THE POLITICS AND ECONOMICS OF CAPITAL PUNISHMENT POLICY: DETERRENCE vs. PUBLIC OPINION

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Abstract. The overall purpose of this paper is to examine the determinants of the adoption and commitment to the death penalty in a given State. A State may have the penalty because it serves as a deterrent or perhaps because it represents the just deserts for capital crimes; or maybe both. This paper explores three overall hypotheses: the "need" or deterrence hypothesis, the "desire" hypothesis, and the combination of both. Using a policy analysis framework, I run logit analyses for the pre-*Furman* and post-*Furman* periods in the US to test my hypotheses. Finding evidence that death penalty statutes are the result of legislative response to the murder rate *and* the public´ sentiment towards the death penalty, I conduct and discuss a case application of these findings and conclude that public opinion in favor of capital punishment is relevant but not sufficient for adopting, readopting, or keeping the death penalty. Regardless of whether policymakers believe in the deterrent force of capital punishment to reduce violent crime, they rely on the need for it to justify its adoption or readoption.

Capital punishment in the US is and has been for centuries a question of public and academic interest. It remains a research topic of compelling interest to spheres of study and to all sides of the political spectrum. On the public dimension of this issue, it is the moral aspect surrounding the legitimacy of a given State´s prerogative of imposing the penalty of death that has fuelled the public debate and has led to the spread of abolitionist groups. The academic side to the debate has been to a great degree directed at the question of whether capital punishment deters. This paper takes a different approach.

The question of interest in this paper is why some States have the death penalty and others do not. Is it the deterrence rationale that drives death penalty legislation or is it opinion? Or both? And if they have some influence on the final outcome of adopting or retaining the death penalty, do these factors have a direct or indirect impact? Our dependent variable of interest here is statutory

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commitment to the death penalty. According to the literature on capital punishment, the deterrence rationale for justifying the presence of the maximum form of penal severity is not the sole argument for adopting the death penalty. More recently, scholarly interest in the death penalty has taken on a policy-making point of view, where the question has also become one of investigating what spurs the adoption or change in status of death capital punishment policy. Academics are studying the effects of politics and public opinion on policy outcomes, particularly the relationship between capital punishment and public opinion (Tyler and Weber 1982; Nice 1992; Harries and Cheatwood 1997; Mooney and Lee 2000).

One can imagine that policymakers could justify the presence of the death penalty statute because a given State *needs* it to serve as a deterrent force, given its inherent instrumental purpose, and/or because the death penalty is just punishment for the crime of murder regardless of any real need for it, suggesting that those States whose median voters and policymakers want it will have it. In this case, it is *desire*, as opposed to need, that makes the real difference to a State having the death penalty on the books. These are the two pillars on which rests public support for the death penalty.

Having been suspended for a brief period during this century in the US, roughly a decade beginning in the mid 1960s, the death penalty allows policy scholars and analysts to employ useful research strategies especially designed to make use of policy interruptions. Very little is known about which of the two factors, the need or the desire for the death penalty, brings the most to bear on the understanding of why State legislators make the decisions they do in regard to capital punishment. Both lines of argument have been addressed in the literature on death penalty legislation and reform, but taken together the few existing studies have provided ambiguous results.

Although commonly invoked as a justification for adopting, retaining, or abolishing the death penalty statute, the deterrence argument has rarely been tested when assessing the determinants behind the policy adoption of the death penalty. More frequent are studies that estimate the impact the death penalty may have on the homicide rate. This has been the dominant relationship of interest in the literature. Few scholars have asked how the status of death penalty laws is at all affected by changes in the murder rate. Most students of deterrence theory would argue that the real deterrent effect, if any, lies with the implementation of the death penalty and not the death penalty *per se*. However, before one can assess the effectiveness of executions as criminal deterrent measures—that is, the death penalty on the right-hand side—it is appropriate to pause and ask whether or not States have the death penalty due to the belief that it produces a deterrent effect—the death penalty on the left-hand side.

The scarce empirical results on this subject suggest that the deterrence argument may not play as real a role in deciding whether or not to have or retain the death penalty. Descriptive statistics alone suggest that the evolution of the homicide rate in the US has not always provided a clear picture of a deterrent effect. This is easily depicted by the oscillating pattern of the murder rate, independent of the period when the death penalty was and was not in effect. The fact that the murder rate has also not always followed an inverse course compared to the execution rate also casts some doubt on the deterrence argument. These are often arguments that opponents of the death penalty raise when debating the (non)deterrent effect of the death penalty.[1] On the other hand, death penalty advocates hang on to the idea that during the moratorium of the death penalty the homicide rate did indeed rise, providing some support for the deterrent argument (Harries and Cheatwood 1997).

James Q. Wilson (1975, 192) once said that "[a]t best, deterrence studies show that legally abolishing capital punishment in States that had only rarely imposed it does not lead to any increase in homicide, and States that rarely execute murderers do not have any more murders than States that never do. The crucial question, at least, for those debating the deterrence issue, is whether I can ever say any more than this." Without aspiring to settle this dispute, this paper seeks to contribute to the debate by exploring the opposite causal flow between the death penalty and the murder rate and by studying other possible determinants for the legal allowance for the death penalty.

The organization of this paper is as follows. First, I review the contributions in the literature on the death penalty as they pertain to the central purpose of the paper and develop the propositions of interest. Next, I examine and discuss the nature of the data, and using a policy analysis framework, I estimate logit analyses of the determinants of the death penalty policy retention and re-adoption in the pre-*Furman* and post-*Furman* periods. Finally, I explore a case application of the findings by looking at how state policy on the death penalty changed in the years following the *Furman* case.

Death Penalty Policy in America

More than a quarter of a century has passed since *Furman vs. Georgia* (1972), when the Supreme Court pronounced itself on the arbitrariness and cruelty of the application of the death penalty. It ruled that the death penalty statute in the State of Georgia did not guarantee protection against arbitrary sentencing. As it stood in 1972, this statute gave complete discretion to the jury, thereby jeopardizing the Eighth Amendment protecting citizens against cruel and unusual punishment. This decision effectively resulted in nullifying 40 death penalty statutes and revoking 629 inmates on death row nationwide, thus suspending the death penalty. But it also left open the

possibility for States to draw up statutes that could be constitutionally permissible in court. This was a time when the rest of the Western democratic world already had or was still doing away with the death penalty. The US is among the very few Western democracies that still keeps the death penalty in force (Hood 1996; Newman 1999).

In the history of capital punishment policy in America, the debate has mostly taken place in the political forum; only a handful of landmark Supreme Court cases—all roughly in the 1970s—have made their mark on the policy of killing individuals convicted of capital offences.[2] Since the mid 1980s, the courts have retreated from any involvement in the discussion on capital punishment policy (Haines 1996), meaning the ball has since then returned solely to the political arena. This in turn means that legislators have been faced with the necessity to balance the need for the death penalty and the desire for it.

Today and for a long time, Americans have generally favored the death penalty to serve as a vehicle for justice, retribution, and/or vengeance, on the one hand, and deterrence on the other. Ever since American opinion was first polled in 1936 (Erskine 1970; Vidmar and Ellsworth 1974; Bohm 1987), favorable opinion has never fallen below 50%, except for the early 1960s when the percentage in favor of the death penalty hit an all time bottom in 1966—42% (US Department of Justice). Opinion surveys, having taken place throughout abolitionist cycles continued to show that American opinion in favor of the death penalty was still a majority and it continued to increase substantially in the years following the *Furman* case. The *Sourcebook of Criminal Justice Statistics* (US Department of Justice) reports that in 1976, 66% of Americans favored the death penalty, 67% in 1980, and 76% in 1985. Despite the diminished growth in the percentage of those favoring the death penalty in recent years, dropping from the all time high of about 80% in the early 90s to 66%

in 2000, the percentage of those favoring of the death penalty is still much greater than the percentage of those against it.

Since 1997, all Council of Europe member States have issued a total moratorium on the death penalty. During that very year in the US, we see a very different picture: 38 out of 50 States endorse the death penalty law and over 3,000 inmates are sentenced to die. Since 1994, US policymakers have made over 60 crimes punishable by death, and executions have increased from approximately two per 100,000 persons in 1982 to about 55 per 100,000 persons in 1995 and 98 in 1999 (Acker 1997; Pridemore 1997; Newman 1999).[3] Why has the US opted to keep a capital punishment system in place while most all of the democratized world has abandoned it in the last half century? Is it that the death penalty has a deterrent effect and the rest of the democratized Western world chooses to ignore the need for it? Is it because the American public desires it while European publics, among others, do not? According to the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Law & Society Association, crime experts do not believe the death penalty has proven to be an effective deterrent to murder. Herbert Haines (1996) and Julian Roberts (1992) tell us that these countries chose to be rid of the death penalty in spite of the public sentiment that still managed to favor the retention of the death penalty. It was not the public, nor the courts, that chose abolition. It was the legislators. They alone, against the tide of public sentiment removed the death penalty from the statutes. Hiroyuki Shinkai and Ugljesa Zvekic, two UN experts on crime (1999, 112), claim that "[p]olicy-makers may well respond that all they do is translate into practice what the public wants." That may well be true of American policymaking, where populist policymaking is common (Norrander and Wilcox 2001). But if we knew that, for example, the British and German policymakers did away with the death penalty, in

1965 and 1987 respectively, when the majority of the British and German public favored it (Tonry 1999; Ziesel and Gallup 1989), some of us might wonder whether the close tie between policy and opinion is true of most countries. Similar tendencies occurred in Canada, Australia, and more recently, Russia (Roberts 1992; Pridemore 1997; Newman 1999). "Many citizens of the United Kingdom, France, and elsewhere would prefer that executions resume in their lands. But these attitudes rarely lead to serious reintroduction drives. In the United States, by contrast, elected officials scramble to capitalize on pro-death penalty sentiment." (Haines 1996: 4).

Available statistics provide mixed support for the notion that governments follow public sentiment when it comes to policymaking. International survey results indicate, for instance, that British support was 49% in 1938, grew to 76% in 1964 shortly prior to its total abolition, and was still going strong by the mid 1990s (Erskine 1970; Hastings and Hastings 1978-79, 1984-85; Gallup 1978, 1979). Seventy percent of the British population in 1965—the year the death penalty was abolished—believed the murder rate would go up in the absence of the death penalty (Erskine 1970). Available international survey results also show that French public support for the death penalty was 39% in 1960, 54% in 1972, 64% in 1984 just three years after the total abolition of the death penalty and only began to wane by the early 1990s, slightly falling to 61%. The opposite occurred in Germany where the death penalty was done away with in 1987 for all crimes. German support for the death penalty was 55% in 1950, decreased to 34% in 1975, 27% in 1980, and 24% in 1992 (Erskine 1970; Hastings and Hastings 1978-79, 1984-85; Gallup 1978, 1979). Spanish results show minor support for capital punishment, 47% in 1979, one year after Spain abolished the death penalty for ordinary but not extraordinary crimes. More recently, survey results in Portuga, where the death penalty has not been in existence for ordinary crimes since the late nineteenth

century and for all crimes since 1976, revealed that only a minority favored the death penalty—43% (Fernandes 1995).

The Death Penalty, Deterrence, and the Public Sentiment

Since the Supreme Court suspension of the death penalty in the US in 1972, two basic theoretical explanations have emerged in the political science and criminal justice policy literatures to explain support for the death penalty. These are the deterrence hypothesis and the desire hypothesis. The first proposition is rooted in Benthamite utilitarianism; that is, the death penalty is employed as a strategy to satisfy the happiness (in this case the safety) of the whole—non-capital offenders and law abiding citizens—at the cost of a few—the capital offenders. The death penalty is the result of a need to reduce the crime rate; the belief that the threat of maximal severity serves as a deterrent against murder is the justification for its use. Homicidal behavior, according to this view, can arguably be treated as rational in many, although of course not all cases, thus prospective murderers can be argued to assess the costs of deciding whether or not to kill. The other hypothesis is based on the pure desire to have the death penalty, that is, on the thirst for justice or the satisfaction of imposing one´s just deserts for committing a capital offense. This proposition centers on the influence of political and social values and also legislators´ aim for reelection on the decision to adopt the death penalty.

The Need for the Death Penalty: Deterrence and Capital Punishment. The deterrence argument pertaining to capital punishment became a central premise at the start of the post-*Furman* period with Isaac Ehrlich´s controversial seminal piece (1975), based on the Becker model (1968) of the economic approach to crime, finding support for a deterrent effect. Ehrlich finished his manuscript on the deterrent effect of the death penalty at a time the Supreme Court was going to consider the

constitutionality of the first death penalty statutes following *Furman vs. Georgia.* At this time the Supreme Court was inclined to approve the new statute and, therefore, sought and contemplated Ehrlich´s work at a time when it had not been published yet. Until the *Furman* case, Thorsten Sellin´s (1959) work on the effects of the death penalty went nearly uncontested. Although the debate on the death penalty goes back much further (Bye 1919; Kirkpatrick 1925; Sutherland 1925; Vold 1932; Peterson and Bailey 1988),[4] it was not until the 1950s that statistical analyses were first conducted (Vold 1952; Schuessler 1952; Sellin 1952; 1959; Mueller and Schuessler 1961; Klein et al. 1978). Sellin´s work was sharply criticized on methodological grounds.[5] These critiques threw a cloud of doubt over Sellin´s insistence that the death penalty was no more a deterrent than other punishments.

Studies on the deterrent effects of capital punishment began to flourish since Ehrlich´s study in the early 1970s. Since the Ehrlich 1975 piece, the death penalty remains the most researched issue in deterrence theory or at least that topic that has generated the most controversy. This is so, not only surrounding the ethics of employing this deterrent strategy but also whether it has the deterrent power many wish to attribute it since the early beginnings of the study of crime. No other deterrence theory application has generated so much debate as the deterrence effect of capital punishment, mostly because of its high salience as a political and moral issue and because deterrence theory, as applied to violent crimes, is highly debatable. Perhaps for these reasons, capital punishment policy has been referred to as the "morality" policy *per excellence*.

Inspired by the polemic study, students of crime began to address and debate the weaknesses in Sellin´s and Ehrlich´s works through more sophisticated techniques. Much of this literature produced ambiguous results (Klein et al. 1978; McGahey 1980; Von Hirsch 1999), with some

scholars finding a deterrent effect (Ehrlich 1975; 1977; Yunker 1976; Wolpin 1978; Layson 1985; Stack 1987; Phillips 1980) and others failing to do so (Bowers and Pierce 1975; 1980; Passell and Taylor 1977; Cochran et al. 1994; Thomson 1997; Bailey and Peterson 1994). The controversy generated more enhanced information on deterrent effects, some claiming that the failure to find deterrent effects was due to the failure to use monthly data on executions and also on the choice of the specific type of murder (Phillips 1980; Stack 1987; Bailey and Peterson 1994). Others claimed that while capital punishment may deter, its impact is very short-lived and may even contribute to a rise in the number of homicides (Thomson 1997). Indeed, some spoke of this as the "death dip" hypothesis Bowers and Pierce (1980), often cited as the first to introduce the sociologically-based "brutalization" hypothesis, argued that not only is there no evidence of a deterrent effect, but the death penalty can lead potential murderers to identify themselves with the State in justifying the right to take a life on the basis of bestowing justice (Decker and Kohfeld 1990; Cochran et al. 1994; Thomson 1997).

The Desire for the Death Penalty: Public Opinion and Capital Punishment. V.O. Key (1961) is well remembered for asserting that public values guide policy, but Robert Erikson (1976) was among the first to raise the issue of a relationship between public opinion and capital punishment statutes. Using information from opinion surveys in the mid 1930s, he found a high degree of association between those States having had the death penalty on the books continuously—what he labelled as a strong commitment to capital punishment—and those States whose citizenry favored the existence of the death penalty.

While the empirical investigation of the deterrent effects of capital punishment grew in the post-*Furman* period, the same is not true of the empirical studies on the connection between

policymaking and opinion. William Bowers (1993) took up Neil Vidmar and Phoebe Ellsworth´s (1974) the argument on the influence of public opinion on judicial policymaking and on the reluctance to use the Eighth Amendment to oppose the death penalty as long as the majority approves of it. Bowers´s point was to show the spuriousness of public support for the death penalty, his argument being that the public´s favor was really "[…] a spurious function of people´s desire for harsh but meaningful punishment for convicted murderers […] deep-seated or strongly held commitment to capital punishment." (pp. 159-62). Despite Bower´s main concern, he nonetheless emphasized an important point for the present study which was that the Court had decided on the death penalty based on its popularity with the public.

On the empirical side, Tom Tyler and Renee Weber (1982) found that support for the death penalty is grounded on the ideological inclination of the public as a determinant of the death penalty. Using people´s concern for crime to represent what these authors call the utilitarian or instrumental hypothesis and their political attitudes in regard to the death penalty to represent what they call the "symbolic" hypothesis, their evidence shows that only the public´s political viewpoint on the death penalty provided any significant impact on the existence of the death penalty. People´s concern for the crime problem was not the key ingredient in explaining why a State did or did not have the death penalty.

In the political science literature two studies are worth taking notice. These are the contributions of David Nice (1992) and, more recently, Christopher Mooney and Mei-Hsien Lee (2000). Nice was among the first to test the causal relationship between electorate ideology or level of conservative opinion among the electorate and the death penalty, arguing, as Erikson and others before him, that "[…] in a context of high public interest and substantial uncertainty regarding the

effectiveness of a policy, officials have strong incentive to respond to public desires. Even if the policy is not particularly effective in resolving the problem, officials have at least made a symbolic response." (1992, 1046). Nice found evidence to support the notion that both a more conservative public climate of opinion and a high murder rate call for a greater push for death penalty statutes. Contrary to the Nice piece (1992) that looks at death penalty determinants in general, the link between opinion and capital punishment support is central to the Mooney and Lee (2000) piece. These authors propose and test a fine line of distinction between how public sentiment is considered depending on the context of public values. Whether or not the climate surrounding the morality issue is largely consensual, meaning the public is less divided on the subject, or more contentious or split, meaning that the dividing line is less certain, determines how policymakers respond and to whom they respond. Where contentious issues are concerned, legislators tend to pay attention to the masses and not so much to political elites, in this way not putting themselves at risk of being considered democratically detached from the constituents. When deciding on issues where the public is less emotionally divided, such as in the situation with public opinion on the death penalty in the post-*Furman* period, legislators are more willing to stress their own views and that of the more informed public. In testing their thesis, Mooney and Lee (2000) found that only elite opinion had a significant influence on the re-adoption of the death penalty statutes in the post-*Furman* era, while only mass public support influenced the decision to keep or abolish the death penalty in the pre-*Furman* period. Both studies test the effect of the murder rate on the death penalty. Of these two papers, only Nice finds an effect of the murder rate. Mooney and Lee (2000) do not report estimates of the effect of the murder rate, but they indicate that, among several control variables, they tested for such an effect and did not find one. This may at first seem intriguing, but upon more

careful consideration, we really should not expect to see an effect from murder in this case. We must keep in mind that these two papers employ entirely different research designs; thus, they answer two entirely different questions. Mooney and Lee use Event History Analysis (EHA) to look at whether the murder rate has an effect on the timing of the adoption of the death penalty. Nice uses OLS regression to study the status of the death penalty. The fact that Mooney and Lee do not find an effect of the murder rate only means that this rate does not affect the precise year that a given State adopted the death penalty; it says nothing about the effect of the murder rate on the status of the death penalty in a given State as such.

Hypotheses

The question of interest here is why some States have the death penalty and others do not. Do policymakers take into consideration the state of violent crime in their jurisdictions? Statistics tell us that most States that have the death penalty also have the highest murder rates (Death Penalty Information Center). Is the murder rate what leads these States to adopt the death penalty? Or might public opinion be the driving force? Could they both be key determinants of the decision to have the maximum statutory severity for murder? These are the central questions raised in this paper. To address them, I test three hypotheses. I hypothesize that legislative commitment to the death penalty is influenced both by the perceived/arguable need to deter potential murderers and the desire to punish. Policymakers have deterrence-based reasons for adopting the maximum form of penal severity with the criminal justice goal of dissuading others from engaging in homicidal crimes, so that need, in the form of high capital crime rates, may a have a direct effect on the statutory existence of the death penalty. The decision to have the death penalty in a given State is influenced by whether that State´s murder rate suggests the need to impose a more severe deterrent threat; that

is, whether State policymakers want to increase the expected cost of committing murder.

Hypothesis 1: States with high murder rates are more likely to be committed to the death penalty—the deterrent or need hypothesis.

Second, legislative commitment to the death penalty may also be influenced by the *desire* to comply with or satisfy constituent demand for the death penalty. In this way, voter and policymaker opinion may also have a direct effect based on the desire to have it, independently of the need for it. Whether States adopted the death penalty in either the pre-*Furman* or the post-*Furman* period is the result of public opinion of the death penalty.

Hypothesis 2: States with public opinion favoring the death penalty are more likely to be committed to the death penalty—the desire hypothesis.

We also entertain the proposition that both the need and desire hypotheses are interdependent, meaning that the strength of either argument will depend on each other. Simply put, this means that, although both propositions are important in the consideration of a State´s statutory severity for murder, the need for a more deterrent threat for murder will be contingent on the degree to which public opinion is divided on the issue.

Hypothesis 3: The electorate´s desire to have the death penalty will mediate the need to increase the expected cost of committing murder in a given State.

A Preliminary Look at the Data on Capital Punishment, Opinion, and the Murder Rate

The analysis in this paper examines the determinants of the status or commitment of State capital punishment before and after the interruption of the death penalty policy. It is altogether fitting then to look at the variation in the outcome variable of interest. Table 1 does just this. It lists those States that were and were not committed to the death penalty in both the pre- and post-*Furman* periods. A “yes” indicates a positive status on capital punishment policy, that is, a strong

commitment to the death penalty and a "no" indicates otherwise (Erikson 1976). For the purpose of the present study, a strong commitment means that the State had and retained the death penalty from 1942 to 1972 in the pre-*Furman* period; in the post-*Furman* period, it means that States having adopted or readopted the death penalty from 1972 to 1977 retained the statute continuously until 1995. A look at the historical trends in US capital punishment policy suggests that the 1940s is an interesting decade to begin our pre-*Furman* period for the purpose of analysis. This is because the overall trend in executions in the US rose steadily from the seventeenth century, having peaked in the late 1930s (Harries and Cheatwood 1997; Espy and Smykla 1987). Beginning in the 1940s, this trend was one of a steadfast decline until the moratorium of the death penalty, making this a good point in time to examine States´ commitment to the death penalty in the pre-*Furman* period. Nineteen forty two also happens to be the year for which there is available data so it also turns out to be both methodologically and statistically convenient to begin in the 1940s. Nineteen seventy two is the year of *Furman vs. Georgia*, when the death penalty was formally and legally suspended. It marks the end of the pre-*Furman* period but also the beginning of the post-*Furman* era. This is because the State of Florida officially reinstated the death penalty in December of that year. The cut-off year of the post-*Furman* period is 1995; the State of New York was the last one to change its death penalty policy during this year. New Hampshire removed the death penalty in May of 2000 and for this reason the post-*Furman* period could have extended until the present, however, available statistics for the year 2000 were not yet readily available. For this reason, New Hampshire´s most recent change in its capital punishment policy was not considered.

[Table 1 about here]

Note that most all States carry their capital punishment policy in the pre-*Furman* period into the post-*Furman* period in the sense that they are consistent in their willingness to commit to the death penalty. Only a handful or less show mixed policy status positions: Kansas, Delaware, Massachusetts, New Hampshire, New Jersey, and South Dakota. The shaded areas point out those States that did not show a strong commitment to the death penalty in either period. With the exception of Massachusetts, nine of the 12 shaded States (plus Alaska and Hawaii that are not part of the present analysis due to missing values in the variables used in the analyses) have remained uncommitted to capital punishment as they remain today anti-death penalty States. These States are: Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.

As referred to above, James Q.Wilson (1975) claimed that States that had the death penalty prior to the 1972 Supreme Court suspension of the death penalty statutes would most likely readopt in the post-*Furman* period. Those that did not have it would probably continue without it when the opportunity to establish it arrived. Judging from Table 1, one might speculate that he was right on the mark. Why that might be gets to the root of our main concern in this analysis. Wilson suggested that when additional factors are taken into account statistically when attempting to explain the murder rate, the "additional importance of the death penalty, or its absence, to the analysis is likely to be slight." (1975, 192-3). Two additional factors that Wilson may have had in mind when he wrote this are the crime rate, particularly the murder rate, and public opinion. A look at these factors in this era will show us that both these factors also appear stable.

Table 2 reveals the state-by-state opinion in the US in 1936 (Cantril 1951). A preliminary look at these data, which happen to constitute the only comprehensive set of state opinion data in

the pre-*Furman* period, tells that in 1936, most States having the death penalty also had a majority of folks favoring the death penalty, most of them in the 60 and 70 percent range. At the time, these States without the death penalty (shaded areas in Table 2) had the smallest percentages of favorable opinions even though all but Wisconsin passed the 50-50 point.

[Table 2 about here]

Two important points are worth noting. The first is the nature of these opinion data; as with the dependent variable itself, they are quite static and slow-moving. For this reason, these 1936 data alone can be representative of the pre-*Furman* period. While this can be a good thing, statistically speaking, it can make one question the causal strength of these data. As a first pass at examining the relationship between opinion and the commitment to the death penalty, Figure 1a shows us the death penalty status (scored 1 for those States committed to the death penalty in the pre-*Furman* period and 0 for those States not committed) plotted against public opinion on the death penalty in the pre-*Furman* period. Three States stand out as outliers among the uncommitted: New York with 67%; Vermont with 70%; and West Virginia with 71%. Among the strongly committed are four outliers: Colorado with 56%; Indiana with 54%; Oklahoma with 59%; and South Dakota with 52%. Figure 2a is a preliminary look at the bivariate relationship between these two factors. It shows how the probability of a State committed to the death penalty changes as the percentage in favor of the death penalty in the pre-*Furman* period increases. As we can see, the greatest change occurs around 60%.

Table 3 presents a crosstabular look at the pre-*Furman* commitment to the death penalty and public opinion. It allows us to identify the outliers in each situation. With the exception of Wisconsin, all States had a majority of their public favoring the death penalty. Notwithstanding

this, it is interesting to note that three fourths of the States had very high percentages of persons in favor of the death penalty. Two-thirds of these 75% were strongly committed to the death penalty. Of the remaining 25% of States with comparably lower percentages in favor of the death penalty, two-thirds were anti-capital punishment States all throughout the pre-*Furman* period.[6]

[Table 3 about here]

As with public opinion, the murder rate is also quite slow-moving throughout the pre-*Furman* period. Table 4 reveals the average ordinary mean murder rates for each State in the pre-*Furman* period. The ordinary mean is a static or typical average. These average rates show some variation in the average murder rates across States but not across time. Plotting the relationship between the death penalty and the murder rates in the beginning of the pre-*Furman* period, 1942, would show us that murder rates above 10% level are found in those States strongly committed to the death penalty statute. Although this makes intuitive logic, States having murder rates below the 10% could equally be committed or not to pro-capital punishment legislation. A bivariate relationship between these two murder rates and the probability of change in the States´ status on the death penalty would show us that the average murder rate appears to cause the greatest change in the probability of a State´s commitment to the death penalty between the five and 10% level. The murder rate, as it stood in 1942, appears to cause a steady uphill change in this probability.

[Table 4 about here]

As in the case of public opinion on the death penalty, these data are not very dynamic. This might lead one to wonder how a change in the murder rate may cause any kind of change in a given State´s willingness to commit to the death penalty. Also shown in Table 4 are the developing mean murder rates for the pre-*Furman* era. The developing mean calls for a more careful explanation. It is

the calculation of what in time series analysis is called the speed of adjustment or the coefficient of the lagged murder rates obtained from partial adjustment models. The dependent variable, in these models the murder rate, adjusts to an equilibrium or long run level of the murder rate. It is the ratio of the murder rate, were there no other causal intervention in the world to the speed of adjustment or one minus the coefficient of the lagged murder rate. In lay terms, this developing or dynamic mean is nothing more that the murder rate that each State can be expected to reach in a specified time period. In this way, it reveals the dynamics of the murder rate in each State for it tells us where the murder rate is heading and where it will end in equilibrium. Upon comparison, the ordinary or static murder rates in each State are not much different from the developing mean murder rates or the expected murder rates by the time we reach the end of the pre-*Furman* period, meaning that it does not seem as if the murder rates change much within States across the pre-*Furman* period.

A simple look at naïve year dummy models indicates that there is not much of a yearly difference throughout the pre-*Furman* period.[7] Yearly effects on the murder rate are very nearly the same when they reach conventional levels of statistical significance. Much of the variation lies with changes across States. Clearly the variation is across States, again building a case for the idea that the murder rates seem to be static. Murder rates may not change across several decades; rather the variation in the murder rate may be mostly cross-sectional.[8]

Given that murder is not typically a responsive crime rate as are arguably property crimes, the murder rate is not expected to respond quickly or instantaneously to policy interventions such as the adoption of the death penalty, thus making it plausible to argue that the murder rate can and should be modelled as a partial adjustment model. The gradual evolution in the murder rate allows us to speak of dynamics. The results of a partial adjustment model of the murder rate in the pre-

Furman period (not shown) show that death penalty policy is not at all immediate; this means that a shock or change in the system due to a policy intervention will not immediately take its toll on the murder rate. A pooled partial adjustment model of the pre-*Furman* period (not shown) reveals that the coefficient on the lagged murder rate is very high and unmistakably significant at the conventional levels of statistical significance. This means the speed of adjustment very slow and, consequently, the murder rate very sticky. The high coefficients of the lagged murder rate in the pooled analysis indicate that State rates are not moving toward a common target or equilibrium. As a group, they are not adjusting, partially or otherwise. Individual state partial adjustment models (not shown) point us to the same idea. The coefficients of the lagged murder rates allow us to infer that the States´ murder rates are adjusting at different speeds, and in many of the cases that actually reach statistical significance, those speeds are slow-moving and unresponsive to outside forces. Having provided some evidence of the static nature of the murder rate, Heise´s correlational test of stability (1969) provides further evidence that the murder rates are not very dynamic and that their targeted means are not much different from their ordinary means.[9]

Research Design

The research design employed is a cross-sectional design for the US States for two periods in time; I conduct a logit analysis of the determinants of the retention and readoption of the death penalty policy from 1942-95 in the pre-*Furman* and post-*Furman* periods.[10] I examine the institutional, and political determinants of the adoption and readoption of the death penalty statutes in the US. The purpose lies in contributing to the debate on whether death penalty reform is really about deterrence, opinion, or both. Table 5 presents the descriptive statistics of the variables employed in this study. As we can see, the average number of States having shown a strong

commitment to the death penalty is not much different in the pre- and post-*Furman* periods. From 1942 until 1972, approximately 73% of the States adopted and revealed a strong commitment to the death penalty, as compared to 65% of the States that readopted and retained the death penalty statute from 1972 to 1995. As for the murder rate, the average murder rate was 5.6 in the pre-*Furman* period. In 1942, there were 7.8 murders per 100,000 persons, while in 1972 the typical murder rate was 7.5 per 100,000.Worth noting also is that in 1936 about two thirds of the population responded positively to the existence of the death penalty, even though only roughly over a third of the population had a traditionalistic political culture according to Elazar's typology (1966). Perhaps the fact that only a third of the population was aged 15-34, the most-crime prone age bracket, might help account for this. Although the two measures of public opinion for each of the periods are not directly comparable, the Senate National Election Survey measure (Norrander 2001) of attitudes towards the death penalty indicates that on a scale from 1 to 5, the average position was strongly supportive of the death penalty.

[Table 5 about here]

Empirical Analysis and Discussion of the Findings

The following model depicts our view of the determinants of a State´s commitment to the death penalty:

$$DP = \beta_0 + \beta_1 Murder + \beta_2 ElectOpin + \beta_3\ Murder*Elect\ Opin + \beta_4 PolCult1 + \beta_5\ PolCult2 + \beta_6 Urban$$

where, *DP* is the commitment to the death penalty; *Murder* is the murder rate, representing a need for the death penalty; *ElectOpin* is electoral opinion, representing public desire for the death penalty; and *Murder*Elect Opin* is an interaction term representing the mediating effects that need or desire may have on each other. *PolCult1* and *PolCult2* are two dummy variables representing

political culture; *Urban* is a demographic control for the level of urbanization. Table 6 shows the results of six logit analyses of the determinants of the commitment of the death penalty in each period under analysis. In conformity with Hypotheses 1 and 2, I find support for both the need and the desire hypotheses. Both the murder rate and public opinion have significant effects in the expected direction, although the effect of public opinion is more robust. It reaches statistical significance in every case, whereas the effect of the murder rate is more sensitive to the extension of the model, specifically to the inclusion of the interaction term between the murder rate and public opinion.

Our evidence shows that policymakers take into consideration both the need for the death penalty as well as the public´s desire to have it, judging from the significant coefficients of the murder rate and the opinion variable. There is no indication that the two arguments mediate each other because the coefficient on the interaction term never reaches statistical significance. Neither operates as a necessary condition. Were it not for the significant direct effects of the murder rate in models 1-3, I would have no indication as to whether the murder rate has any effect on the status of the death penalty or what the nature of that effect is—direct or mediating. This is because this effect disappears once the interaction of the need and will hypotheses is introduced, most likely due to multicollinearity. Judging from the summary statistics, we can see that the inclusion of the interaction term does not improve the fit.

These results do not mean that policymakers necessarily believe in the deterrent effect of capital punishment. In fact, from our previous partial adjustment model of the murder rate, policymakers really have no reason to suspect that the murder rate would change much given the introduction of a policy directed at reducing it, namely the death penalty. Keeping in mind that

whether the death penalty serves as an effective deterrent or not is not a relevant question for our purposes here, what I have shown is that the deterrence argument can be used to elaborate arguments to justify having it. Policymakers do not have to believe that having the death penalty would reduce the murder rates in their States. The only inference this model allows us to draw is the fact that policymakers base their position on the murder rate to pass legislation to retain or readopt the death penalty. It is used as a justification to have it or not on the books.

[Table 6 about here]

Case Application and Discussion

In accordance with the evidence presented above, besides the demand, policymakers pay attention to the need for the death penalty. But the death penalty has been cited as an example of a policy for which a given society may not have a real need. Simply having it on the books does not cost policymakers much, making it a likely candidate for being tagged as a morality policy. Thereby, having the death penalty statute may rest solely with policymakers´ will to have it regardless of whether a State needs it or not. Given the arguable nature of the need for the death penalty, to what extent is need relevant for deciding whether or not to retain or readopt the death penalty? One way to find out is to look at the decisions State policymakers made following the Supreme Court decision to lift the moratorium of the death penalty. Policymakers wanting to adopt the death penalty could justify support for the death penalty by pointing to the idea that there is a need for it and also a public demand for it.

Given the interruption in the death penalty and our research design, I can check whether the results of my model have any worldly meaning. If a State wished to readopt the death penalty in the post-*Furman* period that State could readopt it simply based on the public´s desire to have it. But

policymakers might also wish to justify a need for readopting the death penalty in their States. They can do this if one or both of the following situations occurred in the pre-*Furman* period: 1.) the State had a high murder rate compared to other States; and 2.) the State perceived an increase or gain in the murder rate. Still other States, where these situations do not apply, one could justify the readoption of the death penalty based on the reason that the murder rate is low is because the State had the death penalty previously. Therefore, failing to adopt the death penalty could result in the rise of the murder rate in the post-*Furman* period. Anyway you see it, an argument for the need for capital punishment could be made, provided there is the desire for it. The death penalty would be needed to bring down the murder rate in the first case or control the gain in the second. If we look back at Tables 1 and 4, we can see which States could justify a need for the death penalty as of 1972 based on the comparison of the ordinary and equilibrium murder rates of the States that were committed or not to having the death penalty in the pre-*Furman* period. The States of California, Colorado, Connecticut, Illinois, Indiana, Iowa, Missouri, Ohio, Pennsylvania, and Wisconsin could make a case for readopting the death penalty given the gain in the murder rate in the pre-*Furman* period. If we just compare the murder rates in the same period across the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia could argue that they need the death penalty to bring down the murder rate.

Why did not all States rush to draw up new death penalty legislation in conformity with *Furman vs. Georgia*, especially if they had been committed to the death penalty up until *Furman*? In other words, why did some States, namely Kansas, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Oregon, and South Dakota not readopt the death penalty by 1977, the year

of the first execution following the 10-year-long moratorium, when most States that had the death penalty in the pre-*Furman* period had already done so by then? Indeed, by then 32 of the 35 committed States in the pre-*Furman* period had already readopted the death penalty and not one of the previously anti-capital punishment States had readopted it, regardless of any need for it. It appears as if the vast majority of the States sought to return to the status quo in the pre-*Furman* period. Only Oregon readopted the death penalty statute in 1978. New Mexico and South Dakota readopted it in 1979. It was not until 1982 that New Jersey readopted; and it took New Hampshire over 10 years to do so, adopting it in 1991. Kansas waited until 1994 and New York—the last State to readopt—until 1995. Of these States, Kansas, New Hampshire, New Jersey, and South Dakota were pro-capital punishment States in the pre-*Furman* period, whereas the remaining three States were not. Interestingly, all of these States´ public were strongly in favor of the death penalty in the pre-*Furman* period, as they scored approximately four out of five points on the SNES opinion scale used to measure public opinion in the post-*Furman* period. However, none of them, whether previously committed or not, could justify the readoption of the death penalty as of 1972 because all of them had relatively low murder rates and none registered a noticeable gain in the murder rate. In fact, in New Jersey and New York, one could project a drop in the murder rate by comparing the ordinary average murder rate in this State with its targeted level. However, if one were to compare the equilibrium levels of the murder rate at the end of the pre- and post-*Furman* periods, one can see that all four States could indeed justify a need to adopt the death penalty when they did, given the sizable projected increase in their murder rates. This is an indication that policymakers in these States did indeed rely on the need argument when deciding on the severity of the penalty for murder. The desire for it could have been always there, but as it appears policymakers delayed the

readoption until they could justify a need for it.

Conclusion

This analysis provides evidence that the decision to have the death penalty on the books in the US is fundamentally the result of the legislative response to the public sentiment towards the death penalty *and* the murder rate. If the majority was in favor of the death penalty, then it was highly likely that policymakers retained or readopted it. But this is not news to scholars interested in the impact of public opinion on capital punishment. What I think may be novel is that policymakers also base their decisions on deterrence-based reasons or the need to have the death penalty. What the murder rate looks like or will look like makes a difference to policymakers, keeping them from simply translating public opinion into policy. Thus, both the deterrence or need and the desire hypotheses are important influents on capital punishment policymaking, at least in the US. Although the majority of deterrence scholars has been more interested in the reverse causal relationship between the death penalty and the murder rate, it may be worth pointing out that whether or not capital punishment is an effective deterrent, it is taken into account in policymaking as if it were.

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Table 1: Death Penalty Status in the U.S. States in the Pre- and Post-*Furman* Periods

States	Pre-*Furman* Commitment (1942-72)	Post-*Furman* Commitment (1972-95)
Alabama	Yes	Yes
Arizona	Yes	Yes
Arkansas	Yes	Yes
California	Yes	Yes
Colorado	Yes	Yes
Connecticut	Yes	Yes
Delaware	No	Yes
Florida	Yes	Yes
Georgia	Yes	Yes
Idaho	Yes	Yes
Illinois	Yes	Yes
Indiana	Yes	Yes
Iowa	No	No
Kansas	Yes	No
Kentucky	Yes	Yes
Louisiana	Yes	Yes
Maine	No	No
Maryland	Yes	Yes
Massachusetts	Yes	No
Michigan	No	No
Minnesota	No	No
Mississippi	Yes	Yes
Missouri	Yes	Yes
Montana	Yes	Yes
Nebraska	Yes	Yes
Nevada	Yes	Yes
New Hampshire	Yes	No
New Jersey	Yes	No
New Mexico	No	No
New York	No	No
North Carolina	Yes	Yes
North Dakota	No	No
Ohio	Yes	Yes
Oklahoma	Yes	Yes
Oregon	No	No
Pennsylvania	Yes	Yes
Rhode Island	No	No
South Carolina	Yes	Yes
South Dakota	Yes	No
Tennessee	Yes	Yes
Texas	Yes	Yes
Utah	Yes	Yes
Vermont	No	No
Virginia	Yes	Yes
Washington	Yes	Yes
West Virginia	No	No
Wisconsin	No	No
Wyoming	Yes	Yes

Sources: Mooney and Lee (1999); Nation al Prisoner Statisics (1974)

Notes: 1.) A "Yes" denotes the uninterrupted existence of the death penalty statute (pro-capital punishment States).

2.) The shading denotes those States that did not have an uninterrupted death penalty statute in the pre- and post-*Furman* periods under analysis. For the purpose of this study, New Jersey, having abolished the death penalty only in January of 1972, was considered pro-capital punishment in the pre-*Furman* period. The boxes denote States with mixed positions on the commitment to the death penalty statutes in the pre- and post-*Furman* periods.

3.) Two observations were dropped in the case of Nevada due to questionable data. Alaska and Hawaii were omitted due to missing

observations on some variables.

Table 2: Percentage in Favor of the Death Penalty, 1936

State	Percentage	State	Percentage
Alabama	69	Nebraska	66
Arizona	73	Nevada	84
Arkansas	76	New Hampshire	72
California	64	New Jersey	69
Colorado	56	New Mexico	62
Connecticut	67	New York	67
Delaware	60	North Carolina	67
Florida	75	North Dakota	58
Georgia	75	Ohio	62
Idaho	76	Oklahoma	59
Illinois	70	Oregon	59
Indiana	54	Pennsylvania	67
Iowa	61	Rhode Island	52
Kansas	63	South Carolina	68
Kentucky	68	South Dakota	52
Louisiana	68	Tennessee	69
Maine	56	Texas	65
Maryland	62	Utah	82
Massachusetts	67	Vermont	70
Michigan	53	Virginia	65
Minnesota	55	Washington	68
Mississippi	79	West Virginia	71
Missouri	69	Wisconsin	49
Montana	64	Wyoming	77

Source: Cantril (1951)

Notes: The shaded areas denote States that did not have the death penalty in 1936. The States of Arkansas, Delaware, Iowa, New Mexico, New York, Oregon, Vermont, and West Virginia removed the death penalty statute prior to 1972. New Jersey abolished the death penalty in January of 1972. South Dakota reestablished the death penalty statute in 1939.

Table 3: Crosstabulation of Pre-*Furman* Commitment to the Death Penalty and the Percentage in Favor of the Death Penalty

D P Commitment/Opinion	49-60% Favor Opinion		60-84% Favorable Opinion		
Strongly committed	Colorado Indiana Oklahoma South Dakota	*8.3%*	Alabama Kentucky New Jersey Wyoming Arizona Louisiana North Carolina Arkansas Maryland Ohio California Massachusetts Pennsylvania Connecticut Mississippi South Carolina Florida Missouri Texas Georgia Montana Tennessee Idaho Nebraska Utah Illinois Nevada Virginia Kansas New Hampshire Washington	*64.6%*	72.9%
Not committed	Delaware Maine Michigan Minnesota North Dakota Oregon Rhode Island Wisconsin	*16.7%*	Iowa New Mexico New York Vermont West Virginia	*10.4%*	27.1%
		25%		75%	100%

Table 4: Ordinary and Dynamic Murder Rates, 1942-72

State	Mean Murder Rate: Ordinary	Mean Murder Rate: Developing
Alabama	15.395	13.847
Arizona	6.888	6.916
Arkansas	9.937	9.287
California	4.890	10.800
Colorado	4.664	5.023
Connecticut	1.946	2.017
Delaware	5.934	5.904
Florida	12.076	11.626
Georgia	16.141	15.241
Idaho	2.857	3.009
Illinois	5.963	7.194
Indiana	4.321	4.505
Iowa	1.459	2.811
Kansas	3.582	3.564
Kentucky	9.375	8.599
Louisiana	9.806	9.666
Maine	1.840	1.806
Maryland	8.170	8.160
Massachusetts	1.780	
Michigan	5.007	2.891
Minnesota	1.370	1.452
Mississippi	11.494	11.225
Missouri	7.049	7.278
Montana	2.512	2.517
Nebraska	2.591	2.546
Nevada	8.723	8.873[a]
New Hampshire	1.322	1.311
New Jersey	3.182	1.827
New Mexico	6.183	6.317
New York	4.065	2.046
North Carolina	11.393	10.809
North Dakota	1.088	1.065
Ohio	4.697	5.699
Oklahoma	5.858	5.896
Oregon	3.068	3.073
Pennsylvania	3.387	3.909
Rhode Island	1.407	1.406
South Carolina	12.296	12.051
South Dakota	1.889	1.854
Tennessee	12.252	11.790
Texas	11.245	10.796
Utah	2.333	2.313
Vermont	1.551	1.744
Virginia	10.275	8.857
Washington	3.015	3.133
West Virginia	4.853	4.760
Wisconsin	1.803	1.619
Wyoming	4.530	4.471

Notes:

1.) The shading denotes those States that did not have an uninterrupted death penalty statute in both the pre- and post-*Furman* periods under analysis.

2.) Two observations were dropped in the case of Nevada due to questionable data. Alaska and Hawaii were omitted due to missing observations on some variables.

Table 5: Variables, Sources, and Descriptive Statistics

Variable	Variable Description	Source	Mean/St. Dev.		Min./Max.	
$DP_{post\text{-}Furman}$	Dummy variable coded 1 if state reinstated the death penalty in the period 1972-77 and kept it continuously until 1995; 0 if otherwise.	Death Penalty Information Center (DPIC);	.646	.483	0	1
$DPp_{re\text{-}Furman}$	Dummy variable coded 1 if state had an uninterrupted death penalty statute from 1942-72; 0 if otherwise.	DPIC; U.S. Dept. Justice (1974)	.729	.449	0	1
$Murder_{42}$	The number of murders per 100,000 (murder and manslaughter, culpable and negligent) in 1942	Statistical Abstracts of US	7.750	6.949	.63	24.59
$Murder_{72}$	The number of murders per 100,000 (murder and manslaughter, culpable and negligent) in 1972	Statistical Abstracts of US	7.494	4.592	1.2	18.5
Murder	The number of murders per 100,000 (murder and manslaughter, culpable and negligent) from 1942-95	Statistical Abstracts of US	5.858	4.577	.200	25.350
$ElectOpin_{post\text{-}Furman}$	Attitude regarding the death penalty measured as a support scale 1-5 for the death penalty based on the the Senate National Election Study (SNES); high means more liberal attitude	Norrander (forthcoming)	1.951	.219	1.49	2.44
$ElectOpin_{pre\text{-}Furman}$	Public opinion measured as the percentage of the population favoring the death penalty in the 1936 public opinion survey	Cantril (1951)	4.049	.219	3.560	4.510
$Murder*Elect_{pre\text{-}Furman}$	Interaction between the murder rate in 1942 and pre-*Furman* electorate opinion	Computed	454.112	391.249	24.960	1585.500
$Murder*Elect_{post\text{-}Furman}$	Interaction between the murder rate in 1972 and post-*Furman* electorate opinion (using SNES attitude capital punishment)	Computed	30.445	18.659	4.628	74.370
Politcal Culture 1	Dummy variable representing Elazar´s political culture coded 1 if individualistic culture; 0 if otherwise	Elazar (1966)	.333	.476	0	1
Political Culture 2	Dummy variable representing Elazar´s political culture coded 1 if traditionalistic culture; 0 if otherwise	Elazar (1966)	.313	.468	0	1
$Urbanization_{73}$	Proportion of the population living in a metropolitan area in 1973	Statistical Abstracts of US	.581	.242	.123	.933
$Urbanization_{42}$	Proportion of the population living in a metropolitan area in 1942	Statistical Abstracts of US	.481	.176	.214	.910

* These data were obtained using linear interpolation due to missing data in non-census years. An exponential interpolation was also performed and generated similar results as the linear interpolation.

Note: These data are state-level data; Hawaii and Alaska are omitted due to missing data in some of the variables.

Table 6: Logit Analysis of Determinants of the Death Penalty in the Pre- and Post-*Furman* Periods

	Pre-*Furman* Retention 1942-1972						Post-*Furman* Readoption 1972-1977					
Variables	**Model 1**	**Model 2**	**Model 3**	**Model 4**	**Model 5**	**Model 6**	**Model 1**	**Model 2**	**Model 3**	**Model 4**	**Model 5**	**Model 6**
Constant	-.360	-10.463***	-10.189**	-11.561**	-13.460**	-12.809**	-1.308**	-26.361***	-31.793***	-42.086**	-46.163**	-53.894**
	(.522)	(3.862)	(4.119)	(4.952)	(5.522)	(5.949)	(.620)	(9.584)	(11.896)	(18.227)	(18.239)	(22.806)
Murder Rate	.258****		.207*	.435*	.386	.470**	.289****		.333****	1.899	2.373	2.797
	(.010)		(.108)	(.262)	(.237)	(.224)	(.112)		(.010)	(2.617)	(2.649)	(2.744)
Public Opinion (high means greater support for the death penalty)		.180****	.158**	.183**	.185**	.180**		6.719****	7.478***	10.042**	10.906**	12.696**
		(.061)	(.066)	(.081)	(.083)	(.082)		(2.388)	(2.895)	(4.438)	(4.402)	(5.420)
Murder*Public Opinion				-.004	-.002	-.002				-.393	-.518	-.700
				(.004)	(.004)	(.004)				(.645)	(.655)	(.677)
Political Culture 1 (1 if individualistic)						-1.701						2.062
						(2.185)						(1.765)
Political Culture 2 (1 if traditionalistic)						.141						1.345
						(1.262						(1.062)
Urbanization					3.004	1.769					1.341	2.025
					(2.970)	(3.628)					(2.376)	(2.563)
N	45	48	45	45	45	45	48	48	48	48	48	48
Pseudo R^2	.187	.232	.332	.349	.370	.390	.198	.230	.416	.421	.428	.471
% Correctly Predicted	80.000	79.170	84.440	86.670	82.220	84.440	70.830	81.250	83.330	83.330	83.330	81.250
LL	-21.215	-21.547	-17.421	-16.988	-16.447	-15.915	-25.027	-24.020	-18.217	-18.076	-17.857	-16.511
χ^2	6.710	8.570	10.420	8.530	12.510	14.600	8.890	7.910	16.020	14.710	16.410	20.760

**** p<.005; ***p<.01; **p<.05; *p<.1

Notes:

1.) The values in parentheses are the standard errors of the coefficients.
2.) These data are State-level data.
3.) Hawaii and Alaska were omitted due to missing data in some of the variables.

[1] This is aside from arguments pertaining to the possibility of tainted procedures and unjust verdicts.

[2] Christopher Mooney and Mei-Hsien Lee (1999) describe three abolitionist periods since 1846. The first of these began with Michigan having abolished the death penalty (except in the case treason) in 1846; by 1887, three other States followed. The second period takes us back to the early twentieth century. Between 1897 and 1940, 10 more States had abolished the death penalty, but eight of these 10 ended up reestablishing it for certain circumstances. Finally, beginning in 1957 and until 1972, when this abolition period was ended by Supreme Court intervention, six States had done away with capital punishment by 1965; half of these States, however, reestablished the statute for specific cases by 1969.

[3] Bowers (1993) found that opinion polls do not reflect "genuine" support for the death penalty for the expressed death penalty support is spuriously induced by the public´s underestimation of the alternatives to capital punishment. Hans Zeisel and Alec Gallup (1989) report that about two-thirds of the American public in the late 1980s at this time believed in the deterrent effect of the death penalty while the academic community still seriously questioned it. Others have stressed the need to distinguish between informed public opinion and general public support as expressed in opinion polls (Vidmar and Ellsworth 1974; Roberts 1992; Hood 1996).

[4] Cesare Beccaria and the Classical School of Criminology made it a point to attack the death penalty as a deterrent measure. Contrary to what many authors claim regarding Beccaria´s position on the death penalty, he was not entirely against it. He specified situations for which the death penalty could constitute a suitable and proportional level of severity. Given the historical context at the time, in the Ancient Regime, where there were no limits on the cruelty of punishment—the very reason at the root of the Classical School—Beccaria and his followers advocated proportionality of penalties (Beccaria 1965).

[5] Sellin compared homicide rates before and after the abolition of the death penalty and between retentionist and abolitionist States with similar socio-economic and demographic characteristics. He did not control for factors that might affect the homicide rate; he also did not study the impact of the effective implementation of the capital punishment threat (Ehrlich 1975).

[6] Being that the nature of these data is quite static, as pointed out above, one might question the causal strength of this relationship. Erikson (1976), Nice (1992), and others have also raised the possibility that the causal relationship might also run in the opposite direction so that we do not know if it is really death penalty policy that influences opinion rather than vice-versa. One could overestimate the effect of opinion on the death penalty policy due to a positive feedback reciprocal relationship coming from the death penalty policy. One easy and immediate way to check on this is to consider the correlation between a prior measure of public opinion in the pre-*Furman* period and the readoption of the death penalty in the post-*Furman* period. A coefficient of .456 could suggest that one need not worry too terribly much about a reciprocal relationship here. This troublesome worry of reciprocality is a also a factor to take into account when considering the relationship between the murder rate and death penalty policy because one could underestimate the relationship due to the potential negative reciprocal feedback. Given the literature on the deterrent effect of capital punishment, it is entirely plausible to wonder if a given State´s policy on the death penalty might influence the murder rate. If one considers, though, the correlation between the death penalty policy status in the pre-*Furman* period and the murder rate at the start of the post-*Furman* period, .205, one may put this worry to the side.

[7] Naïve year and state dummy models were run, but due to the length of this paper, they cannot be shown. Naïve models are simple bivariate regressions where the explanatory variables are dummies and the dependent variable, in this case State murder rates, are standardized. Models such as these are useful in that they allow one to see where the variation in the dependent variable is coming from. If the explanatory dummy variables are years, the naïve year dummy model will tell us how the murder rate changes with the passage of each year; if the explanatory dummy variables are States, a naïve state dummy model will tell us how the murder rate changes across States.

[8] It is plausible to argue that, although at times the evolution of the murder rate may seem to indicate a deterrent effect and at other times fails to do so, changes in the murder rate may be mostly attributable to maturation effects (Lempert 1960; Cook and Campbell 1979). If this is the case, the murder rate is really not responding to death penalty policy at all, thus casting doubt on the possibility of duality or reciprocality.

[9] This technique allows one to generate a stability coefficient using combinations of the correlation coefficients of the periods of interest. This stability coefficient simply tells us how much change occurs from one time point to the next. The higher these coefficients, the more stable the murder rate. These coefficients are obtained from the formulae developed by Heise (1969) using correlational coefficients between the murder rates of the appointed times. Judging these coefficients, we can say that the average murder rates did not change much from one decade´s time to the next in either period, thus confirming our previous regressional inference from the naïve state and year dummy models.

[10] Previous studies in political science modelling adoption questions have increasingly turned to Event History Analysis (EHA) designs. Its novelty and its purpose make it an attractive analysis tool for political scientists, especially those whose interests lie in policy analysis.
Depending on the specific research question at hand, the hazard model might not be appropriate. These models estimate how time affects, for instance, the adoption of the "Three Strikes" law. Although other factors that influence the event of adopting the law are also considered and estimated in the analyses, it is the time of adoption that EHA really tells us about. Arguably, this may not be central to the question being asked, but rather the effect of a particular independent variable on the adoption of the law. A cross-sectional design with a logit estimation allows me to conduct this analysis in a more straightforward way. Why? I am ultimately interested in why State X_1 has the death penalty relative to State X_2 and not the precise moment a particular State adopted or readopted the death penalty. That precise moment may not be the result of the factors considered in the model, even though the model may, for instance, be a good model in explaining the adoption or readoption of the death penalty. The "hazard" of a particular State dropping out of the "at risk" group for capital punishment reform may occur at T_1, T_2, or T_3, etc. depending on one or a series of factors not captured in the model, like for example, the personality or moral/political will of the governor in a given State. The explanatory variables will have or not have the same causal force, but who decides may mark the difference whether a State readopts in a particular year or the year after, etc. when a new governor with a different stance on the subject is elected. Thus, EHA does not further our understanding of the determinants of the adoption/readoption of the death penalty any more than would a logit estimation of these determinants.