

Public Opinion, Political Ideology and the Death Penalty:  
A State-Level Analysis

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The retention of capital punishment in 38 U.S. states makes the United States an anachronism in the modern world. Indeed, of the 30 member states of the Organization for Economic Cooperation and Development, only the United States, Japan and the Republic of Korea retain the use of the death penalty.<sup>1</sup> All 44 member states of the Council of Europe have abolished capital punishment, save Armenia, which is in the process of approving a new, post-Soviet penal code which will do so.<sup>2</sup> All 13 members of the European Union have likewise abolished. Simply put, the United States is the only industrialized Western democracy which retains the use of the death penalty. What factors lead to the retention and use of the death penalty in those U.S. states which still practice it?

**APPROACHES TO THE DETERMINANTS OF STATE POLICY**

There are four main currents in political science research which address the question of policy adoption in the

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<sup>1</sup>"Abolitionist and Retentionist Countries," Amnesty International, at <http://www.web.amnesty.org/rmp/dplibrary.nsf/ff6dd728f6268d0480256aab003d14a8/daa2b602299dded0802568810050f6b1!OpenDocument>.

<sup>2</sup>"Armenia: Time to Abolish the Death Penalty," Amnesty International, at <http://www.amnesty.org/ailib/aipub/1997/SUM/45400397.htm>.

American states. The first, following on seminal research by Jack Walker,<sup>3</sup> deals with the factors that lead to the diffusion of policy innovations across the American states. Inasmuch as the worldwide trend is toward abolition of capital punishment, a decision to abolish the death penalty could be seen as a policy innovation. Thus, it is worthwhile to examine whether the factors determined by Walker and those who have followed him to influence policy at the state level have also figured in decisions to abolish the death penalty. Walker finds that both demographic factors such as urbanization, income and education as well as political factors such as inter-party competition and legislative malapportionment correlate with policy adoptions in 88 different programmatic areas. He posits a measure of policy innovation for each state and performs a factor-loading analysis which finds definite regional patterns in policy innovation.

Virginia Gray<sup>4</sup> excludes programs which were enacted in the states following the establishment of Federal grant-in-aid programs and establishes her own measure of state innovativeness. She also indirectly confirms Walker's regional hypothesis by demonstrating an "interaction effect" between state adoptions.

Studies following on Walker's and Gray's methodologies have demonstrated, however, that innovativeness may be specific

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<sup>3</sup>"The Diffusion of Innovations among the American States," *American Political Science Review* 63:3 (September 1969) pp. 880-899.

<sup>4</sup>"Innovation in the States: A Diffusion Study," *American Political Science Review* 67:4 (December 1973), pp. 1174-85.

to "either given technologies or given areas."<sup>5</sup> Menzel and Feller find that "Several different forms of relationships among states are contained within the broad concept of interaction, thus limiting the extent to which conclusions concerning behavioral relationships can be derived from aggregate statistical analysis."<sup>6</sup> Lester, Franke, Bowman and Kramer<sup>7</sup> find effects of both economic and political factors on state policy adoptions in the environmental field. Berry and Berry<sup>8</sup> find evidence of both diffusion on account of internal factors and regional diffusion patterns. Mintrom and Vergari<sup>9</sup> emphasize the role of social and professional networks in the diffusion of public policy.

From these analyses, it is clear that the question of regional patterns must be taken into consideration in the study of any question of policy diffusion. It is also clear that the literature suggests that political factors are important determinants of the adoption of innovative policies. Furthermore, an interactive effect based on the presence of

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<sup>5</sup>Donald C. Menzel and Irwin Feller, "Leadership and Interaction Patterns in the Diffusion of Innovations Among the American States," *Western Political Quarterly* 30:4 (December 1977), p. 528.

<sup>6</sup>*Ibid.*

<sup>7</sup>"Hazardous Wastes, Politics and Public Policy: A Comparative State Analysis," *Western Political Quarterly* 36:2 (June 1983), pp. 257-285.

<sup>8</sup>"State Lottery Adoptions as Policy Innovations: An Event History Analysis," *American Political Science Review* 84:2 (June 1990), pp. 395-415.

<sup>9</sup>"Policy Networks and Innovation Diffusion: The Case of State Education Reforms," *Journal of Politics* 60:1 (February 1998), pp. 126-48.

networks of state governmental officials is also highly suggested.

A second current of thought founded in the majoritarian model of democracy focuses on the question of public support for policies at the state level (a line of theory not inconsistent with what Berry and Berry term an "internal determinants"<sup>10</sup> model.) Ronald Weber and William Shaffer<sup>11</sup> examine the impact of state public opinion and the strength of interest group membership on public policy in the fields of public accommodations, parochial school aid, right-to-work, teacher unionization and firearms control and determine that public opinion and interest group membership are stronger determinants of state law than socioeconomic characteristics and political factors. A major limitation of their work is the use of simulated public opinion data in their correlations. Robert Erikson<sup>12</sup> overcomes this limitation by utilizing public opinion data from the 1930s in the areas of child labor, the use of female jurors and -- very significantly -- capital punishment and finds strong correlations between public opinion in a limited subgroup of states and actual state policy.

With the appearance of Klingman and Lammers' article

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<sup>10</sup>*op cit.*, p. 395.

<sup>11</sup>"Public Opinion and American State Policy-Making" *Midwest Journal of Political Science* 16:4 (November 1972), pp. 683-99.

<sup>12</sup>"The Relationship between Public Opinion and State Policy: A New Look Based on Some Forgotten Data," *American Journal of Political Science* 20:1 (February 1976), pp. 25-36.

"The 'General Policy Liberalism' Factor in American State Politics,"<sup>13</sup> a third, closely-related strand of thought emerges which attempts to determine a general level of liberalism on a state-by-state level. Klingman and Lammers utilize measures of expenditures and regulatory policy in compiling their index and find that nonsouthern coastal and Great Lakes states are generally more liberal than their counterparts. They find that liberalism is strongly correlated with both sociocultural diversity and a Moralistic political culture as measured by Elazar<sup>14</sup> and Sharkansky.<sup>15</sup>

The most noted work on the relationship between liberalism, public opinion and policy, however, comes from the work of Gerald Wright, Robert Erikson and John McIver. In their first article on the subject, published in 1985,<sup>16</sup> they derive estimates of state partisanship and ideology from 51 CBS News-New York Times polls conducted between 1974 and 1982. The first of two articles published in 1987<sup>17</sup> focuses on state political

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<sup>13</sup>*American Journal of Political Science* 28:3 (August 1984), pp. 598-610.

<sup>14</sup>Daniel J. Elazar, *American Federalism: A View from the States*. (New York: Crowell, 1966).

<sup>15</sup>Ira Sharkansky, "The Utility of Elazar's Political Culture: A Research Note," *Polity* 2 (Fall 1969), pp. 66-83.

<sup>16</sup>Gerald C. Wright, Robert S. Erikson and John P. McIver, "Measuring State Partisanship and Ideology with Survey Data," *The Journal of Politics*, Vol. 47, No. 2. (June 1985), pp. 469-489.

<sup>17</sup>Robert S. Erikson, John P. McIver and Gerald C. Wright, Jr., "State Political Culture and Public Opinion," *The American Political Science Review*, Vol. 81, No. 3. (Sep., 1987), pp. 797-814.

culture, determined by an index of dummy variables measuring various aspects of demography, region and state, and its relationship to ideology and partisanship. The authors find that state culture is more important than state demographics in determining opinion differences. The trio's second 1987 article<sup>18</sup> is an explicit look at the relationship between public opinion as measured by estimates of ideology and public policy in the areas of entitlements, consumer rights, criminal justice, legalized gambling, equal rights and tax progressivity. They find that opinion liberalism is a far better predictor of public opinion than the demographic variables of income, urbanization and education. Finally, Erikson, Wright and McIver, writing in 1989,<sup>19</sup> find that opinion, as measured by their ideological index, determines the positions of state political parties and that responsiveness to ideology determines electoral success.

The clearest lessons to be learned from the public opinion and ideology literatures are that direct measures of public support on an issue and measures of state ideology are both relevant variables to include in any attempt to predict state policy. The biggest problem, as will be elaborated below, is the availability of data, especially for smaller states.

Finally, a school of thought founded in

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<sup>18</sup>Gerald C. Wright, Jr., Robert S. Erikson and John McIver, "Public Opinion and Policy Liberalism in the American States," *American Journal of Political Science* 31:4 (November 1987), pp. 980-1001.

<sup>19</sup>"Political Parties, Public Opinion and State Policy in the United States," *American Political Science Review* 83:3 (September 1989), pp. 729-50.

neoinstitutionalism argues that institutions matter at the state level. Given the prominence of the neoinstitutionalist model in contemporary Americanist circles, the paucity of literature from this perspective is startling. Corey Rosen<sup>20</sup> finds that results reporting the greatest success for legislators who are moderate, deferential and accommodative at the Federal level are largely replicated at the state level. LeLoup<sup>21</sup> unsurprisingly finds that roll-call votes in the 1965-66 and 1973-74 sessions of the Missouri and Ohio legislatures cluster on the basis of partisanship. Hamm<sup>22</sup> determines equally unsurprisingly that committees in state legislatures set the state legislative agenda. Gerber<sup>23</sup> finds significant differences between policy outcomes resulting from direct legislation and those resulting from the initiative process.

The only conclusion this author is able to discern from the literature on state legislative institutions is that more research is necessary. While, for instance, the presence of preference outliers on state legislative committees might be

<sup>20</sup>"Legislative Influence and Policy Orientation in American State Legislatures," *American Journal of Political Science* 18:4 (November 1974), pp. 681-91.

<sup>21</sup>Lance T. LeLoup, "Policy, Party and Voting in U.S. State Legislatures: A Test of the Content-Process Linkage," *Legislative Studies Quarterly*, 1:2 (May 1976), pp. 213-30.

<sup>22</sup>Keith E. Hamm, "The Role of 'Subgovernments' in U.S. State Policy Making: An Exploratory Analysis," *Legislative Studies Quarterly* 11:3 (August 1986), pp. 321-51.

<sup>23</sup>Elisabeth R. Gerber, "Legislatures, Initiatives and Representation: The Effects of State Legislative Institutions on Policy," *Political Research Quarterly* 49:2 (June 1992), pp. 263-86.

expected to have some influence on whether or not a bill to abolish capital punishment reaches the floor of the legislature, there is no literature suggesting that state legislative committees are or are not so composed. The partisan composition of the state legislature might be expected to have an influence on whether or not an abolition bill is passed, but Wright, Erikson and McIver<sup>24</sup> suggest that the partisan composition of the legislature plays only the function of an intervening variable between ideology or opinion and public policy.

#### **MODEL CONSIDERATIONS**

We are left, then, with a set of factors related to policy diffusion in general and factors related to public support for capital punishment in particular and state ideology more generally. The policy diffusion literature suggests strongly that the question of regionalism must also be taken into consideration.

#### **Interaction**

Several authors, most notably Gray,<sup>25</sup> find that the effects of interaction between states should be taken into effect. The most popular measure of interaction, however, which she develops, operationalizes interactions using the product of pair relations between adopters and non-adopters and is based on a temporal function. With an  $n$  of 12 states which have abolished

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<sup>24</sup>1989, *op cit.*

<sup>25</sup>*op cit.*



the death penalty and with abolitions occurring at highly irregular intervals between 1854 and 1987, however, such an analysis is likely to be highly unfruitful. In addition, unlike many of the more technical innovations which Gray considers, capital punishment is an issue with a great deal of emotional resonance.<sup>26</sup> The suggested mechanism of diffusion via interaction is usually that state government officials, through communication with each other, communicate the advantages of innovative policy options. It is unlikely that decisions would be made on this basis at the state legislative level on an issue determined largely by "fundamentally noninstrumental symbolic attitudes, based on emotions and ideological self-image."<sup>27</sup>

### **Innovation Scores**

Both Jack Walker and Virginia Gray compile aggregate measures of state innovativeness based on the spread of policy adoptions and the speed at which they occur.<sup>28</sup> However, both of these measures correlate very strongly with a liberal state ideology (see below), with Walker's index showing a Pearson coefficient of 0.716 ( $p > 0.001$ ) and Gray's showing a Pearson coefficient of -0.677 ( $p > 0.001$ ). While there is every reason to believe that state ideology would be determinative of the

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<sup>26</sup>Phoebe Ellsworth and Samuel R. Gross, "Hardening of the Attitudes: Americans' Views on the Death Penalty," in Hugo A. Bedau (ed) *The Death Penalty in America: Current Controversies*. (New York: Oxford, 1997), p. 100.

<sup>27</sup>*Ibid.*

<sup>28</sup>See Walker, *op cit.*, p. 883 and Gray, *op cit.*, p. 1184.

existence or use of the death penalty in a state, the connection between innovativeness and abolition is somewhat less plausible, and in any case, neither Walker nor Gray's model is a good fit for the diffusion of abolition, since time is a key variable in both indices, and, as noted above, it has occurred in fits and starts and over a period of more than 130 years.

### **Public Opinion and the Death Penalty**

It is strongly suggested by findings from the second school of thought noted above that public opinion on a state-by-state level is determinative of the existence of the death penalty in a given state. Indeed, in a study based on 1936 data, Robert Erikson so found.<sup>29</sup> Erikson's findings indicate that seven of nine states with public support for capital punishment between 49 and 58 percent had abolished the death penalty, while all 39 states with public support for capital punishment above 59 percent retained it. However, no more recent data exists, and the capital punishment landscape was changed significantly by the decisions in *Furman v. Georgia*<sup>30</sup> and *Gregg v. Georgia*<sup>31</sup> which first declared all existing death statutes unconstitutional and then declared capital punishment constitutional as long as certain procedures were followed. In addition, support for the death penalty has not remained constant over the years since 1936, favoring to garner the support of a majority of respondents

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<sup>29</sup>*op cit* (1976), p. 27.

<sup>30</sup>408 US 238 (1972)

<sup>31</sup>428 US 153 (1976).

in polls taken in the midsixties.<sup>32</sup> Furthermore, demographic trends may well have altered the ideological balance in many states.

What is known about public opinion on the death penalty today? On a nationwide basis, support for the death penalty has ranged between 65 and 72 percent in polls taken over the last two years.<sup>33</sup> However, Americans are ambivalent about capital punishment, and support drops dramatically, often to below 50 percent, in polls in which life without parole sentences are offered as an alternative to the death penalty, especially when restitution to the victim's family is added.<sup>34</sup> However, on the core issue of support for the death penalty, aside from this one significant caveat, the wording of the question does not seem to matter.<sup>35</sup>

### **Ideology and Political Characteristics**

Several of the works dealing with policy diffusion suggest that political characteristics, broadly defined, have an effect on the spread of policy innovations. For instance, Walker<sup>36</sup> incorporates measures of legislative malapportionment

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<sup>32</sup>Ellsworth and Gross, *Ibid.*, p. 90.

<sup>33</sup>See rather comprehensive study of national polls on the subject at "Recent Poll Findings," <http://www.deathpenaltyinfo.org/Polls.html#National>.

<sup>34</sup>Ellsworth and Gross, *op cit.*, and Richard C. Dieter, "Sentencing for Life: Americans Embrace Alternatives to the Death Penalty," in Hugo A. Bedau (ed), *The Death Penalty in America: Current Controversies*. (New York: Oxford, 1997), pp. 116-26.

<sup>35</sup>Ellsworth and Gross, *Ibid.*, p. 93.

<sup>36</sup>*op cit.*

and partisan competition in his model, and Berry and Berry<sup>37</sup> utilize measures of divided government and religious fundamentalism. However, it is probable that partisan measures, especially, attempt to divine the same information that a measure of state ideology provides, and a measure of religious fundamentalism would undoubtedly be collinear with conservatism. Thus, a measure of state ideology probably subsumes all of the considerations which would be associated with measures of "political characteristics."

### **Demographic Characteristics**

The demographic characteristics of states figure prominently in the literature. Walker finds correlations between urbanization, total population, average income per capita, value added per capita by manufacturing, per-acre value of farms, literacy and years of school completed and his composite measures of innovation.<sup>38</sup> Berry and Berry utilize a measure of personal income. Weber and Shaffer<sup>39</sup> include socioeconomic factors in their analysis. However, Wright, Erikson and McIver<sup>40</sup> find that state culture is much more important than demographic characteristics in determining opinion differences, and they also find<sup>41</sup> that opinion liberalism better predicts public opinion

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<sup>37</sup>*op cit.*

<sup>38</sup>*op cit.*, p. 884.

<sup>39</sup>*op cit.*

<sup>40</sup>*APSR* 1987 *op cit.*

<sup>41</sup>*AJPS* 1987, *op cit.*

than do the demographic variables in their analysis.

Yet, in preliminary tests of possible models to predict the existence of the death penalty on a state-by-state basis, measures of the percentage of the population that was black, the percentage that was urban, the education level, and the poverty rate all showed significance when included singly, but including more than one of these measures skewed statistical significance and model fit. At first, this researcher was puzzled, but a correlation analysis showed that all of these measures apparently assess the same concept (see table 1).

Because the presence of a high crime rate can explain the existence of the death penalty more plausibly than can any other single demographic factor, it was decided to include the violent crime rate as the sole demographic variable in the model. It is a good fit. It correlates at the  $p=0.002$  level or better with all of the other proposed measures, and it provided a better overall boost in pseudo  $r^2$  value to the model than any of the others.

Table 1. Correlation Matrix for Population Percentage Black, Urban, in Poverty; Education Level; and Crime Rate.

	Black	Urban	Poverty	Education	Crime
Black		0.219 p=0.175	0.470 p=0.002	-0.567 p>0.001	0.778 p>0.001
Urban	0.219 p=0.175		-0.055 p=0.737	0.104 p=0.524	0.476 p=0.002
Poverty	0.470 p=0.002	-0.055 p=0.737		-0.794 p>0.001	0.590 p>0.001
Education	-0.567 p>0.001	0.104 p=0.524	-0.794 p>0.001		-0.540 p>0.001
Crime	0.778 p>0.001	0.476 p=0.002	0.590 p>0.001	-0.540 p>0.001	

### **Whither Abolition?**

Though it is uncontested that 12 states have no death penalty on their statute books and 38 states retain it, the question arises: "What does it mean for a state to have abolished the death penalty?" This is especially true in light of the fact that there are six states<sup>42</sup> which have not actually performed an execution in the last 37 years despite retaining the death penalty *de jure*.<sup>43</sup> It is plausible that the forces of public opinion and state ideology could result in the reluctance of a state which retains the death penalty in law to actually utilize it by performing an execution. Therefore, it is probably desirable to test any model against both the question of whether a state retains the death penalty in law and whether it has performed any executions since capital punishment was reinstated by the Supreme Court in *Gregg v. Georgia*.

### **RESEARCH DESIGN**

Thus, from the available literature, the variables included in the model to be tested are four: public support for the death penalty on a state-by-state basis, state ideology, the crime rate and some measure of regionalism.

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<sup>42</sup>Connecticut, Kansas, New Hampshire, New Jersey, New York and South Dakota.

<sup>43</sup>"State by State Death Penalty Information," at <http://www.deathpenaltyinfo.org/firstpage.html>.

Data on public support for the death penalty from a single source with a large enough sample to draw conclusions on a state-by-state basis is difficult to come by. Typically, polls measure the opinions of approximately 1,500 individuals, and question wording varies from poll to poll. Some national surveys, such as the General Social Survey, do not ask respondents to name the state in which they reside. However, since at least 1992, the American National Election Study has collected responses from a national sample to the question "Do you favor or oppose the death penalty for persons convicted of murder" and also inquires as to the state of residence of the respondent. Pooling data from the 1992, 1994, 1996, 1998 and 2000 yields a data set of 8,087 valid responses.

However, the NES data has its own limitations. Until the 2000 NES, no data was collected in the States of Delaware, Idaho, Kentucky, Maine, Mississippi, Montana, Nevada, North Dakota, Rhode Island, South Carolina, South Dakota or Vermont or in the District of Columbia, and even the 2000 NES sample does not contain data from respondents in Alaska or Hawaii. The result was that an inadequate sample size existed to reliably estimate the opinions on capital punishment of persons in 10 states: Alaska, Delaware, Hawaii, Idaho, Maine, Mississippi, Montana, Nevada, Rhode Island and Vermont. Thus, the models are tested on a sample of 40 states plus the District of Columbia.

Support for the death penalty is operationalized as the percentage of respondents who expressed an opinion who stated

that they support the death penalty for persons convicted of murder. Respondents who did not express an opinion are not counted in the computation of this measure; thus, the percentage counted as supporting the death penalty in this sample is somewhat higher than in other national polls, where persons who do not express an opinion are essentially counted as nonsupporters. Highest support for the death penalty, at 93 percent, is recorded in Nebraska, while lowest support, at an even 50 percent, is recorded in the District of Columbia.

Measures for state ideology are taken from Wright, Everson and McIver's research.<sup>44</sup> Wright, Erikson and McIver's methodology is simple: the polls which their results aggregate asked respondents the question: "How would you describe your views on most political matters? Generally, do you think of yourself as liberal, moderate or conservative?"<sup>45</sup> Wright, Erikson and McIver compile scores which are, in effect, means, with "liberal" responses coded as -1, "moderate" responses coded as 0, and "conservative" responses coded as 1.<sup>46</sup> Both updated and alternate measures of this key concept would be highly desirable; however, updated measures are not, to the knowledge of this researcher, available. Alternate measures which do not directly ask respondents whether they consider themselves liberals, moderates or conservatives generally do not

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<sup>44</sup>1985, *op cit.*

<sup>45</sup>*Ibid.*, p. 471.

<sup>46</sup>*Ibid.*, p. 475.



disaggregate by state and almost universally incorporate some sort of capital punishment question, with those who state opposition receiving credit toward being labeled liberal, in their measures. The most conservative state, Utah, receives a score of 0.333, while the most liberal jurisdiction, the District of Columbia, scores -0.060.

The violent crime rate is operationalized, in accordance with the standards of the Federal Bureau of Investigation, as the number of violent offenses - murder, forcible rape, robbery and aggravated assault - known to the police (and, presumably, reported by them to the FBI) per 100,000 population as measured by Census Bureau estimates. The figures utilized are those from the 1999 FBI Report *Crime in the United States*.<sup>47</sup> The state with the highest violent crime rate, Florida, has a rate of 854 violent crimes per 100,000 population, while the state with the lowest rate, North Dakota, has a rate of 67 per 100,000.

Regional effects are estimated by using a measure of whether states which border on the state in question have abolished the death penalty. This is a dummy variable, with the value 1 indicating that the state in question borders an abolition state and the value 0 indicating that it does not.

Binary logistic regression models were computed utilizing two separate dependent variables. The dependent variable in the first model simply indicates whether a state

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<sup>47</sup>available at <http://www.census.gov/statab/ranks/rank08.txt>.

retains the death penalty on its statute books. The value 1 indicates that the state retains; the value 0 indicates that the state has abolished capital punishment *de jure*.

The second model attempts to identify factors which predict the use of the death penalty rather than its simple presence in law. If a state has executed an individual in the period since the Supreme Court decided the case of *Gregg v. Georgia*, this variable takes on the value of 1; if it has not, it takes on the value of 0.

## **RESULTS AND ANALYSIS**

### **Retention of the Death Penalty**

The results of the first model are presented in Table 2.

Table 2. Existence of the Death Penalty by State as a Function of Popular Support for the Death Penalty, State Ideology, Violent Crime Rate and Bordering an Abolition State.

	B	Standard Error	Wald	p
Support for the Death Penalty	15.589	7.094	4.829	0.028
State Ideology	15.185	8.376	3.287	0.070
Violent Crime Rate	0.003	0.002	0.910	0.217
Borders Abolition State	-1.099	1.152	0.910	0.340
Constant	-12.708	6.530	3.788	0.052

Pseudo  $r^2$  (Nagelkerke method) = 0.440

As can be seen, in this model, only public support for the death penalty demonstrates a statistically significant impact on the probability that a state will retain capital punishment on

the statute books. A slight revision of the model, shown in Table 3, omitting the effects of bordering an abolition state (which appear to be nil in any case) yields better results with almost no sacrifice in model fit:

Table 3. Existence of the Death Penalty by State as a Function of Popular Support for the Death Penalty, State Ideology and the Violent Crime Rate.

	B	Standard Error	Wald	p
Support for the Death Penalty	17.287	7.085	5.954	0.015
State Ideology	16.559	7.956	4.332	0.037
Violent Crime Rate	0.004	0.002	3.119	0.077
Constant	-15.248	6.245	5.961	0.015

Pseudo  $r^2$  (Nagelkerke method) = 0.413

In this model, both public support for the death penalty and state ideology demonstrate statistically significant impacts on the probability that a state will retain capital punishment, and the violent crime rate is significant at the  $p > 0.1$  level. Clearly, from both models, public support and state ideology have some impact on the retention of the death penalty, with more conservative states retaining and more liberal states abolishing, and there is a good possibility that the rate of violent crime has an effect as well.

#### Magnitude of Effects

Because the binary logistic model is not a linear model, it is impossible to ascertain the effects of a unit increase in an independent variable on the dependent variable as

can be discerned through the use of ordinary least squares. Thus, the researcher must resort to predicting the probability that the dependent variable is equal to 1 given different values of independent variables, holding all other independent variables constant at their means. The matrix in Table 4 shows the probability that a state will retain the death penalty given different levels of support for capital punishment and variations in state ideology and the violent crime rate based on the model in Table 3.

Table 4. Predicted Probabilities of the Existence of the Death Penalty.

Support for the Death Penalty	0.9	0.8	0.7	0.6	0.5
P(Y=1)	0.989970	0.946006	0.756701	0.355712	0.089926
State Ideology	0.3	0.2	0.1	0	-0.5
P(Y=1)	0.992309	0.960988	0.824651	0.473097	0.000228
Crime Rate	850	650	450	250	50
P(Y=1)	0.975654	0.947387	0.890000	0.784273	0.620281

Public support for the death penalty and a conservative state ideology each have a huge effect on the probability that a state will have the death penalty, while the rate of violent crimes has a much smaller effect.

#### **Use of the Death Penalty**

The results of the second model are presented in Table 5.

Table 5. Usage of the Death Penalty by State as a Function of Popular Support for the Death Penalty, State Ideology, Violent Crime Rate and Bordering an Abolition State

	B	Standard Error	Wald	p
Support for the Death Penalty	13.862	6.285	4.864	0.027
State Ideology	18.414	7.775	5.609	0.018
Violent Crime Rate	0.005	0.002	4.881	0.027
Borders Abolition State	-1.036	0.898	1.332	0.248
Constant	-20.144	7.324	7.566	0.006

Pseudo  $r^2$  (Nagelkerke method) = 0.505

Unsurprisingly, it becomes easier to demonstrate statistical significance as the number of cases in which the dependent variable is equal to 0 increases. However, this does not diminish the significance of support for the death penalty, a conservative state climate and a high violent crime rate as predictors of whether a state will actually perform executions. Surprisingly, however, regional factors, operationalized as whether a state borders a state which has abolished the death penalty, still do not demonstrate statistical significance. The violent crime rate, while statistically significant, has a much smaller effect on whether a state performs executions than do the other two independent variables.

#### Magnitude of effects

The matrix in Table 6 shows the probability that a state will actually perform executions given different levels of support for capital punishment and variations in state ideology and the violent crime rate based on the model in Table 5.

Table 6. Predicted Probabilities of Usage of the Death Penalty.

Support for the Death Penalty	0.9	0.8	0.7	0.6	0.5
P(Y=1)	0.974197	0.904213	0.702397	0.371109	0.128570
State Ideology	0.3	0.2	0.1	0	-0.5
P(Y=1)	0.990631	0.943721	0.726733	0.296652	0.000042
Crime Rate	850	650	450	250	50
P(Y=1)	0.972399	0.928369	0.826626	0.636893	0.392195

Again, public opinion and state ideology have a very large impact on the probability that a state has executed someone since 1976. The difference in state ideology between the most conservative state (Utah, 0.333) and the most liberal jurisdiction (the District of Columbia, -0.060) seems nearly able to determine on its own whether or not a state will utilize capital punishment. The crime rate has a somewhat more noticeable effect on the actual use of the death penalty than it does on the existence of capital punishment in state law.

### **The Issue of Regionalism**

Surprisingly, regionalism does not show an effect on the presence or absence of either the death penalty in law or actual executions. As both Walker<sup>48</sup> and Berry and Berry<sup>49</sup> have both demonstrated regional effects in their research, further examination of this factor seems necessary. This becomes even more obvious when one examines Figure 1.<sup>50</sup>

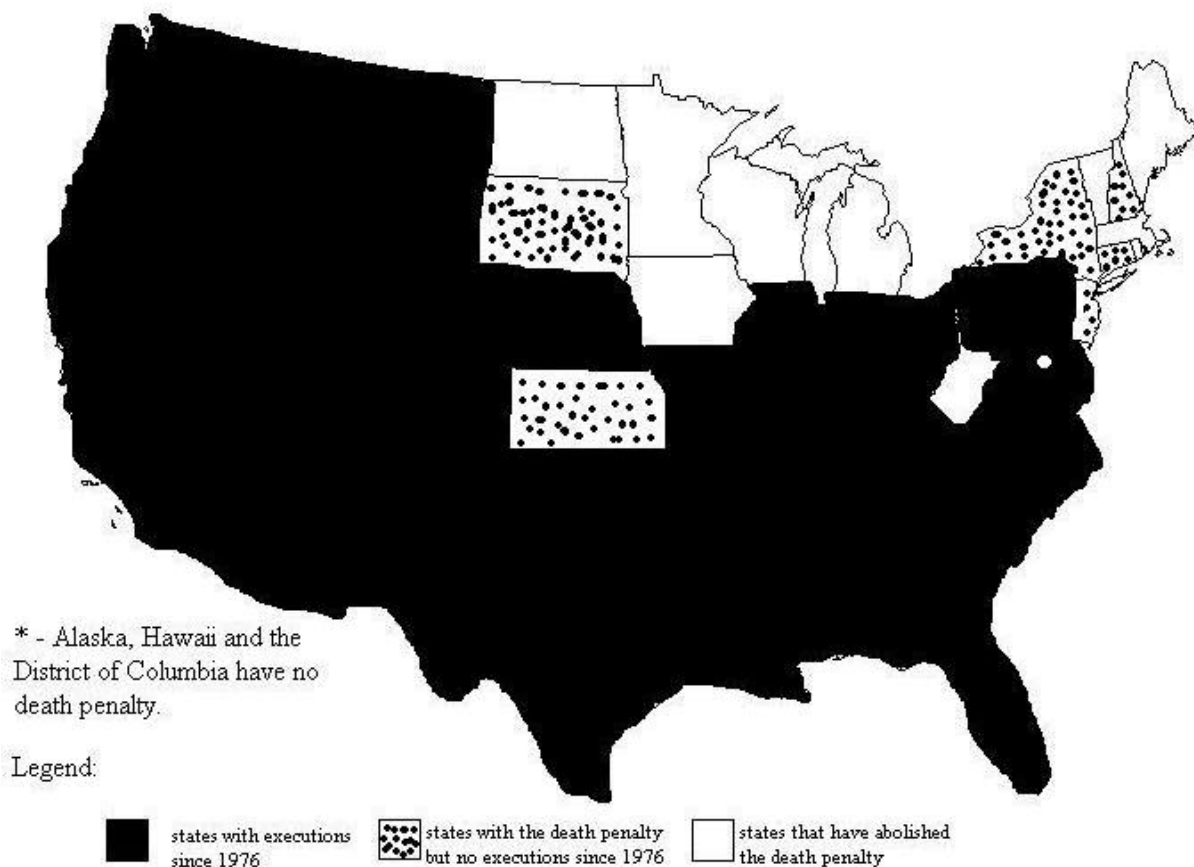
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<sup>48</sup>*op cit.*

<sup>49</sup>*op cit.*

<sup>50</sup> data from Death Penalty Information Center, "State by State Death Penalty Information," at <http://www.deathpenaltyinfo.org/firstpage.html>. Map compiled by author.

Figure 1. States which have the death penalty on the statute books and which have and have not had executions.



Clearly, states in the North Central and Northeast regions of the country either have no death penalty or are reluctant to utilize their capital punishment statutes. This leaves only one possibility: there is an error in attempting to measure regionalism in this particular policy area with a dummy variable measuring the policies of states bordering a particular state. Let us then examine measures of regionalism that other scholars have used. Walker<sup>51</sup> utilizes a factor-loading approach which discerns five groupings of states. While the Northeast

<sup>51</sup>*op cit.*

cluster of states is well-explained by its grouping on Walker's Factor II, the North Central cluster of states loads on all four of Walker's other factors.

Clearly, also, there is a regional component to the abolition of the death penalty and to the absence of executions since *Gregg v. Georgia*, but a measure which would allow accurate assessment of that regional factor remains elusive.

### CONCLUSIONS

This paper has developed a model which is apparently of utility in predicting the abolition of the death penalty and the absence of executions. It has demonstrated, among other things, that public opinion in a state is a powerful determinant of whether the death penalty will exist in theory or in practice in that state.

Or has it? Previous research indicates that on this topic, the direction of causality is far from certain. Ellsworth and Gross, citing Zimring and Hawkins (1986), note that "in the past 30 years, capital punishment has been abolished in West Germany, Great Britain, Canada and France, despite majority support."<sup>52</sup> And the European Union, itself an abolitionist jurisdiction, notes that:

"While in some EU Member States abolitionist measures have met the deep sentiment of the population and thus corresponded to the accomplishment of a national tradition,

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<sup>52</sup>*op cit.*, p. 91.



in others the political decision towards abolition was not taken with the support of the majority of public opinion. Nevertheless in countries where this was the case, the decision did not result in any form of negative reaction, usually leading to minimal debate on the issue. Therefore, mention should be made of the fact that abolition itself contributed favourably to better-informed public opinion."<sup>53</sup>

In other words, abolition of the death penalty despite majority public support may lessen public support for the death penalty! However, given the majoritarian pressures resultant from the two-party, single-member plurality election system in the United States, it may indeed be the case that public opinion is of greater influence in this country. But in no jurisdiction in the United States, not even in the liberal District of Columbia, which defeated a Congressionally-mandated capital punishment referendum by a 2-1 majority in 1992, does capital punishment fail to garner majority support according to both the National Election Study data utilized in this study and the 1936 data cited by Erikson.

Results from studies of the relationship between public opinion and public policy in the United States, though, suggest strongly that policy will follow opinion. There is little data, (but also, indeed, little research on the question) to suggest that the causal arrow will run in the other direction.

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<sup>53</sup>"EU Policy on the Death Penalty: EU Memorandum on the Death Penalty," at <http://www.eurunion.org/legislat/deathpenalty/eumemorandum.htm>.

It is clear, however, that there is at least a relationship between the two variables, regardless of the direction of causality between them. It is also clear that the degree of general ideological liberalism is strongly predictive of abolition, and none have dared suggest that a state's abolition of the death penalty would cause a shift in a state's overall political ideology. This is consistent with a causal arrow pointing from public opinion to policy rather than from policy to public opinion, at least in the American case.

The relationship between the rate of violent crime and the existence of the death penalty is suggestive of the traditional belief, still held by nearly a majority of individuals despite widely conflicting evidence,<sup>54</sup> that the death penalty deters violent crime. It may also show that the desire to incapacitate or take revenge on a murderer<sup>55</sup> increases with public frustration as the rate of violent crime goes up. Or it

<sup>54</sup>on this point, see Stephen Layson, "Homicide and Deterrence: A Reexamination of the United States Time-Series Evidence." *Southern Economic Journal*, 52:1 (July 1985) and Isaac Ehrlich, "The Deterrent Effect of Capital Punishment: A Question of Life and Death," *American Economic Review*, 65:3 (June 1975), who find a significant deterrent effect, and John Sorenson, Robert Wrinkle, Victoria Brewer and James Marquart, "Capital Punishment and Deterrence: Examining the Effect of Executions on Murder in Texas," *Crime and Delinquency*, 45 (1999), pp. 481-93 and Keith Harries and Derral Cheatwood. *The Geography of Execution: The Capital Punishment Quagmire in America*. (Lanham, MD: Rowman and Littlefield, 1997), who find none. Ernie Thompson, "Effects of an Execution on Homicides in California," *Homicide Studies* 3 (1999), pp. 129-150, and William Bailey, "Deterrence, Brutalization and the Death Penalty: Another Examination of Oklahoma's Return to Capital Punishment," *Criminology* 36 (1998), pp. 711-33, find an increase in the number of murders following an execution.

<sup>55</sup>Aside from deterrence, these are demonstrated by much empirical research to be the most important reasons for support of capital punishment among Americans. See Ellsworth and Gross, *op cit.*, p. 97.

may simply be the result of grandstanding by state legislators in high-crime jurisdictions who are eager to show that they are taking action to "get tough" on crime. More research is needed to demonstrate the reasons for this empirical linkage, though it is dwarfed in effect on the probability of the existence of the death penalty or on the probability of actual executions by the twin factors of public opinion and state ideology.

More research is also necessary to determine a means of properly operationalizing the regional factor in the diffusion of the abolition of the death penalty and the absence of executions. A cursory glance at a map of the United States shows that it exists, but its measurement is elusive.

On a more general level, the results of this study tend to confirm earlier research which has demonstrated that public opinion and ideology are important factors in determining public policy in the United States and that they are more important than demographic factors (operationalized in this study by the rate of violent crime) in predicting the policy of a state. Demographic factors are still important, but their effect on policy is less. Further, though it was unable to find quantitative support for such a hypothesis, this study is strongly suggestive of the regional effects found by Walker and Berry and Berry in policy innovation. This research updates and confirms Erikson's 1976 findings (based on 1936 data) on public opinion and capital punishment and elaborates on them by including variables later found by Erikson to be significant predictors of public policy.

Given the present state of public opinion, it is unlikely that the death penalty will be abolished in the United States anytime in the near future. It appears that only a shift in public opinion and the ideology of our citizens will permit us to join the civilized nations of the Western world in firing the executioner.

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