

THE POLITICAL SOCIOLOGY OF DEATH SENTENCE RESOLUTIONS: AN ANALYSIS  
OF FOURTEEN U.S. STATES, 1977-2005

by

SABRINA RILES

(Under the Direction of Teena Wilhelm)

ABSTRACT

*Objective.* This paper uses Cox proportional hazards models to explain inmate departures from death row from 1977-2005 in fourteen U.S. states. I argue that political and institutional powers afforded to governors matter more in executions than social and economic conditions within states. *Methods.* The data represents all inmate-years from 1977-2005. *Results.* When deciding to execute or overturn a capital conviction and/or sentence, political and institutional powers afforded to the governor as well as economic and social characteristics of states matter. Commutations, however, are best explained by demographic characteristics of the offender. *Conclusions.* Explanations for departures from death row differ by type and over time. Scholars should refine theories regarding who dies and who survives on death row and why.

INDEX WORDS: States, politics, executions, commutations, overturned convictions, overturned sentences, unemployment, clemency, partisan politics, lame duck administration periods

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## CHAPTER 1

### INTRODUCTION

An execution is the most severe legal penalty. However, minimal research on the factors that influence the sanction exists. While theorists have argued that criminal punishment is intrinsically political (Foucault, 1977; Garland, 1990, Savelsberg, 1994), the political forces that alter capital resolutions and durations have largely been ignored. The literature has focused instead on who is given the death sentence and, whether on the whole, it serves as deterrent. While these studies have been useful, the political determinants of executions and death sentence durations deserve scrutiny.

According to researchers, executions are one the most vivid displays of state power (Foucault, 1977; Garland, 1990). Foucault (1977) views executions as rituals designed to enhance political power by reminding potential miscreants of the state's vast coercive resources. While juries and thus citizens participate in the initial decision-making process, state and federal officials have more consequential effects. Legislators craft the laws. Additionally, in states with death penalty laws, governors and advisory boards help to decide which offenders receive commutations. As penal sanctions are carried out by agencies of the state, any pressure surrounding executions is garnered by political officials. Thus, it is important to understand the extent of political power as it relates to durations of death sentences. Further, to whom should responsibility be attributed for the political nature of the death penalty.

In recent years, variations in durations of death sentences have garnered attention because death penalty states differ sharply in their willingness to execute. In many reluctant jurisdictions, capital offenders can spend well over two decades on death row, while other states execute in far less time. These differences have raised concern for citizens of states with death penalty laws. For one, placing an individual on death row is an enormously expensive undertaking for tax payers. Moreover, delays in execution add measurably to that expense (Constanzo and White, 1994). Furthermore, delays raise constitutional concerns regarding whether they contravene the Eighth Amendment's bar against cruel and unusual punishment. Equally, critics of speedy executions worry about the impact on the rights of the accused and their ability to prove their innocence once they have been placed on death row.

Collectively, these concerns provide rationale for the importance of looking at the duration of capital sentences. To fill a void in the literature, this research asks the following questions: Do political and institutional powers afforded to the governor matter more in executions than social and economic conditions within a state? Is there a political element to what is normally considered a legal process? Moreover, are there any correlating factors that either mitigate or exacerbate these probabilities? And finally, how do these factors affect death sentence durations?

I will use an event history model to assess those factors that influence post-death sentence outcomes. These outcomes are operationalized as execution, commutation, overturning of conviction and/or sentence, or staying on death row. To buttress the sparse literature on post-sentence probabilities, I use a survival analysis that adjusts for censoring and simultaneously assesses offender, economic, political, structural, and regional characteristics. The multiple advantages that result from the inclusion of both individual and aggregate factors suggest that

this analysis will provide an enhanced picture of the post-sentencing death penalty process, including the extent to which the political environment may influence these outcomes. Glimpses of existing literature show support for these contentions. A review of this research can be found in the following chapter.

## CHAPTER TWO

### THEORETICAL FRAMEWORK

This research asks the question whether political and institutional powers matter more in executions than social and economic conditions within a state. To answer this query, I review two general perspectives that have guided prior investigations of state behavior. Stemming off hypotheses about the effects of social divisions, I begin by discussing the explanatory power of racial cleavages and economic inequality on capital sentence outcomes. Second, I explore the political powers afforded to governors that are expected to exacerbate executions.

#### **Race and Economic Divisions**

Weberian and neo-Marxist theories see criminal law as primarily serving the interests of the privileged. If criminal sanctions are partially shaped by the need to control an underclass, enhanced state coercion can be expected where this threat is most intense. Given that states are not insulated from social forces, it is plausible that racial and economic divisions within states may exacerbate efforts to control the underclass via criminal punishment. Existing research has recognized the following correlations between social divisions and criminal punishment.

#### *Racial Mix*

Conflicts about race once were and perhaps still are the most salient feature of politics in the United States (Godfield, 1997; Jacobs and Tope, 2007, Key, 1949). Racial threat theories suggest that enhanced minority presence leads to repression. According to theorists, a majority's

ethnocentric views and that group's inclination to view minorities as trespassers enhance the group's presumption that they should retain exclusive claims over important rights and privileges (Blalock, 1967; Blumer, 1958; Bobo and Hutchings, 1996). Moreover, hostility and entrenched beliefs about a majority's "rightful" position are solidified by the political struggles that occur when minority groups seek to alter these arrangements (Blumer, 1958). Consequently, when large minority populations endanger their dominance, whites, who often constitute the majority, often react by supporting law and order measures that at least indirectly target these minorities.

Results derived from prior analyses find support for these contentions. Particularly, racist views were found to be more prevalent in cities with more black residents (Fosset and Kiecolt, 1989; Quillian, 1996; Taylor, 1998). Additionally, threat research has discovered that enhanced minority presence can produce additional votes for anti-minority candidates (Giles and Hertz, 1994; Heer, 1959) who are more likely to endorse harsh criminal punishments. Holding crime rates constant, Liska, Lawrence, and Sanchirico (1982) and Quillian and Pager (2001) found that fear of crime was greater in cities or neighborhoods with more black residents. Moreover, results from prior research indicate that the death penalty is likely to be legalized in states with the highest percentages of African American residents (Jacobs and Carmichael, 2002), while the number of death sentences is greater in states with the largest African American populations (Jacobs, Carmichael, and Kent, 2005).

Furthermore, these results suggest that relationships between threat and repressive outcomes should be curvilinear. Taylor (1998) shows that many associations between minority presence and the racial attitudes of whites depart from linearity. At present, these contentions are still debatable. Moreover, these analyses have typically focused primarily on the presence of African Americans and Hispanics while omitting the inclusion of other groups. Still, additional

examinations of death sentencing that do not place assumptions on the relationship between threat and sentencing outcomes must be performed for an improved understanding of threat effects. Given these findings, I anticipate that in areas characterized by high minority presence, the probability of an offender facing execution will be greater. Moreover, I expect death sentence durations to be shorter as a result of a tough on crime tactic of state officeholders. Together, these expectations are consistent with minorities being punished for their perceived threat.

### *Economic Threat and Unemployment*

Economic versions of conflict theory maintain that disparities in economic rewards create potentially unstable social arrangements that must be sustained by punitive threats (Giddens, 1971; Lenski, 1966). Theorists such as Alexis Tocqueville and Emile Durkheim who do not stress conflict claim that as inequality expands, affluent citizens exhibit reduced sympathy for their less fortunate counterparts (Whitman, 2003). For these reasons, David Garland (1990) claims that criminal punishments are largely determined by relations between the rich and poor because harsh punishments reinforce the hierarchical order and dramatize state power.

The logic of exchange provides another theoretical link between the degree of economic inequality and punitive measures. In a society in which production is coordinated by markets, it is not implausible that economic considerations would play a role in deciding when states will and will not execute. Existing research has found correlations between unemployment rates and decisions to execute by states (Unah and Steenbergen, 2005). According to Unah and Steenbergen (2005), death row inmates face greater risk of execution during economic downturns exemplified by high unemployment. This finding suggests that economic conditions

do however influence how states resolve capital cases. Moreover, it indicates that economic concerns may have priority in executions than other departure types. However, further analyses that include other departure types must be taken into account before any conclusions can be made.

### **Political Explanations: Gubernatorial Control**

By definition, a state's use of the death penalty is a political act. Decisions about whether citizens are executed or spared death by the state involve the exercise of one of the highest forms of political power. Thus, it is no surprise to find some level of politicization surrounding virtually all aspects of the death penalty. However, the interesting question may not be whether political factors influence these decisions, but rather which factors do so during post-sentencing. Existing research suggests that governors may have influence, and specifically the degree of institutional power and norms afforded the position.

#### *Why Study the Governor?*

As chief executive of their state, governors are granted substantial authority in capital resolutions. In fourteen states that employ the death penalty, governors are given sole clemency decision making authority. In virtue of this authority, a governor can reduce an offender's sentence to life imprisonment either with or without parole or vacate a sentence altogether. Clemency as practiced in the United States is almost exclusively an executive function and not a judicial function. Moreover, the unique nature of clemency as a tool of the executive branch has also resulted in very limited judicial review of clemency procedures and decisions. To date, the judicial branch has only rarely involved itself in issues that affect the grant or denial of clemency (Carter and Moylan, 2004). With little review from the courts, governors in these states serve as



supreme arbiters of who lives and who dies on death row. Analyzing institutional powers such as clemency authority in addition to a state's environment may shed light on when this power is most pronounced. Moreover, it raises questions of to whom should capital decisions be vested.

In addition to clemency, institutional powers such as the line-item veto allow governors control over their state's budget.<sup>1</sup> As a result, a governor can decide either to increase or decrease corrections expenses from year to year. In virtue of this power, governors have substantial influence over impositions and resolutions of capital sentences which also can vary over time. Moreover, execution of this power can influence durations of death sentences. In addition, governors, like other political officials, may have parochial interests that help determine political outcomes.

Aside from their institutional powers, governors are at the apex of state system, overseeing the execution of all legal sanctions. Standing at this pivotal position, governors are afforded extensive power to either enhance or contract their responsibility of correcting injustice. For many who wish to retain careers in politics, their actions as governors are crucial to their political survival. As a result, governors may use capital punishment as a political tool to augment their notoriety and support. Studying the influence of the institutional and political powers afforded to governors on capital sentence departures and durations is worthy of inquiry for a number of reasons. First, such inquiry brings to public attention how accountable government officials are to their constituents. Moreover, it highlights whose interests the government serves, and how equitable the American system is. Given that equality before the law is at the heart of our penal system, biases in the enforcement of law threaten the perception

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<sup>1</sup> Although this research does not control for line-item veto power among state executives, it is worth noting that all but seven states afford their governors some version of this power. Those states without the line-item veto are Indiana, Maryland, Nevada, New Hampshire, North Carolina, Rhode Island, and Vermont.

of consistency citizens have of it. Consequently, the office of governor should be analyzed. As such, this research investigates powers afforded to the governor.

## CHAPTER THREE

### HYPOTHESES AND CONTROLS

Up to this point, few studies have examined resolutions of capital sentences using a multilevel approach. Unlike preceding research, this research investigates the extent to which race and economic divisions, gubernatorial politics, demographic and regional factors influence capital resolutions and durations. Expectations of this research are outlined below.

#### **Race and Economic Divisions**

Because executions are dramatic displays of state power and less than ten percent of all death sentences result in executions, it follows that extralegal factors can explain capital resolutions (Jacobs and Kent, 2007). According to threat theories, who lives and dies on death row can be explained by the threat minority groups pose against majority populations. Given that racial minorities are often disproportionately incarcerated, it follows that these offenders may also experience discrimination once placed on death row. These findings lead one to expect that in states characterized by large minority group presence, racial minorities will face death at higher rates. Consequently, these offenders should receive both commutations and overturns at lower rates than offenders of other racial or ethnic groups. Moreover, these offenders may be more likely to remain on death row for shorter durations. To control for these effects, *ethnic homogeneity* scores for each state were available from Winters (2005). Scores range from 2223-4425 where higher scores signify greater homogeneity whereas lower scores indicate more heterogeneity.

Likewise, market influences are expected to have explanatory power in deciding when states will and will not execute. Given the high cost per year of housing death row inmates, states characterized by high unemployment are expected to execute offenders at faster rates than states with lower unemployment rates. Additionally, these states are expected to overturn capital convictions and sentences and grant clemencies at higher rates in an effort to reduce correctional expenses. Contrastingly, states with lower unemployment rates are expected to have lower execution, commutation, and overturn rates, and longer death row sentences. Yearly state *unemployment* rates were obtained from the Bureau of Economic Analysis website.

### **Political Considerations: The Role of Governors**

#### *Ideology and Partisan Strategies of Elected Officials*

In addition to racial and economic concerns, developments in political and sociological research suggest that political processes are not simple derivatives of social and economic arrangements (Evans et al. 1984). State officials often act autonomously and support policies that will enhance their parochial interests. David Mayhew (1974) asserted that politicians, particularly members of Congress, seek to gain power through re-election. Most importantly, Mayhew (1974) maintained that the most important aspect of re-election is accountability. The representative is expected to do what is in the best interest of the constituents, hoping this leads the people to vote for him. Therefore, when making policy he should argue for the best interest of his voters. As a result, these theoretical explanations have led social scientists to explore other political actors and their responsiveness to external influences. Moreover, Allen and Campbell (1994) found Republican candidates can win elections by appealing to lower-middle class and working-class voters who do not benefit from Republican economic policies. Thus, these

officials use law and order claims to appeal to less affluent, non-minority citizens who are more likely to be crime victims and whom often live where risks are greater to divide the Democratic coalition (Edsall and Edsall, 1991; Garland, 2001; Oliver, 2003). Consequently, this division allows Republicans to garner enough votes to either get in office. Once in office, these officials then continue to perpetuate these policies to stay there.

Using these works as the foundation for their hypotheses, researchers have begun to empirically test the impacts of these forces on state executives. If accurate, these findings lead to the expectation that increases in Republican governors who employ these tactics should result in increases in executions. Since state law and order rhetoric ought to influence public opinion, increases should expand, especially, after state executives are elected. Additionally, these partisan features are expected to decrease prospects of receiving either a commuted or overturned conviction or sentence. Moreover, offenders sentenced in these states are expected to remain on death row for longer durations. Furthermore, this logic suggests that substantial Republican strength in the legislature will produce similar results. To control for partisan features, a partisanship variable was included using data from Carl Klarner's (2005) state party competition dataset. Partisanship for both the governor and state legislature were treated as dichotomous entities with zero indicating Democrat and one indicating Republican. As a result, two variables were created to show this influence *Republican governor* and *Republican legislature*.

#### *Governor Approval Rating*

During the final decades of the twentieth century, New Federalism initiatives promoted by Nixon and Reagan produced a shift in responsibility for education, health, and welfare

programs, among other policy areas, from the national government to the states (Nathan, 1983). At the center of these changes has been the office of governor. The previously weak governorship now has the authority over appointments, budgets, and legislation (Beyle, 1999; Rosenthal, 1990). Simultaneously, the governor has become the most visible figure in state politics. As a consequence of the authority and visibility that has been awarded to the governorship, people hold governors responsible for the quality of government, public policy, and life in the state (King and Cohen, 2004).

Analogous to the presidency, citizens unhappy with the direction and policies of state government can make the governor the target of their disgruntlement. This connection is clearest on Election Day, when voters are more likely to cast their ballots for popular governors than unpopular candidates (King, 2001). Similar to the president, the ability of governors to achieve their policy objectives rests on both formal and informal powers granted to their position. In virtue of the increased authority afforded to executives, King's research (2001) suggests that a governor's popularity rating among his constituents may influence the policies a governor supports. In virtue of King's (2001) accountability claim, I expect that a governor's popularity rating among his constituents will decrease the occurrence of executions within a state.

Moreover, I expect that higher approval ratings should have a positive influence on commutations, causing shorter capital durations. In the United States, government is best understood as one of separate branches with shared powers. However, collaborative and cooperative inter-branch functions have become even more essential as the responsibility for executing national policy has increasingly fallen to state governments. Since the judicial and executive branches have long worked together, I expect positive ratings of governors to have a similar affect in overturns. Accordingly, I hypothesize that courts will overturn capital

judgments when executive relations within a state are amiable. To control for governor approval, I use public opinion scores from the U.S. Job Approval Ratings (JAR) dataset assembled by Beyle, Niemi, and Sigelman (2002). *Governor approval rating* is operationalized as the percentage of positive responses to the governor's job assessment over a number of response categories.

### *Timing*

Anecdotal evidence, both at the state and federal levels, suggests that clemency decisions by an executive officer at the close of an administration might vary from decisions made at other times during an administration. Two examples illustrate the sensitivity of commutations to time periods in an executive's administration. In 1986, New Mexico Governor Toney Anaya granted clemency to five death row inmates just prior to leaving office in 1987. Similarly, former Ohio Governor Richard Celeste granted clemency to eight death row inmates prior to leaving office in 1991. However, neither governor granted clemency during any other time period to an offender before the year prior to leaving office. After leaving office, only former governor Celeste reentered the political scene to serve as an ambassador under the Clinton administration.

The logic behind the possibility that time matters is straightforward. To the extent that clemency grants to death row inmates are politically unpopular and risk inflicting political damage to a granting governor, a governor departing office after an adverse election result, a term limitation, or a decision not to run again presumably is less sensitive to those costs (Bedau, 1991). Stemming off this reasoning, I expect that an offender will have a higher probability of receiving a commuted disposition and a lower probability of facing execution during a lame duck period in an executive administration. Moreover, I anticipate that during executive lame duck

periods courts will be less inclined to consider liberal orientations concerning punishment, even if endorsed by other state officials. To assess the effects of time periods in administration, a *lame duck* variable was created and operationalized as the last year of an administration before a new executive. Data to generate this variable was obtained from the National Governor's Association online database.

### *Gubernatorial Election Cycles*

While the link between presidential elections and clemency decisions is arguably attenuated, the link between gubernatorial elections and clemency is far more direct and robust. Researchers note that state elections influence other state-level activities, ranging from taxing and spending issues to police hiring (Levitt, 1997). Moreover, prior research conducted by Pridemore (2000) that assessed clemency decisions between 1974 and 1995 found that offenders who were older, male, sentenced in the South and whose final disposition took place during a gubernatorial election cycle were less likely to receive clemency. Additionally, Klasmeier (1995) noted the possibility that governors seeking to "ingratiate themselves with a fearful and vengeful electorate" might alter their clemency decisions with an eye toward elections. Consequently, states elections are expected to have greater potential to influence clemency decisions in states that vest clemency authority solely with their governors.

Stemming off the discovery that gubernatorial election cycles reduce clemency likelihoods (Pridemore, 2000), I purport that during gubernatorial election cycles offenders will have a lower probability of receiving a commutation, particularly in states that vest clemency authority with their governors. Stemming off the logic that these cycles will reduce clemencies, I expect reductions in commutations to result in increases in both executions and overturned



judgments. To control for the effect of gubernatorial election cycles on capital departures, a *gubernatorial election year* variable was created and operationalized dichotomously to denote the presence or absence of an election year. Again, the National Governor's Association online database was used to acquire this information.

#### *Clemency Decision-Making Authority*

The weight of political and, to a lesser extent, institutional factors on clemency decisions has remained tacit. Stemming on the notion that governors are not insulated from political factors, conventional wisdom suggests that administrative boards rather than governors are better positioned to resist public opinion and, therefore, more likely to remove an offender from death row. Conversely, former Illinois Governor Ryan's imposition of a death penalty moratorium and subsequent grant of clemency to nearly one hundred sixty inmates on Illinois's death row in 2002 received significant public attention. Ryan's actions suggest that clemency decisions may be a result of political and institutional variables that interact. For example, political factors may be more likely to have an effect in states where clemency authority is vested in elected governors rather than appointed administration boards or vice versa. Still, further examinations must be made before conclusions can be drawn.

Although few studies have assessed the influence of institutional factors on executions, I predict that in states where governors have sole clemency decision making authority, offenders will have a greater likelihood of receiving a commuted or overturned decree and a lower probability of facing execution than offenders sentenced in states where clemency decision-making power is vested to an administrative board or blended by a board on which the governor is a member. To control for institutional effects, a *pure executive* variable was included from

data obtained from the Death Penalty Information Center. The variable denotes the authority of governors to grant clemency without the consideration of other political actors. As such, no other authority type is assessed in this research.

## **Alternative Explanations**

### *Demographics of the Offender*

Beyond the major expectations, alternative factors may also influence who survives on death row. Existing research has long documented the effects of personal characteristics of the offender on post-sentence outcomes (Baldus and Woodworth, 2003). One explanation researchers purport as an influence on death penalty impositions is the offender's race as well as the race of the victim on the imposition of the death penalty (Zeisel, 1981; Steiker and Steiker, 1995, Baldus et al. 1998). For instance, after controlling for the criminal record of the offender and the severity of the crime, blacks are more than four times as likely to receive the death sentence (Baldus et al. 1998).

Conversely, few studies have examined the influence of race once an inmate has been placed on death row. Of those that have examined these effects, none have found supporting evidence for racial bias (Argys and Mocan, 2004; Unah and Steenbergen, 2005). Findings from this research suggest that since black are less likely to be executed than are white inmates, some of the discrimination that may have taken place earlier in the sentencing process may be offset once blacks are placed on death row (Argys and Mocan, 2004; Unah and Steenbergen, 2005). That is, given the right circumstances, blacks face a smaller likelihood of execution and spend more time on death row than whites. However, a comprehensive model should look at the entire process that leads to execution and should assess when racial biases occur and whether such

biases are corrected in subsequent phases of the process or persist. This research intends to examine not only whether these effects occur but also whether these effects differ by departure type. As such, these attributes will be assessed in each model type.

Supplementing explanations posed for disparities in sentencing is the argument posing age as significant causal factor. Yet, research findings on the influence of age in sentencing are sparse. In addition, recent research divulges the factor is more complex than is often recognized. Thought to have a linear effect, age in many existing research designs has been controlled for as a continuous variable. In many of these studies, age has been found to have negligible effects on differing sentences. However, Steffensmeier, Ulmer and Kramer (1995) recently clarified the role of age in sentencing as having a curvilinear effect.

In their analysis discerning who shall live and who shall die once an inmate has been sentenced to death, Argys and Mocan (2004) found that as the age of an inmate at the time of sentencing increases, the likelihood of having the sentence commuted goes down. The effects found were nonlinear, and the impact of age on the probability of clemency was positive for offenders after the age of forty-four. These findings signify that who lives and dies on death row may depend on personal rather than criminal characteristics of the inmate.

In addition to the features mentioned, researchers have assessed the effects of gender on capital sentencing outcomes. Previous research has found that in comparison to females, trial courts give less lenient sentences to males (Bickle and Peterson, 1991). This finding may be partially based on a failure to control for the ways offenders participated in their crimes. Inasmuch as their involvement is less pernicious, female offenders receive lighter sentences than their male peers. Therefore, it is reasonable to expect that chivalrous inclinations or focal

concerns may be paramount in post-sentencing decisions as well, thereby reducing the probability of execution of females. As such, this research controls for the gender effects of the offender. Due to limited accessibility, the gender of the victim or victims is not assessed in this research.

In congruence with these findings, I expect the race, gender, and age of the offender to have an effect on state officials' decisions to execute, commute, and overturn. Thus, I anticipate whites, males, and both young and old offenders to have higher probabilities of being executed in proportion to their racial, gender, and age counterparts.<sup>2</sup> Additionally, these offenders are expected to remain on death row for shorter periods of time and receive commutations and overturned convictions and/or sentences at lower rates. To control for these effects, both *race* and *gender* of the offender were included and treated as dichotomous entities in congruence with the expected results. Demographic data was obtained from the *Capital Punishment in the United States, 1973-2005*, which was compiled by the United States Department of Commerce and the Census Bureau and published by the Bureau of Justice Statistics.

### *Regional Influence*

Why is capital punishment nonexistent in some states? Harries and Cheatwood (1997) assert that the most clear response is that capital punishment has a distinctive geography, ranging along a continuum from abolitionists to relatively frequent executions, and it is clear that the various elements of American culture that have an impact on capital punishment exhibit frequently sharp spatial variations, particularly in terms of state laws. "These variations," the authors maintain, "can show up in more subtle ways having to do with customary interracial

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<sup>2</sup> Although not specified in the text, these controls are expected to influence all departure types. Thus, they are included in all three models (executions, commutations, and overturned convictions and/or sentences).

relationships, or the moral, religious, and political philosophy of the state's founders and the imprimatur, or otherwise, that they put on capital punishment" (33). To date, all states in the former Confederacy have a death penalty statute while several states that were not part of the Confederacy do not. According to Pridemore (2000), "Southern society and southern justice are thought to be more punitive and more violent than elsewhere in the country" (167). However, whether the data bear out the perception surrounding the death penalty's application in the South remains unclear.

Given that death penalty statutes are highly correlated with geographic location, I suspect that regional influences demarcated by the South will affect capital outcomes in former south states. Being known for its punitive nature, it follows that states in the former South should be more likely to execute and less likely to grant commutations or overtures than states in other regions. Additionally, I conjecture that offenders in these states will serve shorter durations on death row. To control for regional effects, a *south* variable was included and operationalized as any state that was part of the historical Confederacy.

## CHAPTER FOUR

## DATA AND METHODS

Using the *Capital Punishment in the United States, 1977-2005* dataset, this study evaluates death sentences imposed within fourteen U.S. States, accounting for change over time and variation among departure-types. Mirroring Cauthen and Latzer's (2005) research, I chose to analyze capital sentences in similar states.<sup>3</sup> States were chosen as representative of the thirty-seven states that have enforceable death penalty laws, as described in Table 1.<sup>4</sup>

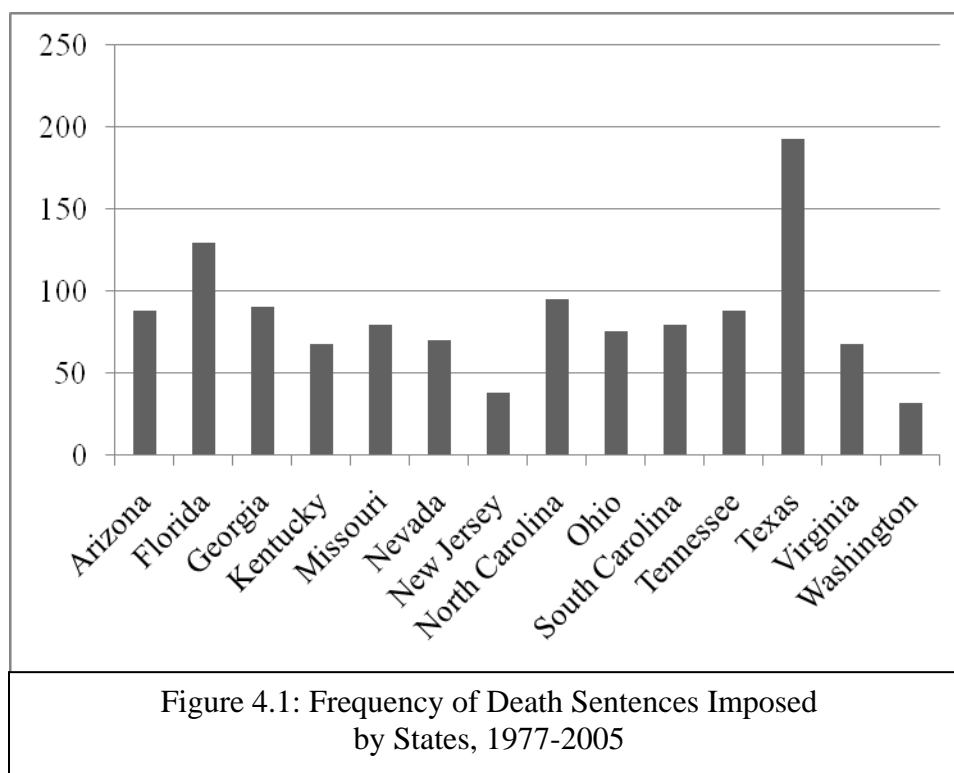
TABLE 4.1: Typology of States Employing the Death Penalty  
Source: Cauthen and Latzer (2005)

<i>Classification</i>	<i>Death Sentence Rate</i>	<i>Reversal Rate</i>	<i>Execution Rate</i>	<i>States</i>
Active	Average or Below	Average	Average or Below	KY, NJ, WA
Symbolic	Above Average or High	Average or Below	Very Low	NV, OH, TN
Inefficient	High or Very High	High	Moderate or Low	AR, GA, FL, NC
Aggressive	High or Very High	Limited	High	MO, SC, TX, VA

<sup>3</sup> States examined in both works were Arizona, Florida, Georgia, Kentucky, Missouri, New Jersey, Nevada, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia, and Washington.

<sup>4</sup> This typology is characteristic of findings derived in Cauthen and Latzer's (2005) study on capital appeals. Results from this analysis may illustrate different frequencies based on cases selected.

Overall, over 4,500 of the 7,000 known inmates that were placed on death row between 1977 and 2005 were from the states chosen in this analysis.<sup>5</sup> Using a systematic random sampling technique, 1,200 sentences were extracted for examination. A total of 1,200 offenders and 11,595 offender-years appear in the data. Random samples of sentences were chosen from each state. Figure 4.1 shows how many sentences were derived from each state.



STATE	AZ	FL	GA	KY	MO	NV	NJ	NC	OH	SC	TN	TX	VA	WA
N=1200	89	130	92	68	80	70	38	95	76	80	88	194	68	32

Given that the dependent variable is duration, it is appropriate to employ an event history modeling technique. To predict the influence of economic or political factors within a state on

<sup>5</sup> Death sentences per year can be confirmed at the following website: <http://www.deathpenaltyinfo.org/death-sentences-united-states-1977-2007>. However, this analysis only focused on a random sample of cases between 1977 and 2005.

the likelihood of execution, commutation, or overturning judgment, I use a Cox proportional hazards models.<sup>6</sup> Unlike its primary alternatives, the Weibull and Gompertz model, the Cox model makes no assumption about the distribution of the data and thereby avoids misspecification of the shape parameter or hazard function (Box-Steffensmeier and Jones, 2004:47-48). To examine capital sentence resolutions, this analysis excludes any inmates who died while serving a capital sentence.

During a capital sentence, an inmate is said to be “at risk” of “failure,” with the probability of an inmate’s sentence being terminated defining a hazard rate. To discern the effects of social, political, personal, regional, and institutional characteristics on the hazard rate for each departure-type, a competing risks approach is employed (Box-Steffensmeier and Jones, 2004; Vining, 2009:10). The result is the construction of models for each departure type (Vining, 2009:11). Since staying on death row requires no final disposition, only models are generated a) for those executed, b) for those who received a commutation, and c) for those who received an overturned judgment. The models include state and year fixed effects, which control for unobserved differences between states by including a set of state dummies, and a set of year dummies to capture.

Taking into account the adequacy of the proportional hazards assumption, it is important that each observation’s hazard function follows the same pattern over time. According to Kalbfleisch and Prentice (1980), misspecified proportional hazards models overestimate the impact of variables whose associated hazards are increasing, while coefficient estimates for covariates in which the hazards are converging will be biased towards zero. To test the

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<sup>6</sup> To examine capital sentence resolutions, this analysis, following that Unah and Steenbergen (2005), excludes cases in which an inmate died or escaped while serving a capital sentence. Moreover, these departures were not pertinent to the focus of this study (i.e, decisions to execute, commute, overturn convictions and/or sentences, or keep an offender on death row).



proportional hazards assumption, Schoenfeld residuals were generated and used to calculate the rho, chi-square, and p-value for each covariate (Vining, 2009:13). Where the proportional hazards assumption failed, the offending explanatory variables were multiplied by the duration variable (*duration*) and the resulting interaction terms were included in the revised models (Box-Steffensmeier and Jones, 2004: 134-137; Vining, 2009:13). In the execution model, interactions were created for governor approval and governor election year. In the commutation model, interactions were created for lame duck governor year and unemployment.

In virtue of coefficients derived from Cox models are difficult to interpret, the results of the models generated in this analysis are expressed as hazards ratios.<sup>7</sup> These figures represent the relative risk of departures corresponding to a unit increase in the independent variable with all other variables held at their means (Vining, 2009:14). Hazards ratios equal to one indicate no change in risk. Figures greater than one indicate an increased hazards rate or higher probability of an event, while contrastingly, those less than one indicate a lower probability of an event. The degree greater or less than one is interpretable as equivalent to the percent change in the probability of a death sentence being terminated. For example, a hazard ratio of 1.17 represents a seventeen percent increase in the hazard of an inmate leaving death row. Likewise, a hazard ratio of .89 indicates that departure is eleven percent as likely when the action represented by the variable is nonexistent.

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<sup>7</sup> The Cox coefficient is the log of the hazard ratio (Box-Steffensmeier and Jones, 2004:50; Vining, 2009:14).

## CHAPTER FIVE

## RESULTS

**Descriptive Statistics**

As Figure 5.1 demonstrates, offenders in this sample facing death row between 1977 and 2005 were more likely to receive a commuted or overturned judgment than face the death penalty. In the 1,200 sentences chosen for analysis, 21 (2%) offenders received a commuted while 439 (37%) offenders received an overturned ruling. Surprisingly, 366 (30%) offenders were executed while the remaining 374 (31%) remained on death row.

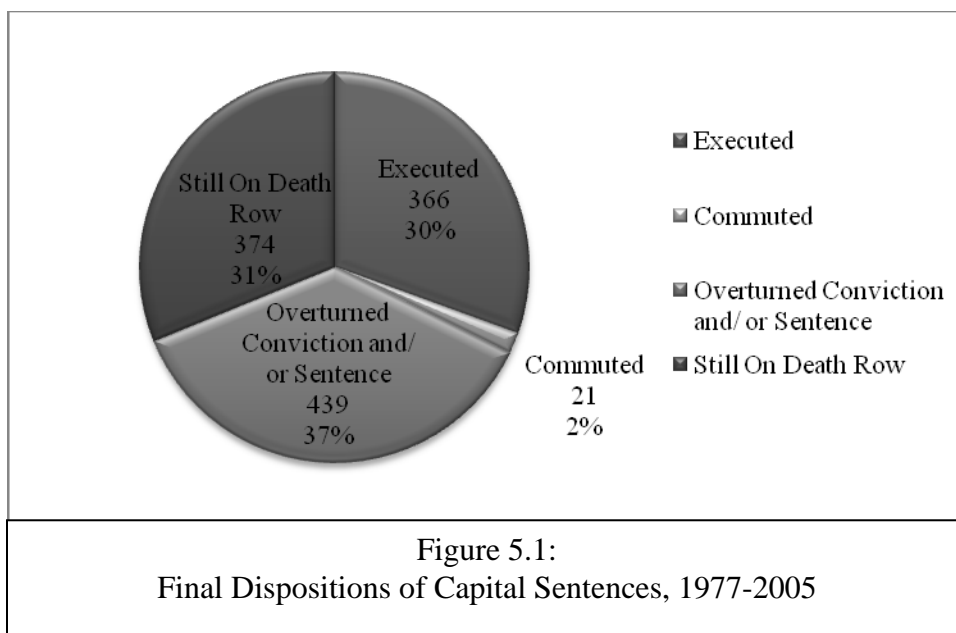
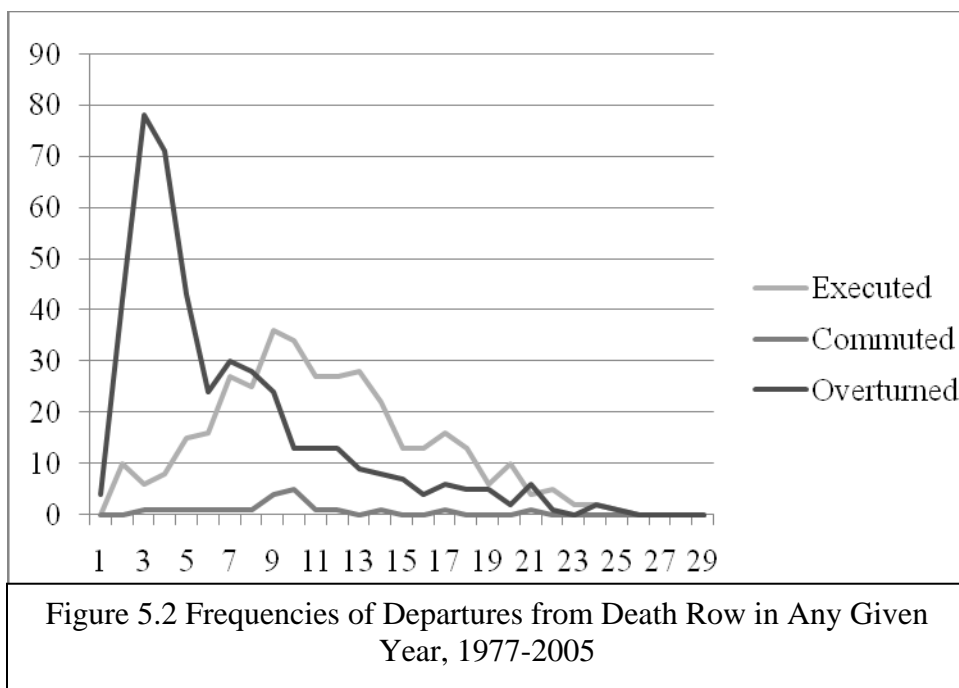


Figure 5.2 summarizes the frequency of each departure type for the cases observed. The chart suggests that offenders are more likely to receive an overturned judgment during the first four years of being sentenced to death row and decrease over time. Moreover, the results illustrate that both executions and commutations are most likely to occur between year nine and year ten but decrease thereafter according to the cases observed. Furthermore, these findings

suggest that time effects may be paramount. During the early 1980s states were more likely to both overturn capital convictions and sentences and to execute. These findings may be indicative of ambivalent opinions within states concerning capital punishment.



The descriptive summary of the data indicate that states vary in their implementation of the death penalty. As illustrated in Table 2, execution rates were proportionately higher for states such as Georgia, Texas, and Washington, with Missouri and Nevada lagging closely behind. Of the states's years analyzed, New Jersey had the lowest execution rate, executing 0 percent. However, Kentucky had the lowest implementation rate among all states at 9 percent. In congruence with the states resist to executing, generally, offenders in Kentucky remained on death row (nearly sixteen years) longer than offenders in any other state before being executed. Conversely, the duration of an inmate on death row before execution in North Carolina was shorter than any other state, by more than 9 years. Accounting all departure types, the average death sentence duration approximated 7 ¼ years.

In terms of sentence commutations, the data reveals that states were in congruence. Commutations were relatively low in all states observed during this time period, with no state exceeding a rate above 5 percent. Contrastingly, most states appeared quite eager to overturn convictions or sentences. The average rate was around 38 percent. New Jersey had the highest proportional overturn rate at 50 percent. Kentucky, Florida, and Tennessee lagged closely behind, overturning 48 and 49 percent of capital convictions and sentences. Of the states analyzed, Texas was the most resistant to overturning a conviction or sentence, with an overturn rate of only 16 percent in comparison to all other states.

TABLE 5.1:

## Resolutions of the United States's Death Row Population by State, 1977-2005

State	Death Row Population	Executions (1977-2005)	Execution Rate	Average Years to Execution	Capital Sentence Commuted (Rate)	Overturned Death Sentence (Rate)	Still on Death Row (Rate)
Arizona	89	18	.20	14.94	0 (.00)	40 (.45)	31 (.35)
Florida	130	20	.16	11.35	2 (.02)	62 (.48)	46 (.35)
Georgia	92	43	.47	12.34	4 (.04)	28 (.30)	18 (.20)
Kentucky	68	6	.09	15.67	1 (.01)	33 (.49)	28 (.41)
Missouri	80	30	.38	11.90	1 (.01)	28 (.35)	21 (.26)
Nevada	70	28	.39	10.07	1 (.01)	26 (.37)	15 (.21)
New Jersey	38	0	.00	NA	0 (.00)	19 (.50)	19 (.50)
North Carolina	95	25	.27	9.43	4 (.04)	34 (.36)	32 (.34)
Ohio	76	27	.36	13.2	4 (.05)	28 (.37)	17 (.22)
South Carolina	80	26	.31	12.0	0 (.00)	34 (.42)	20 (.25)
Tennessee	88	20	.22	12.0	0 (.00)	42 (.48)	26 (.30)
Texas	194	91	.47	11.17	1 (.01)	32 (.16)	70 (.36)
Virginia	68	18	.26	10.43	3 (.04)	25 (.37)	22 (.32)
Washington	32	14	.44	10.38	0 (.00)	8 (.25)	10 (.31)
	1200	366		11.92	21	439	374

Note: Rates are rounded. Thus, rows may not total to 100% when added.

## Determinants of Leaving Death Row

The results for analyses of executions, commutations, and overturns are illustrated in Table 3. The reported coefficients signify the impact of each variable on moving out of death row to the outcome listed in each column. Marginal probabilities are also reported along with z-statistics. Table 4 displays summary statistics for determinants analyzed in this research.

The original question asked by this research is whether political and institutional powers matter more in executions versus social and economic conditions within a state. The findings suggest that both political and institutional powers afforded to the governor as well as economic and social conditions within states are influential determinants of who lives and dies on death row.

### *Executions*

Conforming to expectation, results indicate that executions are influenced by not only political and institutional powers afforded to the governor but also economic and social conditions within a state. The results illustrate that pure executive clemency decision making authority decreased an offender's likelihood of facing execution by 44 percent. Moreover, the results confirm that as a governor's approval rating increased an offender's prospect of being executed decreased minutely by nearly 1/100<sup>th</sup> percent. Given that the hazard rate is relatively small, this determinant can be interpreted as having no substantial influence on execution likelihoods despite its statistical significance. Also purporting with expectation, the presence of a lame duck executive administration period reduced an offender's prospect of being executed. Although no evidence is found for the influence of gubernatorial election cycles on executions, the robust finding for lame duck governor suggests that administrative time periods have explanatory power in predicting execution prospects.

In addition to the above determinants, a number of determinants were found to have influences that contradict with previous sentencing research. For instance, results from the model indicate that as unemployment increased an offender's probability of facing execution decreased by nearly 6 percent. This result contradicts evidence that states characterized by high unemployment rates are more likely to execute than states with lower unemployment rates (Unah and Steenbergen, 2005). Instead, this finding suggests that economic security rather than threat is a motivating factor for states to execute.

Even more surprising, results confirm that the presence of a Republican legislature in a state decreased rather than increased an offender's prospect of being executed by nearly 33 percent. This contradictory finding may result from not accounting for interactions among variables. For instance, the presence of a Republican legislature may have the assumed effect when conservative ideology within the state is high. Since this research does not account for state ideology concerning capital punishment, this logic is only speculative. Although the results corroborate that the racial makeup within a state influences post-sentencing decisions, the direction of influence contradicts racial threat theories. According to the model, as ethnic homogeneity in a state increases, an offender's prospect of being executed decreases minutely by nearly 1/1000<sup>th</sup> percent. While robust, this finding, along with that of governor approval rating, can be interpreted as posing no change because of its proximity to one.

Not surprisingly, demographic factors influence execution probabilities. The findings illustrate that the likelihood of being executed is mitigated by an offender's age. While offenders above the age of fifty-five experience a low probability of being executed, young offenders experience lower probabilities of being executed with offenders between the ages of under twenty years of age facing the lowest probability of execution than all offenders for which

age is statistically significant. This finding, however, may be the result of only 5 percent of offenders within this age group cases were analyzed. Moreover, the results corroborate that in comparison to older offenders, offenders between the ages of thirty-five and forty-four witnessed almost a 60 percent lower probability of being executed. However, these findings may be the result of state's resolving sentences of older offenders as younger offenders enter death row.

### *Commutations*

When predicting commutations, results indicate that demographic characteristics of an inmate have more explanatory power than political and institutional powers afforded to the governor or economic and social conditions within a state. Although ethnic homogeneity was found statistically significant, the coefficient is close to one. As a result, I interpret this determinant as having no effect on issuances of commutations. The lack of evidence of influence of this determinant and others suggests that while commutations are largely executive decisions, political and institutional factors are not as influential. To better explain commutations, theorists must uncover additional variations among states and possibly governors when trying to predict these departure types.

Additionally, the results provide evidence that theories regarding the demographic characteristics of offenders may be pivotal at all sentencing phases. The results illustrate that for the cases analyzed, being black increased an offenders chance of receiving a commutation by 193 percent. This finding suggests that racial discrimination occurs in earlier capital sentencing phases may be reversed during the post-sentencing phase.

Aside from race, all age categories were found statistically significant in lowering an offender's prospect of receiving a commutation. However, results illustrate that offenders between the ages of forty-five and fifty-four years of age have the highest probability of

receiving a commutation than offenders of other age categories. Yet, this finding may be the result of perceptions that older offenders are less dangerous to society if given a reprieved judgment. Likewise, the results confirmed that males receive commutations at substantially lower probabilities than females even after sentencing. Collectively, these findings suggest that surviving on death row may depend on individual rather than criminal characteristics of the offender.

### *Overtured Convictions and/or Sentences*

Like executions, both political and institutional powers afforded to the governor and economic and social conditions within states have explanatory power in predicting overturns of convictions and/or sentences. Purporting with expectations, the results indicate that partisan politics in a state influence capital departure likelihoods. Republican governors and legislatures in a state reduced an offender's likelihood of receiving an overturned conviction and/or sentence by 24 and 25 percent. In addition, lame duck administration time periods were confirmed to decrease the probability of receiving an overturned conviction and/or sentence by 23 percent. Furthermore, being sentenced in a state in which sole clemency decision-making power is vested to the governor increased an offender's prospect of receiving an overturned judgment by almost 34 percent.

In terms of economic considerations, the results confirmed that as unemployment rose, the likelihood of an offender receiving an overturned judgment increased by 24 percent. The influence of unemployment rates in both this model and the executed model suggest that not only do states take their economic status into account when resolving capital cases but during times of economic distress, states minimize their death row population. The lack of evidence for governor approval rating and governor election year suggests that these factors may not have the



explanatory power researchers have theorized on post-sentencing decisions. The lack of verification for these factors suggests that their effects may be more pronounced in earlier stages of the American legal process. Moreover, it highlights that additional factors must explain post-sentencing resolutions.

Moreover, results confirm that demographic characteristics of an offender explain which offenders receive overturned judgments and which do not. According to the model, younger offenders have the highest prospects of receiving an overturned judgment. As offenders age, this likelihood decreases, but is still relatively high even for offender between the ages of forty-five and fifty-four with a hazard rate of 64 percent. Additionally, gender has a substantial impact on an offender's chance of receiving an overturned judgment. In accordance with gender-bias theories, males witnessed a 52 percent lower prospect of receiving an overturned judgment than females. These findings substantiate arguments that who lives and dies on death row depends on factors unrelated to the crime or crimes committed.

Although economic, institutional, political, and social factors are significant predictors of overturned judgments and executions, demographic characteristics are better predictors of commutations. Given that none of independent variables presented in this work were significant in all departure types, it appears that diverse theories must expound capital departures. Moreover, the findings illustrate that both political and institutional powers afforded to the governor nor economic and social conditions within states have more explanatory power in death sentence resolutions. Instead, the results confirm that death sentence resolutions are the products of a number of economic, institutional, political, and social forces.

TABLE 5.2: Cox Competing Risk Model of  
Determinants of Leaving Death Row

Determinants	Executions		Commutations		Overturns of Convictions and/or Sentences	
<i>Racial, Ethnic, and Economic Divisions</i>						
Ethnic Homogeneity Scores	.9999546	-5.44 <***>	.9999915	-4.44 <***>	.9999239	-0.67
Unemployment	.9440326	-12.81 <***>	.9129258	-0.44	1.243126	5.33 <***>
<i>Political Explanations: Gubernatorial Control</i>						
Governor Approval Rating	.9997389	-9.61 <***>	1.020265	0.95	1.007645	1.50
Governor Election Year	1.000609	0.72	1.001341	0.36	1.113178	0.84
Governor Lame Duck Year	.7121185	-1.80 <+>	.9954888	-1.00	.7723032	-1.69 <+>
Republican Governor	.8898681	-0.97	1.158343	0.35	.7509349	-2.44 **
Republican Legislature	.6743125	-2.68 **	.5179143	-1.47	.7636012	2.09 **
Pure Executive Clemency Decision Making Authority	.5606791	-3.57 <***>	1.017861	0.36	1.336955	2.05 **
<i>Alternative Accounts</i>						
<i>Demographics of the Offender</i>						
Race	1.082233	0.63	2.933873	1.94 <+>	.9804235	-0.16
Gender	.7519368	-0.50	.7037211	-4.30 <***>	.4815646	-1.73 <+>
Under Age 20	3.42e-13	-49.64 <***>	3.02e-18	-27.57 <***>	9.202831	1.97 **
Age 20-24	.5038945	-1.14	1.19e-17	-46.48 <***>	7.156167	5.62 <***>
Age 25-34	.6173985	-1.18	.100329	-1.98 **	3.140426	3.88 <***>
Age 35-44	.4155085	-2.00 **	.0946449	-1.66 <+>	1.926399	2.29 **
Age 45-54	.925513	-2.30 **	.7847905	-2.24 **	1.647999	1.75 <+>
Age 55+	.9288535	-2.42 **	2.13e-16	-25.14 <***>	-----	-----
<i>Regional Influences</i>						
South	1.008631	0.78	.7565863	-0.60	.9071265	-0.66
Log Pseudo-likelihood	-2465.8182	Probability > Chi2 =0.0000	-137.80892	Probability > Chi2 =0.0000	-3651.7604	Probability > Chi2 =0.0000
Offender-Years	11595		11595		11595	

--- Denotes variable was dropped from the model results due to collinearity.

<+> Significant at the 10% level.

\*\* Significant at the 5% level.

<\*\*\*> Significant at the 1% level.

TABLE 5.3: Summary Statistics for Determinants of Leaving Death Row

Variable	Mean	Standard Deviation	Minimum	Maximum
Offender ID	3780.108	1675.731	99	8004
State ID	32.13903	15.81924	4	53
Year	1993.892	6.804764	1977	2005
Duration	7.236481	5.289151	1	29
Executed	.0315653	.1748474	0	1
Commuted	.0018111	.0425206	0	1
Overtured	.0378611	.1908686	0	1
Death Row	.9287624	.2572324	0	1
Under Age 20	.0054334	.0735141	0	1
Age 21-24	.0903838	.2867432	0	1
Age 25-34	.3750755	.4841633	0	1
Age 35-44	.3251401	.4684474	0	1
Age 45-54	.1538594	.3608295	0	1
Age 55+	.0501078	.2181768	0	1
Race	.3603277	.4801162	0	1
Gender	.9860285	.1173777	0	1
Governor Approval Rating	52.3956	11.87087	21	81
Governor Election Year	.2404485	.4273743	0	1
Republican Governor	.4172488	.493126	0	1
Lame Duck	.1756792	.3805634	0	1
Republican Legislature	.3914618	.4880984	0	1
Unemployment	5.773376	1.415317	2.3	12.7
Ethnic Homogeneity	3173.434	645.5915	2223	4425
South	.6043984	.4890006	0	1
Pure Executive	.2942648	.4557312	0	1

N = 11, 595.

## CHAPTER SIX

### DISCUSSION

#### **The Findings**

Few studies have explored implementation of the death penalty. This research provides answers to questions concerning the likelihood of execution, who receives it, when, and why. Using a multilevel approach to circumvent the potential bias caused by unobservable factors, this analysis includes nearly twelve hundred capital sentences in the United States in fourteen states, between 1977 and 2005, and estimates the probability of transition from death row to various possible outcomes (execution, commutation, or overturned verdict).

The results corroborate threat and political explanations for capital resolutions. However opposite to economic threat expectations, states with high unemployment rates are less likely to execute offenders. Instead, model results confirm that unemployment rates decrease the likelihood of an offender being executed and increases the offender's chances of receiving an overturned judgment. These findings confirm anticipation that budgetary concerns are paramount in state's resolutions of capital cases.

Moreover, I found that political and institutional powers are not as influential in clemency grants as previous research suggests. The influence of these factors is more pronounced in overturns by the courts and executions. These findings suggest that while courts are thought to be insulated from political forces they, like the other branches, are unguarded against them. The results indicate that the presence of a Republican executive and/or

legislature decreases the likelihood of a judge issuing an overturned judgment and/or facing execution. These findings suggest that judges may be strategic in adhering to the preferences of other political actors within the state when deciding to reverse a capital conviction or sentence or execute. Thus, strategic behavioral theories may have explanatory power for these departures.

Not surprisingly, the results illustrate that lame duck periods in an executive's administration decrease the likelihood of receiving an overturned sentence or facing execution. These findings imply that during lame duck periods, courts are less likely to adhere to liberal preferences of their state's chief executive. However, a governor's preferences may be taken into account more in states where executives have sole clemency power. The results from the model illustrate that when governors are afforded this power, an offender has a 33 percent higher probability of receiving an overturned judgment. Furthermore, in states where sole clemency power is vested to the governor, offenders experience a 44 percent lower prospect of being executed.

In addition, the results reveal that public opinion helps account for variations in executions. Model results indicate that as a governor approval rating increases, an offender's chances of facing execution decrease marginally by 1/100<sup>th</sup> percent. Conversely, executives may execute when they wish to garner greater public support. Yet, when their approval ratings are high, these officials may be better positioned to accomplish personal policy objectives.

Collectively, results from the models illustrate the need for new theories regarding capital resolutions. While evidence of threat and political theories have been found at the pre-sentencing stage, evidence of these factors varies by resolution type with some having no explanatory power in either departure type. Thus, explanations for capital sentence outcomes may differ for executions, commutations, and overturned judgments.

## **Wider Implications**

This analysis fills gaps in the sparse literature on the application of capital punishment. Compared to previous studies of the determinants of capital sentences that are restricted to individual data from one or a few jurisdictions, this study's coverage is a more extensive investigation in virtue of its assessment of both individual and contextual accounts over nearly thirty-year period in a diverse set of multiple states. Until this study, no research has gauged the explanatory power of clemency decision-making authority types on death sentence resolutions. The findings suggest that these contextual omissions are unfortunate as institutional accounts have substantial explanatory power in this and in other analyses that seek to explain capital outcomes.

Moreover, the findings of this research illustrate that death sentence resolutions are political and social and are influenced by both individual and aggregate contextual factors of the state in which an offender is sentenced. Such findings suggest that those who wish to test explanations for capital outcomes should take new theoretical emphasis on politics seriously. Furthermore, the findings indicate that a politically informed version of conflict theory offers greater explanatory power than earlier versions that largely ignored politics and focused only on social divisions.

Although informative, this research has its restrictions. For one, this research does not measure the effect of victim characteristics on capital departures and durations. Moreover, this research fails to account for interactions among variables. While some variables may not have a significant impact on capital departures singly, in combination with other variables these variables may increase or decrease an offender's prospects of receiving certain departures. Furthermore, this research does gauge the influence of state ideology concerning capital

punishment. Additional omissions of this analysis include the ideology and power of other state actors such as the attorney general which may sway how liberal or conservative a stance a governor takes on capital punishment. Yet, it is with great hope that this research spurs further inquiries into the issue of capital punishment which take these omissions into consideration.

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