the difference in restrictions and expansions was closer in 2010 and 2011, as it was in the beginning of the decade. The difference in 2010 and 2011 was 10 provisions, while it is about 15 provisions and 20 provisions in 2001 and 2002.

#### *Chapter Summary*

The trends between expansions and restrictions tended to remain relatively consistent across states and regions. The main difference occurred in 1998, when the Southern states introduced many expansions in one year before introducing a period of restrictions. Before then, the non-Southern states were slightly more eager to expand the death penalty, since restrictions sometimes surpassed expansions in Southern states prior to 1999. Nonetheless, these differences were minimal. Therefore, the legislative changes were definitely a national trend, even though the Southern states primarily drove the change because they introduced the most bills.

In addition, the abolition states led the drive toward equalizing the number of restrictions and expansions at the end of the decade. Besides this subtle difference, the trends were nationally consistent for abolition states, including and excluding New York.

Even though the trend in execution bills did not follow the national trend for total bills as shown in Figure 1, I examine this dimension in order to discover how Southern states viewed executions, as compared to non-Southern states. I discover that, even though both regions introduced more restrictions than expansions following 1999, the Southern states remained willing to expand, while the non-Southern states have not passed an expansion in many years.

I also control for states with the highest execution rate and murder rates, but I saw no significant differences from Figure 1. Since the beginning of 1999, the number of death penalty restrictions never dipped below the number of death penalty expansions. Prior to then, the number of expansions never fell below the number of restrictions. In addition, the number of expansions and restrictions began to get closer at the end of the second decade. I then examined each bill dimension separately, and I determine that most dimensions followed these trends. In this chapter, I show that all states generally followed these national trends.

## Chapter 4

When illustrating the national legislative trends, I show that that state legislatures acted consistently with anti-death penalty sentiment in the public, media, and judiciary. However, my data, by itself, does not illustrate the state legislatures' reasoning for restricting the death penalty. I cannot fully discover this information, unless I examine the legislative debates within states. Because I do not have the resources to examine the death penalty debates in all state legislatures, I will review some debates in one state. I have chosen to analyze the debates occurring in North Carolina.

I focus upon the North Carolina legislature because it followed national trends closely. From 1990 to the twenty-first century, the legislature expanded the application of the death penalty, but, in 2001, it reversed this trend. However, at the end of the decade, the number of restrictions began to come closer to the number of expansions. This section will not only provide a legislative history of the death penalty in North Carolina, but it speculates on whether the legislature felt the same concerns about the death penalty that caused a change in sentiment within the public, media, and judiciary.

### Legislative History of Capital Punishment in North Carolina 1977-1999

Before examining individual debates, I shall provide a brief overview of the legislative history of North Carolina, as it relates to the death penalty. Since 2006, North Carolina performed no executions, and the legislature even passed the nation's first Racial Justice Act. However, the state did not always hold such views on capital punishment. In fact, since 1977, North Carolina handed out the fourth greatest number of death sentences.<sup>55</sup> It only sits behind Texas, Florida, and California, all of which have

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<sup>55</sup> "Facts about the Death Penalty." Last modified February 20, 2013,

larger populations. In addition, North Carolina ranked fifth in executions between 1726 and 1961, while also ranking sixth in the number of inmates on death row.<sup>56</sup>

In the decades leading up to the twenty-first century, the North Carolina legislature primarily defended its use of the death penalty through the idea that executions helped to console victims' families. In fact, from 1983 to 2000, there were only three significant legislative bills dealing with the death penalty, and all of them worked to compensate or assist victims.<sup>57</sup> One year before the federal government passed a similar bill, North Carolina introduced the Victim Compensation Act of 1983, which set up rules for awarding monetary compensation to the families of victims and established the Crime Victims Compensation Commission. The Commission could regulate the qualifications for monetary compensation and even order law enforcement to conduct investigations to determine whether a victim qualified. The fund was available to any victim who suffered a criminal act at a maximum reimbursement of \$30,000.<sup>58</sup>

Nonetheless, while increasing the rights of victims, the legislature did not completely ignore the rights of capital defendants. In fact, like the other states, even though executions remained high, they did not sky rocket until the 1990s. During the late 70s and 80s, North Carolina supported the death penalty more as a policy rather than a practice. In fact, it restricted executions in the same year that the General Assembly created the Crime Victims Compensation Commission by voting to give defendants the choice of whether to receive lethal injection or gas.

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<http://www.deathpenaltyinfo.org/home>

<sup>56</sup> Michael L. Radelet and Glenn L. Pierce, "Race and death sentencing in North Carolina 1980-2007," *NC Law Review* 89 (2011): 2128.

<sup>57</sup> "Facing Controversy: Struggling with Capital Punishment in North Carolina." Last modified February 20, 2013, <http://www.lib.unc.edu/mss/exhibits/penalty/timeline3.html>

<sup>58</sup> *Ibid.*

Even though North Carolina may have supported the death penalty more as a policy rather than a practice, it continued to expand the rights of victims in order to show support to families, when it sanctioned the creation of the Victim Assistance Network. The legislature performed these actions in order to show support for the penalty, without actually increasing the use of it. This organization assisted the families of murdered victims with navigating the complexities of the criminal system. It also helped victims find counselors and support groups, as well connected victims with the state-funded Crime Victims Compensation Commission. In 1987, the Crime Victims Compensation Commission began its operations. The General Assembly made its first budget appropriations, and the Commission began to pay out disbursements to claimants.<sup>59</sup>

In the 1990s, the North Carolina legislature continued to rule on capital punishment, and it continued to introduce legislation that favored the penalty. In late 1990s, like in the other states, the number of yearly executions reached an all time high. For instance, in 1994, the legislature declared that LWOP would be the only alternative to the death sentence for first-degree murder cases. In this period, the public no longer supported the death penalty mostly as a policy rather than a practice. This was a response to the public's fear that convicted murderers were not receiving just punishment. The legislature had made a political move to make sure that convicted murderers would never walk among the public again. However, in 1996, the legislature once again showed that it supported the penalty more as a policy than a practice, when it granted capital inmates the right to open-file discovery.<sup>60</sup> The legislature was concerned with preventing wrongful executions, and it was not showing disapproval for the penalty.

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<sup>59</sup> Ibid.

<sup>60</sup> Maher, "Worst of Times, and Best of Times," 100.

In fact, the legislature continued its support of victims' rights even toward the end of the decade. My research suggests that 1998 marked the year where most states spiked in their willingness to expand the death penalty, before the legislatures began to restrict its use. North Carolina was no exception. In that year, the General Assembly passed the Victim Rights Act, which added the Victim Rights Amendment to the state constitution.<sup>61</sup>

However, North Carolina also eliminated lethal gas in 1998. While this may seem like a restriction for the death penalty on face value, this was a benefit for the victims' family and prison staff. The prison officials had reported to the legislature that gas was leaking into the viewing room of the executions. Scientific observation confirmed the validity of these statements, and the legislature responded through this bill.<sup>62</sup>

#### *2001-2004*

Even though, in the 1980s and 1990s, the North Carolina legislature focused primarily on expanding the rights of crime victims, this drastically changed in the 2000s. I have shown that beginning in 1999, most states switched from steadily expanding the death penalty to restricting its use. North Carolina legislature was no exception because, beginning in 1999, it passed many bills that bolstered the rights of capital defendants.

The first major bill established the Indigent Defense Study Commission. The state legislature passed the Indigent Defense Services Act of 2000, which created the Office of Indigent Defense Services (IDS). This Office would consist of a 13- member governing body that would assume a number of responsibilities on July 1, 2001.

These responsibilities included 1) overseeing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law; 2)

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<sup>61</sup> "Facing Controversy: Struggling with Capital Punishment in North Carolina." Last modified February 20, 2013, <http://www.lib.unc.edu/mss/exhibits/penalty/timeline3.html>.

<sup>62</sup> Ibid.



developing training, qualification, and performance standards to govern the provision of legal services to indigent persons; 3) determining the most appropriate methods of delivering legal services to indigent persons in each judicial district; and 4) providing services in the most cost-effective manner possible.<sup>63</sup>

As it pertains to capital trials, the IDS Act created administrative alterations to increase the quality of counsel for capital defendants. Attorneys had to consult the newly established Center of Death Penalty Litigation to trial, and the new office of Indigent Defense Services assumed the responsibility for appointing counsel through the Office of the Capital Defender, rather than relying on local judges to make such decisions. The IDS Act also created a series of strict experience and training requirements for attorneys in capital trials. From then on, a defendant would have two trial attorneys, whom the Capital Defender would approve. Furthermore, it increased supervision of these attorneys, as well as took charge of allocation for experts and investigators.<sup>64</sup>

The legislature also passed a series of groundbreaking statutes beginning in 2001. The first law no longer required district attorneys to try first-degree murder cases capitally, even if there was an aggravating factor. Instead, prosecutors could choose when to seek the death penalty in all first-degree murder cases. The Statute read as follows:

1. The State can choose whether to try a defendant capitally and non-capitally in first-degree murder cases, even if there is evidence that aggravating circumstances exist
2. A death sentence cannot be ordered for a defendant convicted of a capital crime unless the state has given notice of its intent to seek the death penalty on the date of or before the pretrial conference

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<sup>63</sup> NC General Assembly. Indigent Defense Services Act. [http://www.ncids.org/home/IDS\\_%20Act\\_8-11.pdf](http://www.ncids.org/home/IDS_%20Act_8-11.pdf)

<sup>64</sup> NC General Assembly. Indigent Defense Services Act. [http://www.ncids.org/home/IDS\\_%20Act\\_8-11.pdf](http://www.ncids.org/home/IDS_%20Act_8-11.pdf)

3. If the State does not give notice of its intent to seek the death penalty, the case should be conducted non-capitally and the defendant should be given a sentence of life imprisonment if found guilty of first-degree murder.<sup>65</sup>

In addition, the legislature allowed for post-conviction DNA testing, and it voted to prohibit the execution of the mentally retarded. In 2004, the legislature also voted to allow open file discovery to all capital clients for pre-trial preparations. However, not all of the death penalty restriction bills introduced in the legislature were successful in this period. For instance, in 2003, the North Carolina Senate passed a bill that ordered a two-year study of the inequities in capital sentencing along racial, economic, and geographic lines. This bill later failed in the North Carolina House of Representatives.<sup>66</sup>

#### *2005-2008*

Following a vast array of bills restricting the use of the death penalty from 1999 to 2004, the legislature remained inactive in regards to capital punishment, from 2005 to 2008. However, the judicial branch was highly involved in the evolution of the death penalty during this period. While the legislature had dealt primarily with promoting the equity of capital trials and appeals, the judiciary decided to regulate mostly executions. More specifically, the Court reviewed the legality of lethal injection.

In two groundbreaking decisions in 2006, U.S. District Judge Malcolm Howard allowed the N.C. Department of Correction officers to administer lethal injection, despite the high likelihood that the executioner may not administer all the drugs correctly. However, Judge Howard ruled that lethal injection could be constitutional as long as a doctor monitored the condemned inmate's brain waves. Ironically, in the following year, the N.C. Medical Board passed a new ethics policy that prohibited doctors from

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<sup>65</sup> Ibid.

<sup>66</sup> "Facing Controversy: Struggling with Capital Punishment in North Carolina." Last modified February 20, 2013, <http://www.lib.unc.edu/mss/exhibits/penalty/timeline3.html>.

administering lethal injections, causing Superior Court Judge Donald Stevens to delay four executions, until the executive branch created new execution procedures.

Nonetheless, even when the executive branch had determined these new procedures, the North Carolina Supreme Court would once again delay executions. The Court ruled that the executive branch had erred during its process of creating these new procedures. More particularly, the executive branch had acted unconstitutionally by failing to hear arguments from capital defense attorneys.<sup>67</sup>

After Judge Donald Stephens delayed two more executions, North Carolina effectively remained under a non-official moratorium from 2006 onward, as doctors continued to refuse to administer lethal injections. However, in 2012, Judge Stephens ruled that the Governor and the Council of the State had adopted protocols that were constitutional, but the N.C. Supreme Court decided to review this ruling. Therefore, while the legislature remained uninvolved from 2005 to 2009, the judiciary was incredibly important in constructing the North Carolina's stance on the death penalty.<sup>68</sup>

### 2009

#### *Racial Justice Act*

In 2009, the state legislature reemerged in the death penalty debate by passing the most groundbreaking piece of legislation since the IDS Act. The Racial Justice Act was a huge victory for capital defendants and their attorneys, as the legislature granted them the ability to use statistical evidence to prove racial bias. However, this legislation went well beyond the scope of *McCleskey v. Kemp* by allowing attorneys to show that race was a significant factor in decisions to seek or impose death sentences in the county, the prosecutorial district, the judicial division, or the state. In other words, the defense did not

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<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

have merely to show that bias occurred within the particular trial. Instead, if the defense attorney could show that discrimination had occurred within prior cases in the juridical area, then the defendant could receive a sentence of life without parole instead of death.<sup>69</sup>

In addition to bolstering the rights of criminal defense attorneys, the RJA granted the state a chance to rebut the evidence of racial bias by showing a lack of correlation. The state could also defend itself by referring to programs, which it had previously implemented, that would have made the likelihood of racial bias highly unlikely.<sup>70</sup>

White defendants also had standing to raise a jury claim. More specifically, the attorney of a white defendant on death row could argue that the district attorneys has a history of purposely excluded non-white jurors from jury pools, since they would be less likely to give the penalty. Once again, the attorneys only had to show that juror exclusion had affected the integrity of the court system in an area rather than in the case.<sup>71</sup>

The original supporters of the bill realized that the RJA went well beyond the scope of *McCleskey v. Kemp*, but they defended the bill by explaining how the Justices in *McCleskey* explicitly invited the legislatures to act more strictly than the judicial system. The supporters pointed out how the U.S. Supreme Court had enunciated that state legislatures had the abilities to determine fairly how attorneys could use statistical studies to enhance the efficacy of the capital justice system.<sup>72</sup>

Two years after the passage of the RJA, the court system agreed to hear its first RJA claim as part of the appeal for defendant, Marcus Robinson. The defendants would rely on a Michigan State University study that showed that over a 20-year period in North

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<sup>69</sup> Kotch, "The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina," 2114.

<sup>70</sup> Ibid, 2119.

<sup>71</sup> Ibid, 2118.

<sup>72</sup> Ibid, 2111.

Carolina, prosecutors were twice as likely to eliminate black jurors from the jury pool as white defendants. The appeal occurred on April 20, 2012, and Judge Gregory Weeks not only found racial bias occurring in the judicial district of Robinson's trial, but he believed that there was intentional bias in Robinson's particular case. In his opinion, Weeks wrote, "race was materially, practically, and statistically significant factor in the decision to exercise peremptory challenges during jury selection by prosecutors."<sup>73</sup>

However, despite the positive momentum in favor of capital defendants, less than a year after Judge Weeks' ruling, a new Republican legislature voted in favor of a bill that would repeal the original Racial Justice Act, on June 13, 2012. This new bill still allows capital defense attorneys to introduce evidence of racial bias, but this bias had to occur in defendant's particular trial. Despite the fact that Governor Beverley Perdue vetoed the legislation, the North Carolina legislature was able to override her veto within only four days, on July 2, 2012.<sup>74</sup>

Even though, the state legislative had gutted the Racial Justice Act, Judge Weeks agreed to once again rule on a claim of racial bias. On December 13, 2012, Judge Weeks reduced the sentences of three death row inmates to life without parole because he determined that racial bias had occurred in each one of these defendants' trials.<sup>75</sup>

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<sup>73</sup> Campbell Robertson. "Bias Law Used to Move a Mann Off Death Row." *New York Times*. April 20, 2012. Accessed February 20, 2013.

[http://www.nytimes.com/2012/04/21/us/north-carolina-law-used-to-set-aside-a-death-sentence.html?\\_r=0](http://www.nytimes.com/2012/04/21/us/north-carolina-law-used-to-set-aside-a-death-sentence.html?_r=0)

<sup>74</sup> "Facing Controversy: Struggling with Capital Punishment in North Carolina."

<http://www.lib.unc.edu/mss/exhibits/penalty/timeline3.html>.

<sup>75</sup> "Judge: Race a factor in picking juries for death penalty cases." *WRAL News*. December 13, 2012. Accessed February 20, 2012.

<http://www.wral.com/judge-race-a-factor-in-picking-juries-for-death-penalty-cases/11875278/>

2010  
*SBI Reforms*

The third major legislative reform relating to capital punishment that occurred in the last decade was the reform of the State Bureau of Investigation (SBI). This reform was a result of a scandal that occurred following the trial of Gregory Taylor.<sup>76</sup> While the state legislature simultaneously passed the Racial Justice Act, it also supported the creation of the N.C. Innocence Inquiry Commission. This agency is the only state supported initiative in the nation dedicated solely to reviewing innocence claims. The Commission took Taylor's case, and Taylor soon became the first person that it freed.<sup>77</sup>

During his appeals, Taylor's attorneys from the N.C. Innocence Inquiry Commission determined that the serologist, Duan Deaver, who had conducted the DNA test for the SBI in Taylor's case, had provided a false analysis. Apparently, Deaver failed to report the negative results from the confirmatory test: he only reported the positive preliminary test. Even though the attorneys representing the State did not know that the results were faulty, the Court immediately released Taylor as an innocent man.<sup>78</sup>

Immediately following this scandal, the state attorney general ordered an investigation of the State Bureau of Investigation. The investigation found shocking results. SBI officials were often encouraged to mention only positive preliminary tests when the confirmatory tests were negative. Many times, officials also failed to conduct further tests when one or more confirmatory tests resulted in negative or inconclusive results, or they overstated laboratory test results. In other words, the SBI was working with the goal of convicting defendants rather than providing unbiased analyses.<sup>79</sup>

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<sup>76</sup> Paul C. Giannelli. "The North Carolina Lab Scandal." *Criminal Justice* 27 (2012): 1.

<sup>77</sup> *Ibid.*, 1.

<sup>78</sup> *Ibid.*, 1.

<sup>79</sup> *Ibid.*, 1.

In response to this report, the legislature immediately passed reforms to restructure the SBI, in hope of preventing further abuse by SBI officials. First, the legislature voted to switch the accrediting agency of the SBI. It also changed the description of the laboratory's "client" in the statutes. Instead of the "prosecuting officers of the State," the "client" would now be the "public and the criminal justice system." The legislature also voted to create a new crime for the "willful omission or misrepresentation of information subject to disclosure." Lastly, the legislature created the Forensic Advisory Board in order to oversee the operations of the SBI.<sup>80</sup>

#### North Carolina Death Penalty Debates Analyzed

This section speculates on why the legislatures decided to pass the IDS Act and the SBI reform. I suggest that when introducing and passing these bills, the legislature acted due to the same the reasons that caused the public, media, and the judiciary to become so increasingly unsupportive of the penalty. I recognize that, like these other groups, the legislature was concerned about the execution of the innocent.

I also examine the debates regarding the RJA and its recent overhaul. I realize that the legislature's decision to recently limit the RJA are consistent with a national trend that suggests that number of death penalty expansions has increased at a shaper rate than expansions beginning in 2010. Furthermore, my analysis indicates that North Carolina may have restricted the Racial Justice Act due to political reasons.

#### *IDS Act*

After having just passed a legislative expansion of the death penalty in 1998, through the Victims Right Amendment, the General Assembly passed the IDS bill in 2000. The debate in the Senate was more contentious than in the House. The Senate

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<sup>80</sup> Ibid, 3.

elected a committee to review the bill and report to the general body. Some senators complained that the legislature should delete the section of the bill that mandated the amount of \$535, 644 for the first year of operations for the Office. In response, the Senate quickly voted unanimously to strike this clause. As with the House, every Democrat voted in favor of the bill, but a majority of the Republicans voted against it. Nonetheless, these votes were enough to pass the legislation.<sup>81</sup> Once the bill reached the House, it passed relatively smoothly. The House voted to require a select committee to review the bill, who then suggested a few small wording changes. The only major change was the addition of a phrase that would allow the court to assign counsel in cases that had conflicts of interest, according to the guidelines set by IDS. When the legislature had incorporated these changes, the bill passed with the Democrats voting unanimously in favor, while half of the Republicans also voted in favor of the bill.<sup>82</sup>

There was a second vote in both houses, after members of the General Assembly discovered that the Senate and House had not approved the members of each house's respective selected committees. When the Assembly sorted out this issue, the votes were relatively similar in both houses to their previous votes. It is also important to note that this bill passed in a short session, in which the General Assembly typically does not vote on controversial issues. However, in this case, the legislature heard the bill because it was eager to address the issue.<sup>83</sup>

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<sup>81</sup> NC General Assembly. Senate. Judiciary II. 20 June 2000. Minutes. 1999 General Assembly. Second Session 2000.

<sup>82</sup> NC General Assembly. House of Representatives. Appropriations Committee. 20 June 2000. Minutes. 1999 General Assembly. Second Session 2000.

<sup>83</sup> NC General Assembly. Conference Committee. 12 July 2000. Conference Report: Senate Bill 1323. 1999 General Assembly. Second Session 2000.



Therefore, one can see that the IDS Act passed easily in the state legislature, and it continued to garner support from the legislature during the decade. However, why was the legislature so eager to restrict the death penalty, when it has just spent a decade solely promoting victim's rights? I suggest that this action was particularly consistent with one of the reasons for a change sentiment within the public, media, and judiciary. For example, in the case of the IDS Act, one can see, when reviewing the transcripts of the debates, as well as consulting interviews with legislators that participated in the debates, that the legislators cited the common concern over the execution of the innocent.

When passing the IDS Act, the research commission also urged the legislature to act out of concern for protecting the innocent. It discovered that the foregoing system “lacked any centralized authority to provide coordinated planning, oversight, or management.” It also considered it “unacceptable that the state [was] expending some \$60 million per year without providing any administrative body with the necessary authority, staff and other resources too properly and comprehensively plan, implement and manage the programs and budget.”<sup>84</sup> It urged that without these changes, the system could lead to the conviction of the innocent.

In addition, when supporting this bill, anti-death penalty advocates made especially sure that the politicians were aware of the potential risk of executing innocent defendants. For example, in the late 1990s, the N.C. Advocates for Justice and Mary Ann Tally, a public defender at the time, pressured the legislature into understanding that, unless it reformed the indigent defense system, the likelihood of unethical trials would

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<sup>84</sup> N.C. General Assembly. Indigent Defense Study Commission. 2000. Report and Recommendations. <http://www.ncids.org/home/ids%20study%20commission%20report.pdf>

remain at a high level.<sup>85</sup> This participation by these advocates ensured that the legislature felt these concerns.

This concern for the innocent was commonly within the public's mind, the media's stories, and the judiciary's rulings during this time. In fact, around the same time as this debate, the media had produced much negative coverage surrounding the handling of many local and national capital cases, particularly the highly publicized North Carolina exonerations of 1999.<sup>86</sup> In addition, the U.S. Supreme Court at a similar moment as the IDS debate, in *Ring v. Arizona* (2002), determined that a judge could not determine aggravating factors, due to a concern for inefficacy occurring in a capital trial.

#### *SBI Reform*

The motivation behind the SBI reforms was not so different from that for the IDS reforms. During these debates, the legislature had a concern regarding the execution of the innocent. There was no doubt by the public, or the legislature, that these reforms were necessary. In less than a year after the scandal arose, the legislature had passed a series of reforms with practically no resistance. As with the IDS Act there was little contention against the SBI reforms in the years following their passage. Due to the presence of testimony and facts illustrating that this scandal had occurred, the legislature felt that this bill was necessary for the same reason as the IDS Act.

#### *Racial Justice Act*

However, the debate behind the RJA has not gone so smoothly. In the Senate, the Republicans contested the bill, but the bill passed after Republican minority leader Senator Phil Berger agreed to vote in favor. Once in the House, the debate caused even more contention between the parties, as it continued for several hours. It eventually

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<sup>85</sup> Ibid, 66.

<sup>86</sup> Lindsey Stephens. "Indigent Defense Funding and its Effect on Capital Punishment in North Carolina, 1976-present," Thesis presented to the faculty of the University of North Carolina, 2012. 65.

barely passed with a vote of 61 to 54. When it returned to the Senate, the senators once again barely passed the bill with a vote of 25 to 18. Once the bill passed, it did not persist like the IDS Act and the SBI reforms. During the 2010 legislative short session, three proposed amendments to the RJA that would have drastically limited the RJA, but these all failed due to the Democratic majority. When the Republicans won the majority in both the House and the Senate in November 2010, it made it easy for General Assembly to abolish the proposed Racial Justice Act in its original form.<sup>87</sup>

Therefore, the debate on the RJA was highly contentious and partisan, even though the General Assembly had recently passed many restrictions. The Assembly also voted to abandon the original bill. Why was the debate surrounding the RJA so different?

One answer is that the national trend toward passing death penalty legislative restrictions may be reversing. According to my data presented in Part 1, the rate of expansions at the end of the decade began to increase and the rate of restrictions began to decrease, starting in 2010 and continuing into 2011. Through the limiting of the RJA, North Carolina would be no exception since it occurred in 2012, and it would continue this trend. However, there is no substantial evidence that the public sentiment in NC has changed since 2009. It is more likely that these debates were politicized rather than consistent with a change in public sentiment. Unlike the arguments regarding innocence in the IDS debates or the DNA scandals, the RJA debate became highly political.

First, the legislature reached a political agreement during the debates over the original bill. More specifically, the leader of the Republican minority in the House, Phil Berger only voted in favor the bill if the Democrats agreed to declare that the North Carolina Medical Board could not punish its doctors for performing executions. He

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<sup>87</sup> Ibid.

agreed to the RJA only with this trade, because he and fellow Republicans felt that it would end the moratorium against lethal injection in North Carolina. In other words, many legislators only agreed to pass the original RJA based upon a political settlement. Many Republicans solely agreed to vote in favor of the original RJA, not because they supported it, but, rather, because they thought their vote could support their initiatives.<sup>88</sup> Therefore, because the majority of the legislature may never have truly supported the RJA in the first place, when the legislature agreed to repeal the RJA at the end of the decade, it does not necessarily indicate that there was a change in public sentiment.

In fact, the debate, regarding the appeal of the RJA, also about politics, as it pitted Democrats against Republicans. The Republicans embraced criticisms by District Attorneys in order to win power from the Democrats, and deface them. For instance, the N.C. Conference of District Attorneys openly stated that it believed that the RJA would make prosecution of capital defendants “too difficult.” More particularly, Forsyth County District Attorney Thomas Keith said that he felt that a finding of racial discrimination within one district could lead judges to see contingent districts as racist, even though their judicial histories may be different. The Republicans used this statement to criticize the Democratic support for the original RJA. They spread the word that a vote for the RJA now meant a vote against a strong criminal justice system.<sup>89</sup>

Instead of contesting the opponent’s political argument by focusing attention on the necessity of the bill, the Democrats played into this political contest. For instance, congressional representatives brought away the focus of the debate from the context of

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<sup>88</sup> Ibid.

<sup>89</sup> “Perdue signs Racial Justice Act,” *WRAL*, August 11, 2009. Accessed February 20, 2013. <http://www.wral.com/news/state/story/5769609/>

the bill to the integrity and intentions of the legislators themselves. When supporting the original RJA, the Senator Doug Berger stated during the Senate debate:

Imagine if our Civil Rights Act that was passed in '64 said that the only way that you can prove race discrimination is that kind of evidence- an admission by the person engaging in racial discrimination. We would have had little change in our society and culture in terms of the hiring practices.<sup>90</sup>

When bringing up the Civil Rights Act of 1964, Berger speaks to the sentimentality of his audience. He aligns those people who do not support the RJA with the racists of the 1960s. In other words, he seems to imply that if one does not support the RJA, then that person would resemble the immoral legislators of early decades. Instead of making sure that, his audience focuses on the statistical facts presented by the bill; he brought up evil and morality. Berger does not attempt to win over others by focusing on the necessity of the bill, but rather he presents a moral argument against the intentions of the Republicans.

#### *Chapter Summary*

I show that the debates, regarding the IDS Act and the SBI reforms, illustrate that the legislature held the same concern over the execution of the innocent, as the public, media, and the judiciary. This opens the door to the possibility that state legislatures changed their sentiment toward the death penalty for the same reasons that these other groups did so. Even though this study only analyses how the N.C. legislature felt convinced by one particular concern, I expect that a larger study of other debates will suggest that state legislatures were receptive to much of the same reasons that caused a change in sentiment toward the death penalty within the public, media, and judiciary.

I secondly examine the debates surrounding the RJA. I determine that the introduction of the original RJA, and its overhaul, resulted from political motivation

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<sup>90</sup> Kotch, "The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina," 2112.

rather than a change in sentiment. Because this is a survey of only the RJA, one cannot say that the national trend toward expanding the death penalty in the past few years has resulted from politicized debates. However, it is a possibility for further research.

### **Conclusion**

This thesis demonstrates a drastic alteration in death penalty legislation, which was consistent with changing public sentiment. My statistical analysis of state legislatures suggests that the number of bills restricting the application of the death penalty exploded following 1999 and the number of expansions severely dwindled. This all occurred, while the number of death sentences severely dropped, public opinion polls showed decreased support for the death penalty, the media openly criticized the efficacy of capital trials, and the judiciary consistently restricted the death penalty. My research also confirms that even though Southern states primarily led this movement, abolition states, as well as states with large execution and murder rates, followed this same trend. Hence, the legislative movement toward restricting the death penalty was a national phenomenon consistent with changing national sentiment.

The first chapter of this thesis provides an extensive overview of the death penalty within the United States during the past century. I describe that between the years of 1890 and 1940, the American public strongly supported the use of the death penalty, but it disfavored extralegal lynching. This sentiment primarily arose due to the anti-Southern sentiment in the federal government after the end of the Civil War. The federal government required the states to limit any potential connection with the government of the antebellum period. In response, Southern states passed statutes centralizing

executions, so that state executions could only occur by the hand of state sponsored officials and in state regulated prisons.<sup>91</sup>

Even though national trends called for the curtailing of lynching, the public supported the application of the death penalty in a discriminatory manner. The vast majority, 78%, of all death sentences during this period involved a black male as the defendant. In addition, defendants could receive the death penalty for crimes other than murder, such as burglary and rape. Most of the defendants who received the death penalty for these crimes were black. In fact, 12 out of 12 defendants who received the death penalty for burglary in this era were black.<sup>92</sup>

The next era in death penalty sentiment occurred from 1940 to 1972. Even though the previous period included vast support for penalty, this era marked a drastic increase in anti-death penalty sentiment. Most historians mark the end of WWII, the Vietnam War, and the rise of the Civil Rights Movement as the reason for this change. Many Americans had begun to distrust a centralized government's ability to administer executions.<sup>93</sup>

Not surprisingly, the Supreme Court acted coincidentally with this change in public sentiment by outlawing the death penalty in *Gregg v. Georgia* (1972). The Court ruled that states had employed the death penalty in a highly arbitrary manner. However, this moratorium on the death penalty did not last long, as public sentiment, once again, drastically changed. Rising crime rates directed the attention of the public back to the death penalty, and many people now saw it as a means to deterring future crime.<sup>94</sup> In

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<sup>91</sup> Garland, *Peculiar Institution*, 123.

<sup>92</sup> Kotch, "The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina," 2039.

<sup>93</sup> Garland, *Peculiar Institution*, 223.

<sup>94</sup> *Ibid*, 246.

1976, the Supreme Court reestablished the death penalty in *Furman v. Georgia*, which provided a much more complex system of capital trials.

Strong support for the death penalty continued through the middle of the 1990s, until roughly 1999, when sentiment drastically shifted toward restricting the death penalty. In 1994, support for the death penalty peaked at 83%, but it plummeted to 71% by 1999.<sup>95</sup> With the beginning of the use of DNA evidence, and the rise of strong advocates in the form of university led Innocence Projects, the media had found an exciting story to share with the public. Suddenly everybody became aware that innocent people were regularly receiving the death penalty, and people everywhere began condemning the capital trial system as broken.<sup>96</sup>

The second section of this thesis examines this rise of anti-death penalty sentiment in the late 1990s. Previous scholarship has primarily focused upon public opinion, judicial decision-making, media framing, and a reduction in the number of death sentences. My thesis is unique because I examine legislative decision-making. I expected to discover that state legislatures passed more restrictions than expansions since 1999.

My research confirmed my hypothesis. I compiled all bills from 1990 to 2010 that legislators had introduced in congresses in all states, which dealt with the death penalty. I relied on LexisNexis State Capitol in order to find this information. By summarizing the information provided in the Synopsis, I organized these bills based upon their intended purpose, and I then placed these purposes into dimensions, which I then divided into expansions and restrictions. The dimensions includes Creates Death Penalty, Abolish Death Penalty, Mitigating or Aggravating Circumstances, Death Eligibility, Trial or Pre-

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<sup>95</sup> Radelet, "The Changing Nature of the Death Penalty Debates," 44.

<sup>96</sup> Baumgartner, *The Decline of the Death Penalty and the Discovery of Innocence*, 51.



Trial Regulation, Appeal Regulation, Execution and Death Row Regulation, Witness and Evidence Regulation, Judge or Jury Regulation, Creates Moratorium, Creates a Study, Creates Life without Parole, and Other. Each dimension has a Pro or Anti version, which includes expansions and restrictions respectively.

After organizing my data, I discover that, when looking at all bills together, state legislators suddenly altered from expanding the death penalty to restricting it, beginning in 1999. Prior to then, the number of restrictions never surpassed the number of expansions, but this drastically reversed from 1999 to 2011. In this period, the number of restrictions vastly outnumbered the number of expansions. However, beginning in 2010, the number of expansions and restrictions begin to get closer. I then examined each dimension separately. I discovered that the bills that most strongly followed the national trend were those proposed bills that limited death eligibility, improved defense counsel, and increased access to evidence and testimony.

I now realize that the research of Baumgartner et al. supports the fact that these certain bills followed the trend most closely. Baumgartner et al. determine that the public labeled the capital justice system as broken in 1999. The bills, which I have previously listed, align with this change in sentiment by directly focusing on preventing the execution of the innocent through the creation of checks to ensure correctness.

For instance, if the legislature were concerned with eliminating the possibility of unjust executions as noted by Baumgartner et al., it would make sense that the legislature would work to improve defense counsel, since it is a common assumption that poor quality of the defense counsel has a direct effect on producing a high number of false convictions. In fact, in a 1997 study, Stephen Bright documented a series of cases where

the defense attorney was highly unprepared, drunk, or even racist, which he illustrates had an effect in the outcome of the case.<sup>97</sup> My results suggest that legislatures indeed introduced many bills attempting to improve counsel by guaranteeing it, or increasing education and funding requirements for attorneys.

It also makes sense that I discovered that bills regulating witness and evidence testimony drastically altered in 1999. This change spawned from the rise of DNA evidence, and the role it played in raising awareness of the execution of innocent defendants. Baumgartner et al. illustrates that DNA evidence stuck within the minds of many people because, “the scientific value of the DNA evidence seems to put it in a different category in the public mind, irrefutable and objective.”<sup>98</sup> Therefore, since the public eye and media framing largely focused upon DNA evidence, it would make sense that my research shows that the many bills in this period worked to broaden the use of DNA in evidence and testimony.

Aside from bills regulating the fair application of capital punishment, I also notice that the number of creation bills decreased beginning in 1999, while the number of abolishment, moratorium, and study bills increased. The work of historian Stuart Banner suggests that this trend is accurate. He writes that, while some people wished to restructure the penalty in order to promote certainty, others called for its elimination due international outcry, following 1999. He hypothesizes that Americans were aware of a large series of international events occurring between 1999 and 2002.<sup>99</sup>

In addition, David Garland suggests that many people called for the end of the death penalty because, in the recent decades, there was increasing idea of humanism and

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<sup>97</sup> Radelet, “The Changing Nature of the Death Penalty Debates,” 45.

<sup>98</sup> Baumgartner, *The Decline of the Death Penalty and the Discovery of Innocence*, 208.

<sup>99</sup> Banner, *The Death Penalty: An American History*, 302.

civilized refinement. He suggests that since the Civil Rights Movement when the public wanted to erase the association between capital punishment and the nation's history of lynching and racial violence, the public continues to look for ways to reduce "the friction between modern executions and civilized and humanitarian sensibilities."<sup>100</sup>

Lastly, social scientists, Michael L. Radelet and Marian J. Borg also declare that there has been a rise in abolitionist sentiments. They determine that aside from concerns over uncertainty of executions, the public became aware of the substantial costs of carrying out of death sentences. After 1999, critics argued that if the states abolished the death penalty, then legislatures could devote more money to lowering crime rates.<sup>101</sup>

However, even though my results align with previous research, there are a few differences. First, Baumgartner et al. predict that the change in public sentiment as portrayed through public opinion polls, judicial decisions, and media framing began in 1992. However, my results do not show a change in legislation until 1999. Nonetheless, there should be no concern about the inconsistency of my data. When discussing the difference in years between the rise of anti-death penalty sentiment and public policy outcomes, Baumgartner et al. indicate that policy changes are long term. In other words, public policy tends to change only after years have passed since public sentiment has altered.<sup>102</sup> Only sustained changes in public sentiment can eventually lead to a change in public policy.<sup>103</sup> In accordance with these facts, it follows logically that the number of restrictions did not sharply increase and the number of expansions did not decrease until five years following the rise of anti-death penalty sentiment.

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<sup>100</sup> Garland, *Peculiar Institution*, 257.

<sup>101</sup> Radelet, "The Changing Nature of the Death Penalty Debates," 50.

<sup>102</sup> Baumgartner, *The Decline of the Death Penalty and the Discovery of Innocence*, 209.

<sup>103</sup> *Ibid*, 209.

Additionally, it is important to note that, even though there was large increase in the number of restrictions beginning in 1999, most of them did not pass within state congresses. This indicates that, while the death penalty debate may have brought lasting results within the judiciary, it mostly only sparked debate within state congresses rather than produced legislation. David Garland indicates that my results make sense. He suggests that even though the public disapproved of the penalty, and death sentences decreased, this change in sentiment did not necessary mean that legislators had to be more willing actually to pass legislation.<sup>104</sup> Garland suggests that when issue of capital punishment reaches the forefront of legislature's attention, what typically occurs is only "discourse and debate." Instead of serving as penal instrument, the death penalty has become more "about threats rather than deeds."<sup>105</sup>

The final part of my thesis illustrates a case study of North Carolina's legislative history in the 1990s and 2000s. I examine how the legislature passed a series of restrictions beginning in the past decade that dealt with innocence and the certainty of trials and appeals, just like the majority of bills introduced by state legislatures across the nation. In short, the North Carolina legislature followed the same trend that I present through the statistical analysis in the first part of my thesis.

I show that the North Carolina legislature may have acted due to of the same reasons that caused an increase criticism toward the death penalty within the eye of the public, media, and judiciary in the early 2000s. The first bill that I examine is the Indigent Defense Services Act of 2000, which created an organization that could monitor the quality of defense counsel to indigent criminal and capital clients. By reviewing the

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<sup>104</sup> Ibid, 23.

<sup>105</sup> Ibid, 257.

legislative reports of the debates surrounding the passage of this act, I suggest that, like the public, media, and judiciary, legislators were concerned with the execution of the innocent. This indicates that state legislatures, across the nation, perhaps have acted out of the same concerns held by the public, media, and the judiciary.

Similarly, with the passage of the State Bureau of Investigation Reforms in 2010, the legislature once again acted out of concern over executions of the innocent. In this case, the legislature responded to a scandal occurring within the state, and it seemed to have little choice in whether to react because the public outcry was so strong. However, even though this reform may have come about differently than the IDS Reform, they both occurred because of concerns over innocence. As with the IDS reform, this example supports my theory that state legislatures may have begun to reform the death penalty in concurrence with the same reasons that caused public sentiment to change.

Continuing its series of reforms, North Carolina introduced the Racial Justice Act in 2009, but the legislature later overruled it in the following year. The elimination of the RJA supports my conclusion that states are beginning to follow a national trend of introducing expansions at a higher rate than restrictions beginning in 2010. However, as I have previously suggested, the legislatures politicized the debate, so this action may not have resulted from changing public sentiments regarding the death penalty.

In summary, my research suggests that a legislative alteration occurred in 1999, which resulted in the number of proposed death penalty restrictions to surpass the number of expansions. This resulted in concurrence with a change in public sentiment toward restricting the death penalty, and potentially, for the same reasons. Not only had public opinion become critical of the punishment, but also news stories and judicial decisions

criticized it for executing innocent people, while the number of death sentences dropped. There is reason to believe that these changes resulted from similar concerns. However, it is also important to note that there was a decrease in the number restrictions in the past few years, perhaps due to politicization of the debates. Previous scholarship and the legislative history in North Carolina suggest that my analysis of these trends is accurate, but now only time can tell whether legislation will remain trending in this direction.

### Bibliography

- Banner, Stuart. *The Death Penalty: An American History*. Cambridge: Harvard University Press, 2002.
- Baumgartner, Frank R., Boydston, Amber E., and De Beof, Suzanna L. *The Decline of the Death Penalty and the Discovery of Innocence*. New York: Cambridge, 2008.
- Baumgartner, Frank R. and Unah, Isaac, "The Decline of Capital Punishment in North Carolina" (paper presented at the annual meetings of the American Society of Criminology, November 17-20, 2010, San Francisco).
- Death Penalty Information Center. "Aggravating Factors for Capital Punishment by State," accessed February 20, 2013, <http://www.deathpenaltyinfo.org/aggravating-factors-capital-punishment-state>
- Death Penalty Information Center. "Facts about the Death Penalty." Last accessed February 20, 2013, <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>
- Death Penalty Information Center. "The Death Penalty in 2012: Year End Report," last modified December 2012. <http://deathpenaltyinfo.org/documents/2012YearEnd.pdf>
- Garland, David. *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Cambridge: The Belknap Press of Harvard University Press, 2010.
- Giannelli, Paul C. "The North Carolina Lab Scandal." *Criminal Justice* 27 (2012): 1.
- Kotch, S and Mosteller, Robert P. "The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina." *North Carolina Law Review* 88 (2011): 2031-2132.

Lenamon, Terry. "Terry Lenmon's List of State Death Penalty Mitigation Statutu," last modified on May 5, 2010,

<http://www.jdsupra.com/post/documentViewer.aspx?fid=d61d8c7b-896b-4c1a-bd87-f86425206b45>

Maher, Thomas K. "Worst of Times, and Best of Times: The Eighth Amendment Implication of

Increased Procedural Reliability on Existing Death Sentences." *Elon Law Review* 1/95 (2010): 96.

Mallicoat, Stacy L. "Politics and Capital Punishment: The Role of Judicial, Legislative, and Executive Decisions in the Practice of Death." In *Invitation to an Execution: A History of the Death Penalty in the United States*, ed. Gordon M. Bakken, 9-24. Albuquerque: University of New Mexico Press, 2010.

Mastrocinque, Jeanna M. "An Overview of the Victim's Rights Movement: Historical, Legislative, and Research Developments," *Sociology Compass* 4/2 (2010): 95-110.

North Carolina Collection. "Facing Controversy: Struggling with Capital Punishment in North Carolina." Last modified February 20, 2013,

<http://www.lib.unc.edu/mss/exhibits/penalty/timeline3.html>

N.C. General Assembly. "Indigent Defense Study Commission," *Report and Recommendations*. 2000.

<http://www.ncids.org/home/ids%20study%20commission%20report.pdf>

N.C. General Assembly. "Indigent Defense Services Act," 2000.

[http://www.ncids.org/home/IDS\\_%20Act\\_8-11.pdf](http://www.ncids.org/home/IDS_%20Act_8-11.pdf)



N.C. General Assembly. Senate. Judiciary II. 20 June 2000. Minutes. 1999 General Assembly.

Second Session 2000.

N.C. General Assembly. House of Representatives. Appropriations Committee. 20 June 2000. Minutes. 1999 General Assembly. Second Session 2000.

N.C. General Assembly. Conference Committee. 12 July 2000. Conference Report: Senate Bill 1323. 1999 General Assembly. Second Session 2000.

Public Policy Polling. "North Carolina Survey Results," last modified February 7-10, 2013, <http://www.publicpolicypolling.com/pdf/2011/DeathPenaltyResults.pdf>

Radelet, Michael L. and Borg, Marian J. "The Changing Nature of the Death Penalty Debates," *Annual Review of Sociology* 26 (2000): 43-61.

Radelet, Michael L. and Pierce, Glenn L. "Race and death sentencing in North Carolina 1980-2007," *NC Law Review* 89 (2011): 2119-2158.

Robertson, Campbell. "Bias Law Used to Move a Mann Off Death Row." *New York Times*. April 20, 2012. Accessed February 20, 2013.

Slappey, Kellie. "Indigent Defense Funding and its Effect on Capital Punishment in North Carolina, 1976-present," Thesis presented to the faculty of the University of North Carolina, 2012. 65.

Stephens, Lindsey. "Indigent Defense Funding and its Effect on Capital Punishment in North Carolina, 1976-present," Thesis presented to the faculty of the University of North Carolina, 2012. 65.

WRAL. "Judge: Race a factor in picking juries for death penalty cases." *WRAL News*. December 13, 2012. Accessed February 20, 2012.

WRAL. "Perdue signs Racial Justice Act," *WRAL*, August 11, 2009. Accessed February 20, 2013. <http://www.wral.com/news/state/story/5769609/>