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Revisiting capital punishment: Factors that matter when receiving the death penalty (a state by state analysis)

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**REVISITING CAPITAL PUNISHMENT: FACTORS THAT
MATTER WHEN RECEIVING THE DEATH PENALTY
(A STATE BY STATE ANALYSIS)**

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**Thesis submitted to the
Eberly College of Arts and Sciences
at West Virginia University
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for the degree of**

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in
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ABSTRACT

Revisiting Capital Punishment: Factors That Matter When Receiving the Death Penalty (a State by State Analysis)

Bridget Ann Micka

Although the death penalty is popular by most accounts, is it really a good social policy? The purpose of this study is to add to this discussion by examining the factors that directly impact death penalty cases. The data used in this study come from the state level database which contains information on all decisions of initial capital direct, state and federal habeas corpus cases between 1973 and 1995. What are the factors that lead some state compared to others to use the death penalty more often? Some have suggested that this could be the result of a minority-majority conflict. The author discusses her findings in the context of the social policy debate and makes recommendations for change.

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INTRODUCTION

Since the ancient times of eye-for and eye, to the highly structured and organized methods of the death penalty in the United States, capital punishment has been a much debated and studied issue. Many people across the world and nation question if the sentence of death is cruel and unusual punishment. In the U.S. political arena, some states have gone through times of abolishment back to times of re-instating capital punishment. There also seems to be opposing views when looking at the judicial and executive/ legislative braches of government. The Supreme Court has made many decisions that have slowly restricted the scope of capital punishment: (Furman v Georgia 1972), (Gregg v Georgia 1976), (Coker v Georgia 1977), (Ford v Wainwright 1986), (Batson v. Kentucky 1986), (Atkins v. Virginia 2002), (Ring v. Arizona 2002), and (Roper v Simmons 2005). While the legislative/ executive braches have rapidly increased the scope of capital punishment with the passage of the: (Violent Crime Law Enforcement Act 1994) and the (Anti-Terrorism and Effective Death Penalty Act 1996). These public polices are continually at center of a national debate. There are 12 states, including the District of Columbia, who have abolished the death penalty and 36 states that currently have a death penalty statue. Activist groups like the ACLU have this to say about capital punishment:

“The ACLU and other death penalty opponents, including many religious groups and individuals, and a growing number of prison wardens, maintain that capital punishment constitutes cruel and unusual punishment in violation of the Eighth Amendment. Killing, whether carried out by an individual or the state, is immoral and ought not to be condoned. Furthermore, the death penalty as practiced in the U.S., is arbitrary and racially biased. It has no proven deterrent value. And many miscarriages of justice have been documented over the years in which people have been put to death for crimes they did not commit”
(http://www.swlearning.com/economics/policy_debates/death_penalty.html).

There are also activist groups who are pro-capital punishment, who argue:

“Capital punishment is very capable of deterring murder if we allow it to, but our legal system is so slow and inefficient, criminals are able to stay several steps ahead of us and gain leeway through our lenience. Several reforms must be made in our justice system so the death penalty can cause a positive effect” (<http://www.wesleylowe.com/cp.html>).

These are just two quotes marking the stark difference in public opinion. These strong opinions lead to a much heated debate at both the state and federal levels of government. When analyzing capital punishment, social science research methods are a good way to gain a statistical knowledge on the successes and failure rates of death penalty policies. By looking at these policies one can show how capital punishment has come to be framed in the criminal justice system and how policy debates are affected.

Not only do activist groups have a difference of opinions but so do lawmakers. The judicial branch of government (the Supreme Court), since 1973 has narrowed the scope of capital punishment while the executive and legislative branches of government (the President and US Senate), have broadened the scope of capital punishment. Evidence to prove this statement is best shown by the actual policies made. Since 1923, the Supreme Court has debated over the issue of capital punishment with seven important cases: (Furman v Georgia 1972), (Gregg v Georgia 1976), (Coker v Georgia 1977), (Ford v Wainwright 1986), (Atkins v. Virginia 2002), (Roper v Simmons 2005), and (Ring v. Arizona 2002). (Furman v Georgia 1972), found capital punishment to be cruel and unusual due to its arbitrary nature. (Gregg v Georgia 1976) found that capital punishment itself was not cruel and unusual and its arbitrary nature could be solved by allowing states to rewrite their death penalty statutes. States were allowed to consider

mitigating and aggravating factors for each death penalty case. In (*Coker v Georgia* 1977) defendants were no longer allowed to be sentenced to death for the rape of women. In (*Ford v Wainwright* 1986), (*Atkins v. Virginia* 2002) and (*Roper v Simmons* 2005) made capital punishment cruel and unusual for insane persons, mentally handicapped and juveniles. In (*Ring v. Arizona* 2002) the Supreme Court decided to no longer allow judges to decide if a defendant deserves death, only a jury can make this decision. As one can see since 1972 the Supreme Court has made decisions that have continually narrowed the scope of capital punishment. By analyzing Presidential Acts one can see a broadening of the scope of on capital punishment. The Violent Crime Law Enforcement Act of 1994 expanded the federal death penalty to sixty different crimes three of which do not involve murder. The Anti-Terrorism and Effective Death Penalty Act of 1996 placed restrictions on a defendant's number of appeals; deadlines for a habeas appeal were shortened, and it also created specific laws regarding terrorist acts. As the debate continues on capital hill, another good way to study capital punishment is to turn one's eye on each state's court and death row factors.

This study examines how some individuals and groups argue that the punishment of death is given out arbitrarily, i.e., that there is a great deal of variance in the way death penalty verdicts are handed down or reversed on appeal. In this thesis I examine factors that arguably could contribute to the local (state) rate of death penalty verdicts and reversals.

Statement of the Problem

In dealing with death penalty verdicts, the court system in the United States has been accused of giving out a sentence of death on an arbitrary basis. When a defendant's life hangs in the balance and errors are made, there is a decrease in the reliability of the court's system of justice. There have been startling examples of defendants who did not deserve death either due to procedural or Constitutional error or the actual innocence of a defendant. It is the opinion of many that if one innocent person dies due to a wrongful conviction, the system is broke and needs to be reevaluated. There have been various Supreme Court cases reassessing the death penalty. One of these cases, *Furman v Georgia* (1973), found that the death penalty was cruel and unusual based on the Eighth Amendment argument. In this case, Supreme Court Justice Stewart stated: "These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. The petitioners are among a capriciously selected at random handful upon whom the sentence of death has in fact been imposed"(1973 *Furman v Georgia*). Some question whether the arguments of "arbitrariness" presented in *Furman* have resulted in less inter-jurisdictional variation in death penalty verdicts since *Greg v. Georgia* which reversed the *Furman* decision. This study examines whether there variations at the state level which affect the rate at which the death penalty is applied or reviewed? What factors may cause this variation, and what policies can be implemented to curb it? By looking through the lens of a social science researcher one can contribute to the study of capital punishment and its policies through statistical evidence. This information may prove to be useful to public

administrators, criminal justice boards, attorneys, and judges, who can implement policies that will alleviate variation death penalty verdicts due to certain situational factors such as ideology or bias.

Review of Literature

Capital punishment and its various issues have been studied over an extensive period of time. Ways in which these studies can be broken down are by looking at three different categories: alternatives to capital punishment, structure of capital punishment and an overall unfair criminal justice system. The underlying theme to all these issues is power and how it is played out before, during and after a defendant's trial. Issues that fall under alternatives to capital punishment are: clemency, life without parole, and abolishment. Issues that fall under structure are: costs of the death penalty, attitudes towards, crimes leading to, courts who decide, and the policies widening or boarding the scope of capital punishment. Finally issues that fall under an unfair criminal justice system are: capital punishment is given arbitrarily, capital punishment does not deter crime, those convicted of murder are later found to be innocent, one's type of representation can make a difference in a defendant's sentence, and capital punishment is racially bias.

There are various ways in which capital punishment has been studied by looking at the alternatives to death. One such way has to with clemency and the power structure surrounding it:

“clemency authorizes a kind of lawlessness, or acknowledges the limited ability of rules to tell officials how, when, and why they may exercise the power accorded to them. Here we see law constructing and policing its own boundaries, boundaries within which, on its own account, prerogative power cannot be contained.” Sarit (2005, p. 613)

Sarit points out the power structure that surrounds the act of clemency; one person has the exclusive right to decide if a defendant's punishment should be carried out. In the US the one person who can exercise this power is the governor. Many argue if this should be the only person involved when making this decision. Another alternative to the death penalty is abolishment. The US has gone through various times of abolishing and reinstating capital punishment, as discussed in *The Movement to Abolish Capital Punishment 1787-1861*, here Davis frames the philosophical reasons behind abolishment:

"Because the death penalty was associated with both Old testament brutality and the cold utilitarianism of conservative rationalists, it was attacked by those who yearned for an emotional an pietistic brotherhood, for an all inclusive love which would embrace the wayward murderer well as the degraded drunkard" (1957, p. 29)

Davis shows how old religious views "eye for an eye" were then making way to a new ideology that looked at defendants on the same level, not at the severity of the crime. Still today various religious dominations lead the way for a movement toward abolishing capital punishment.

The structure of capital punishment has been studied by showing how the power lies in the hands of the majority as described by Barbra Norrande in *The Multi-Layered Impact of Public Opinion on Capital Punishment Implementations in the American States*: "If the majority of the public favors a policy, the state should enact such a law." (2000, p. 774). Norrande goes on describing how public opinion varies by state which explains why certain states do not have a capital punishment statute. Further explanations describing the difference in opinion by stating: "death sentences should be least likely where liberal rather than conservative political convictions are strongest

because prosecutors, judges, and juries should be less likely to support this sentence in such jurisdictions” (Jacobs and Carmichael 2004, p. 253). Public opinion influences those who are apart of the criminal justice system based on their political beliefs.

Liberals and conservatives differ in their opinion on how to punishment criminals and vary on approaches to combat crime. Public opinion affects those who desire to be elected or re-elected into office, as previously described by Jacobs and Carmichael.

Joseph Carol in his review of Gallop Poll results on capital punishment found: “The percentage of Americans in favor of the death penalty has fluctuated significantly over the years, ranging from a low of 42% in 1966, during a revival of the anti-death penalty movement, to a high of 80% in 1994. More recently opinions “have been more stable, with upward of two in three Americans supporting it” (2004, p.1). Joseph Rankin in

“Changing attitudes toward Capital Punishment” states:

“The increasing public support for the death penalty began sometime between 1966 and 1969, about three years after relatively large increase in the official violent crime rate (F.B.I.). Law and order and crime in the streets were campaigned issues in the 1968 elections, creating an atmosphere which sensitized the American public to the crime problem. Concern about crime intensified resulting in a hardening of attitudes toward criminals and a greater demand for harsh penalties (weather for deterrent or retributive reasons)” (1979, p. 204)

Rankin saw a correlation between increases in homicide rates with that of increase support for the death penalty. Opinions toward capital punishment have been studied based on one’s race such as, “Race, Conceptions of Crime and Justice, and Support for the Death Penalty”, which found:

“The obvious presence of police in largely black neighborhoods provides black citizens with salient representatives of the system that not only investigate crime but also punish criminals. Whites, who are less likely to have direct contact with any tangible representative of that system and who, moreover, have less reason to distrust the system, are naturally more inclined to focus on the issue of criminal responsibility. Young (1991, p. 72)

Blacks will support capital punishment if they have a trust toward the criminal justice system where as whites support capital punishment based on a defendant's criminal actions.

Another way researchers have studied capital punishment has been through an analysis of the overall criminal justice system's successes and failures. Capital Punishment has also been suggested that it is racially bias as described in "Supreme Court Decision Making", the researchers discuss one study that took arbitrariness into account: Discrimination and arbitrariness hypotheses were tested in one study that looked at the charges brought in 1,805 South Carolina homicide cases. "Blacks who killed Whites were 40 times more likely than Blacks who killed other Blacks to have the death penalty requested in their cases" (Paternoster (1983), Ogloff and Chopra p 398). This study shows capital punishment is racially bias, due to the fact that a minority defendant killed a majority victim. The prosecutor is more likely to request the death penalty when this occurs. Ogloff and Chopra later suggest: "Despite the empirical evidence, the majority of the Court has not been convinced that social science evidence presented over time was sufficient to prove discrimination and to show that the death penalty is unconstitutional". (2004, p. 399)

Many researchers have said that capital punishment does not deterrent crime, as shown by Bailey and Peterson:

"due to "system overload," homicides may seriously tax the limited resources of the criminal justice system, thereby make the apprehension and successful prosecution of homicide offenders less certain. This could also produce a negative tradeoff between yearly murder rates and death sentence certainty ratios" (1988, p. 799)

Bailey and Peterson show how some studies may find that capital punishment could be an affective deterrence but ignore the fact of systems overload. Radelet and Akers take a different approach by polling criminal justice experts: “over 75% of those polled do not believe that increasing the number of executions, or decreasing the time spent on death row before execution, would produce a general deterrent effect” (1995, p. 1). By conducting a survey of the opinions of expert criminologist, one is shown they do not see capital punishment as an effective deterrent. In “Capital Punishment and Deterrence: Examining the Effect of Executions on Murder in Texas”, the researchers found: “In 1997 alone, Texas executed a record number of 37 capital murderers, accounting for half of the 74 U.S. executions in that year. Texas has provided an ideal natural experiment to engage the deterrence hypothesis” Sorensen, Wrinkle, Brewer, and Marquart (1999, p. 483). The researchers believed that if they looked at Texas, seeing how this state produced so many executions that they in turn would have a deterrent effect on crime. The researchers concluded there was no evidence that showed deterrence in any way.

Ways in which capital punishment can be seen as unfair punishment has been shown through various claims that capital punishment is given arbitrarily as explained in a report produced by the Death Penalty Information Center “Arbitrariness and the Death Penalty”:

“Three decades after sentencing guidelines were approved by the Court in Gregg, the death penalty is still being unpredictably applied to a small number of defendants. There remains a lack of uniformity in the capital punishment system. Some of the most heinous murders do not result in death sentences, while less heinous crimes are punished by death. (DPIC, p. 1)

The DPIC suggested that even after the Supreme Court decision *Gregg v Georgia*, where states were allowed to create their own capital punishment guidelines through aggravating and mitigating forces, that capital punishment is still given arbitrarily. They also suggest that the type of attorney, one's race, and one's geography, will prove to greatly affect the outcome of a defendant's case. Another study showing how capital punishment can be given arbitrarily stated:

"The potential conflation of the culpability assessment, dangerousness judgments, and risk assessment analyses increase the risk for arbitrary and discriminatory sentencing and fail to promote guided discretion in accordance with legitimate penal purposes, including retribution and deterrence" Claussen-Schulz, Pearce and Schopp (2004, p. 490).

The "culpability assessment" is an assumption made based on the crime and defendant, "dangerous judgments" are made based on "risk assessments", if a defendant is a danger to society and deserves death. If certain cases are decided based on these components this would in turn allow a defendant to receive capital punishment arbitrarily. This study will focus on the issue of how capital punishment can be given arbitrarily based upon the minority-majority conflict theory, which will be explained further in the next section.

Theoretical Perspective and Hypotheses of Study

This research is grounded in a post-modernist perspective, and attempts to apply a conflict sociological model to explain variation in death penalty verdicts and appeals. The Minority-Majority Conflict theory suggests that "Dominate racial groups act politically when threatened by large minority populations" (Blalock 1967 and Key 1949). Herbert Blumer further explains the tension between minority and majority group by stating: "that race prejudice exists basically in a sense of group position, racial identification, and

experience rather than a set of feelings which members of one racial group have towards another racial group” (1958). The conflict model is “a model in which the content of criminal law is determined by the groups that hold economic, political, and social power in a community” Gaines, Kaune, and Miller (2000, p. 4). The post modernist perspective on the criminal justice system looks at the language of the law and how it is set up in a manner that it is not culturally diverse, and creates a further marginalization of minority groups. This perspective allows one to think about the power struggle of the institution over the individual. As suggested by Jacobs and Carmichael: “Given the intense interest in capital punishment, it is surprising that we know so little about the external social and political conditions that make some jurisdictions far more likely than others to impose this sentence” (2004, p. 251). This statement presents the key underlying issue that informs the research question presented in this study. Keeping this in mind, the research has hypothesized that certain factors lead to variation in state-level death sentences and reversals. The topics that will be considered will be state court and death row characteristics. A further discussion of the variables will be described in the following section. The research question I try to answer is this: Is there variability among states in terms of there delivery of death penalty verdicts and reversals on appeal. With the national data provided, I present the following two hypotheses that are grounded in the post modernist conflict perspective mentioned previously.

Hypothesis 1: States with high rates of death verdicts per 100 homicides will also have the following:

- a. a high percentage of Black population change between 1973 to 1995
- b. a high rate of White homicides
- c. a high average of welfare expenditures between 1973-1995
- d. a high rate of inmates per 1000 homicides
- e. a low rate of a direct expenditures on the courts per 10 in the population
- f. a low marriage rate per 100 sentenced
- g. a high prior felony rate per 100 sentenced

H2: States with high rates of state relief will also have the following characteristics:

- a. a low percentage of Black population change between 1973 to 1995
- b. a low rate of White homicides
- c. a low average of welfare expenditures between 1973-1995
- d. a low rate of inmates per 1000 homicides
- e. a higher rate of a direct expenditures on the courts per 10 in the population
- f. a high marriage rate per 100 sentenced
- g. a low prior felony rate per 100 sentenced

METHODOLOGY

Secondary data analysis was conducted on the study: *“Processing and Outcome of Death Penalty Appeals After Furman v. Georgia, 1973-1995: [United States] by Jeffrey*

Fagan and James Liebman. The researchers’ findings were:

- (A) Overall overproduction of death
- (B) Pressures to aggressively and erroneously apply the death penalty
- (C) Heavy court congestion and delay
- (D) Overburdened and under-funded courts have a high risk of capital error
- (E) The review process probably does not catch all serious mistakes

(F) The probability that innocent people have been executed is unacceptably high
(Fagan and Liebman)

Secondary data analysis on the Fagan and Liebman study is appropriate for testing the minority-majority conflict theory not only because not only does it take into account the entire population but also because there is data on specific state and defendant characteristics. When given these state and defendant characteristics the researcher was able to determine what independent variables would be good predictors of the dependant variables. This study differs from the original study in that this study's is a pooled time series of cross sectional data. The dependant variables and independent variables were aggregated in a new state database that looks at each state over a twenty-two year period (1973-1995), compared to the original study, that each state year by year. This new database was created by aggregating data from the original study. The dependant variables were then converted into: percentage of Black population change between 1973 to 1995, rate of White homicides, average of welfare expenditures between 1973-1995, rate of inmates per 1000 homicides and direct expenditures on the courts per 10 in the population, marriage rate per 100 sentenced, prior felony rate per 100 sentenced rate of death verdicts per 100 homicides and rate of state relief per 1000 homicides. The independent variables were also converted into: percentage of Black population change between 1973 to 1995, rate of White homicides, average of welfare expenditures between 1973-1995, rate of inmates per 1000 homicides, rate of direct expenditures on the courts per 10 in the population, marriage rate per 100 sentenced and

prior felony rate per 100 sentenced. The researchers unit of analysis are the 36 states who have a capital punishment statute.

Discussion of Variables

The purpose of this secondary data analysis study will be to see if there is variation in the way states give out the death penalty or provide relief in an appeal. According to Dietz:

“Regional variation in death sentences suggests arbitrariness in application. While one expects to see some variation from state to state, given differences in population, crime rates and laws, one also expects that in a just system, the law of a particular state would be applied uniformly in that state” (2004, p.1)

Variability was measured by court and death row characteristics of each state. The dependant variables were: rate of death verdicts per 100 homicides and rate of state relief per 1000 homicides, were examined with independent variable predictors: percentage of Black population change between 1973 to 1995, rate of White homicides, average of welfare expenditures between 1973-1995, rate of inmates per 1000 homicides, rate of a direct expenditures on the courts per 10 in the population, marriage rate per 100 sentenced, and prior felony rate per 100 sentenced. All of the variables will be weighted by population.

Independent Variables

According to Jacobs and Carmichael: “Racial or ethnic divisions may explain the number of death sentences because of the threat posed by a large racial or ethnic underclass can be expected to produce criminal sanctions that are more severe” (2004, p. 250). In this study racial division was explained by percentage of Black population change between 1973 to 1995, which measured the rate of change in Black population,

this change in population ranged from .52% to 35%. Underclass was explained by the average of welfare expenditures between 1973-1995 average welfare expenditures per 100k which are “the aid programs providing cash, food, housing, medical care, social services, and training to lower income persons by each state” (Rector 2000, p. 1). The average of welfare expenditures between the years 1973-1995 ranged from 15.68 to 3996. More severe criminal actions were explained by the rate of white homicides between the years 1973 to 1995 ranged from 3 to 181. Minority-Majority conflict theory suggest: “Theorists claim that dominant racial groups act politically when they are threatened by larger minority populations” (Blalock 1967; Blumer 1958; Key 1949). White homicide is used to show how a majority group may feel threatened.

Another geographic characteristic of each state number are the inmates per 1000 homicides, this independent variable was used to further explain the majority-minority conflict theory. In Quillian and Pager’s *Black Neighbors, Higher Crime? The Role of Racial Stereotypes in Evaluations of Neighborhood Crime*, found: “The percentage of young black men in a neighborhood is positively associated with perceptions of the neighborhood crime level” (2001, p. 717). Jacobs & Helms’ study revealed that “spending on punishment is far more responsive to the mass politics of racial threat” (1999. p. 1517). There seems to be an increase in spending on prisons due to the pressures of the majority group places on political leaders. Jacobs and Carmichael (2001) suggest there is a correlation between large minority population and large imprisonment rates. There will also be an increase in the majority desire to punish. These study’s show how there is a correlation with fear of crime by whites (majority

group), who act politically, which result in an increase in imprisonment of blacks (minority group). The inmates per 1000 homicides between the years 1973 to 1995 ranged from 14 to 83.

Other independent variables that were taken into consideration were: direct expenditures on the court system per 10 in the population, marriage rate per 100 sentenced, and prior felony rate of inmates sentenced. Average direct expenditures on the court range from 12 to 36, those who were married at the time of their conviction range from 46% to 91% and the rate of felony convictions ranges from 17% to 92%. Direct expenditures on the court system per 10 in population was broken down by state had continued to increased every year up to 1994, then in 1995 the expenditures for each state dropped dramatically. This may have occurred due to the creation of a separate drug court system that received its own budget but this is just a guess as to why this may have happened (Table 1).

Table 1

Direct expenditures on the court system 1973-1995

State	% change 73-94	Decrease in expenditures 94-95
AL	33.17	3342806
AZ	110.51	4425616
AR	200.04	1255092
CA	47.96	59124161
CO	40.65	19054454
CT	10.84	6866283
DE	40.02	231208
FL	154.13	17461316
GA	141.03	4771343
ID	65.7	481322
IL	38.83	9954782
IN	58.59	6484972
KY	72.12	2322528
LA	57.18	3368120
MD	48.52	9018807
MS	80.99	1716512
MO	43.57	3269859
MT	47.58	411029
NE	121.7	1430307
NV	110.35	2586059
NJ	32.39	7416059
NM	34.95	1451294
NC	88.69	11999047
OH	4.37	11541985
OK	57.39	2553432
OR	27.39	1900724
PA	36.26	8587937
SC	74.87	2728845
TN	101.25	10465005
TX	139.68	15733850
UT	187.35	1171174
VA	74.95	11986336
WA	5.17	3758760
WY	52.5	577706

Direct expenditures on the court system per 10 in the population was used to describe the effects that a court budget would play out in capital punishment cases and appeals. Prior

felony rate and marriage rate and rate of inmates sentenced who are married was used to test how as a defendant's character would affect rates of death and relief.

Dependant Variables

Rate of death verdicts per 100 homicides and rate of state relief per 1000 homicides, were used to explain minority-majority conflict by showing how they were effected by the independent variable predictors. The rate of death verdicts per 100 homicides, all death verdicts given between the years of 1973-1995, ranged from 1 to 187. The rate of state relief per 1000 homicides, cases that received relief from a state appeal, ranged from 0 to 259. These variables were aggregated into a new state database. In the original Fagan and Liebman study, total death verdicts and total number of state appeals were looked at by each state and by each year. Relief can be defined as the result in an appeal where a defendant receives a punishment not as severe as death. The defendant may be found innocent or prove to the court that the death penalty was given arbitrarily. Relief can occur at the direct, state or habeas corpus appellate courts. Once a defendant receives the death penalty he or she automatically receives a direct appeal (*Gregg v Georgia*). If the defense proves there was reversible error made during the direct appeal, an appeal at the state level can be requested. The case could then move to the last level of appeals, a habeas corpus appeal, where the defense proves that a reversible error was made in the state court. Reversible error occurs were either a judge, jury or attorney is at fault, and results in an unfair trial.

The next chapter will examine correlations with: the percentage of Black population change between 1973 to 1995, the rate of White homicides, the average of welfare expenditures between 1973-1995, the rate of inmates per 1000 homicides, the rate of a direct expenditures on the courts per 10 in the population, the marriage rate per 100 sentenced and a prior felony rate per 100 sentenced.

Data Analysis

The original study conducted by Fagan and Liebman was downloaded from the national archive of criminal justice data (NACJD) website. The researcher then recoded the dependant and independent variables. These variables were then aggregated into a database with a state-level unit of analysis. The rate of death verdicts and rate of state relief, were examined with independent variable predictors that reflect differentiation in levels of inequality and social control. These concepts are operationalized as 1) the percentage of Black population change between 1973 to 1995, 2) the rate of White homicides, the average of welfare expenditures between 1973-1995, the rate of inmates per 1000 homicides, the rate of a direct expenditures on the courts per 10 in the population, the marriage rate per 100 sentenced and a prior felony rate per 100 sentenced. Once this was done, bivariate and multivariate models were run on each dependant variable with three different models. Model 1 shows the effects of each of the seven independent variables one at a time. Model 2 shows the effect of combined significant independent variables found in Model 1. Model 3 shows the effect of all seven independent variables combined. The unit of analysis in this study is state. All states that have death penalty laws (N=36) are included. The data that were

aggregated to the state level come from this multi year examination of ALL death penalty verdicts and appeals that occurred during this 22 year period. In other words this is not a sample study, but is, in fact, the entire population of death verdict cases by state. The analyses are based on a linear regression according to equation 1.

1) $Y = a + b_1x_1 + b_2x_2 + b_3x_3 + b_4x_4 + b_5x_5 + b_6x_6 + b_7x_7$, with Y being the rate of death verdicts, a indicating the y intercept when x = 0, and the series of unstandardized beta coefficients multiplied by the values of x.

FINDINGS

The findings for this study will be presented in response to the two hypotheses outlined previously and a discussion section will follow.

Hypothesis 1: States with high rates of death verdicts will also have characteristics reflecting unequal power distribution and a stronger commitment to social control.:

In order to test hypothesis 1, I present table 2 which indicates the impact of independent variables on the dependent variable (rate of death verdicts) under 3 conditions: Model 1) one independent variable at a time, Model 2) combination of three variables that were significant from Model 1), and Model 3) all seven independent variables together. (See Table 2).

In the pages that follow, I discuss the strength of the relationship between the dependent and independent variables. Although it is understood that this is a population study (i.e., not a sample), I use statistical significance only to help point to the strength and direction of the relationship. It is, however, understood that any positive or negative relationship in this study is a “real” relationship. The magnitude of these relationships will be discussed below.

Table 2. Effects of State Characteristics on Death Verdicts

	Model 1		Model 2		Model 3	
	B	SE	B	SE	B	SE
Rate of Black population change	1.226 *	0.627	1.186 *	0.546	1.206 *	0.567
Rate of White homicide	0.480 *	0.171	0.446 *	0.156	1.067 *	0.333
Average welfare expenditures	0.012	0.009			-0.032 *	0.017
Rate of Inmates per 1000 homicides	-0.776 *	0.343	-0.538 *	0.306	-0.238	0.349
Rate of direct expenditures on the court per 10	-1.859	1.100			-1.116	0.151
Marriage rate	0.270	0.698			0.267	0.606
Felony rate	0.107	0.446			0.085	0.384
Adjusted R ²			.329		.374	

*p < .05

In model 1 there were three independent variables that indicate statistical significance at the .05 confidence level. They are: Rate of black population change (B= 1.226), Rate of white homicide (B= 0.480), and Rate of inmates per 1000 homicides (B = -0.776). Substantively significant were the variables Rate of direct expenditures (-1.896) and the marriage rate (0.270). In model 2, the variables that emerged as statistically significant were included together in a multivariate test of the relationship to the dependent variable. These three variables remained significant, although the Beta coefficient decreased slightly due to the combined effects. In Model 3, all seven independent variables were included in a multivariate test. This model resulted in a 122% increase in the Beta coefficient for Rate of White homicide. The adjusted R² for this third model was .374.

In model 3, the coefficients indicate that for every 5 increment increase in the black population change, there is a predicted 6 increment increase in the rate of death verdicts. Similarly, for every 1 increment increase in the rate of white victims there is a predicted 1 increment increase in death verdicts. Also of substantive significance, as the rate of court

expenditures by one dollar (per 10 residents), the rate of death verdicts goes down by 1.12 increments.

Hypothesis 2: States with high rates of state relief will also have characteristics reflecting unequal power distribution and a stronger commitment to social control:

In order to test hypothesis 2, I present table 3 below which indicates the impact of independent variables on the dependent variable (rate of relief on appeal for death verdicts by state) under 3 conditions: Model 1) one independent variable at a time, Model 2) combination of three variables that were significant from Model 1), and Model 3) all seven independent variables together. (See Table 3).

Table 3. Effects of State Characteristics on Rate of Relief on Appeal by State

	Model 1		Model 2	
	B	SE	B	SE
Percent of Black population change	1.276	0.922	1.156	0.913
Rate of White homicide	0.436	0.262	1.268 *	0.536
Average welfare expenditures	0.006	0.013	-0.049 *	0.027
Inmates per 1000 homicides	-1.327*	0.474	-0.879	0.562
Rate of direct expenditures on the courts per 10	-2.357	1.588	-0.237	1.853
Marriage rate	0.209	1.001	0.098	0.975
Felony rate	0.355	0.635	0.150	0.619
R ²			.207	

*p<0.05

In model 1 there were six independent variables that were substantively significant. They are: Rate of black population change (B= 1.276), Rate of white homicide (B= 0.436), Rate of inmates per 1000 homicides (B = -1.327), Rate of direct court expenditures (-2.357), the marriage rate (0.209), and the rate at which defendants are found to have prior felony arrests (.335) . In Model 2, all seven independent variables were included in a multivariate test. This model resulted in a 243% increase in the Beta coefficient for Rate of White homicide from Model 1. The beta coefficient for Inmates per 1000

homicides dropped 37 increments from Model 1 while the rate of direct of court expenditures declined by 90 increments. The adjusted R^2 for this second model was .207.

In model 2, the coefficients indicate that for every 1 increment increase in the black population change, there is a predicted 1.15 increase in the rate of relief granted for death row appeals. Similarly, for every 5 increment increase in the rate of white victims there is a predicted 6 increment increase in the rate of relief. Also of substantive significance, as the rate of court expenditures by one dollar (per 10 residents), the rate of death verdicts goes down by 1.12 increments.

DISCUSSION AND CONCLUSIONS

In this study the I examined state level death verdicts and state appeals with the minority-majority conflict in mind. Conflict arises where “Dominate racial groups act politically when threatened by large minority populations” (Blalock 1967 and Key 1949). Herbert Blumer (1958) further explains the tension between minority and majority groups by stating: “that race prejudice exists basically in a sense of group position, racial identification, and experience rather than a set of feelings which members of one racial group have towards another racial group”. As suggested by Jacobs and Carmichael, “Given the intense interest in capital punishment, it is surprising that we know so little about the external social and political conditions that make some jurisdictions far more likely than others to impose this sentence (2004, p. 251). The researcher tested this theory by performing secondary data analysis on the Fagan and Liebman study

“Processing and Outcome of Death Penalty Appeals after Furman v Georgia, 1973-1995”.

The researcher aggregated her own data set and ran linear regressions to see what variables were significant. Each of the independent variables selected were operationalized by placing each variable under either the category of power, social control or control variables. The independent variables that fell under power were: percent Black population change, rate of White homicide, average welfare expenditures, and inmates per 1000 homicides. Percent Black population change was selected to explain the underlying power structure of the criminal justice system which results in variability in sentencing, especially in terms of the death penalty. This is further explained by Jacobs and Carmichael: “Racial or ethnic divisions may explain the number of death sentences because of the threat posed by a large racial or ethnic underclass can be expected to produce criminal sanctions that are more severe” (2004, p. 251). In this study racial division was explained by percentage of Black population change between the years of 1973 to 1995. Threat can be explained by an increase in Black (minority presence). In response to this threat, the majority group will produce more death verdicts and a smaller amount of appeals. Average welfare expenditures was used explain power structure that comes with being below poverty level. As mentioned before Jacobs and Carmichael state how “underclass” a way of explaining death verdicts. By looking at explanatory power of average of welfare expenditures between the years 1973-1995, this study wanted to show that states that have a large population of those who are economically disadvantage would in turn have more death verdicts and fewer reversals. Rate of white homicide was used to explain power structure surrounding “severe

criminal actions". Fear of "severe crime" (i.e. homicides), leads the majority group to act politically. A high production of death verdicts and small amount of reversals are direct responses to fear of crime. When crimes are being committed by individuals of a minority group (Black) and the victims of the crime are of the majority group (White), there will be a quick response to these crimes so the majority group remain in control of the minority group. This is why rate of white homicides was used to show a power struggle between the minority and majority groups. Inmates per 1000 homicides was used to explain the power relationship between majority and minority groups for example, an increase in spending to build more prisons as a result of pressures from the majority group to alleviate their fear of crime. Jacobs and Carmichael (2001) suggest there is a correlation between large minority population and large imprisonment rates. There will also be an increase in the majority desire to punish. By building more prisons this will result in incarcerating more defendants. State that would have a higher number inmates per 1000 homicides would explain more death verdict and less reversals. The independent variable that fell under the category of social control was rate of direct expenditures on the courts. Direct expenditures on the court was used to show how crime can be more accurately controlled by pumping money into the court system the more money a court has the less amount of death verdicts and more relief will be given. The independent variables that were used as control variables were marriage rate and prior felony rate. The researcher will discuss these findings according to the hypotheses already presented.

Hypothesis 1: States with high rates of death verdicts will also have characteristics reflecting unequal power distribution and a stronger commitment to social control:

The research findings, as shown in Table 2, reveal that there is a positive correlation between states with high amount of death verdicts and those with a higher percentage of Black population change, average welfare expenditures (model 1 and 2), white homicide rate, marriage rates, and prior felony rates. Hypothesis 1 had predicted that white homicides, welfare expenditures, inmates per 1000 homicides, and prior felonies would be positively associated with death verdicts. This did not hold true with welfare expenditures in model 3 or inmates per 1000 homicides. Hypothesis 1 had predicted that direct court expenditures and marriage rates would be negatively associated with death verdicts, but marriage rate was positively associated with death. In terms of power and social control one can see that Black population change, average welfare expenditures (model 1 and 2), white homicide rate, marriage rates, and prior felony rates. States exercise power over the minority group, those who are economically disadvantaged, those who commit crimes against majority groups, and those with a prior felony. Direct court expenditures as predicted were negatively associated with death verdicts. As the money increases the amount of death verdicts decreases this most likely due to that more money means more accuracy in dealing with crime.

Hypothesis 2: States with high rates of state relief will also have characteristics reflecting unequal power distribution and a stronger commitment to social control:

The researcher's findings, as shown in Table 3, reveal that there is a positive correlation between state relief and Black population change, white homicides, welfare expenditures in models 1 and 2, marriage rate and prior felony rate. As predicted higher

in Hypothesis 2 there would be high marriage rate and welfare expenditure (model 2) to be positively associated with state relief. Hypothesis 2 did not predict there would be a positive association with Black population change, White homicide rates, welfare expenditures (models 1 and 2) and prior felonies, with state relief. Hypothesis two did predict that rate of inmates per 1000 homicides would be negatively associated with state relief, but did not predict that direct expenditures on the court would be negatively associated with state relief.

In terms of power and social control one can see that when it comes to state relief only inmates per 1000 homicides, marriage rate and welfare expenditures (model 3) seemed to matter when deciding if a defendant deserves relief. The “underclass” is a good way of explaining small amounts of state relief states that have a large population of those who are economically disadvantage would in turn have more death verdicts and fewer reversals. Having smaller amounts of inmates per 1000 homicides has a negative correlation with state relief due to an underlying power structure. States that are easily influenced by the majority group will not want to have high relief rate they would rather have more incarcerated.

Limitations and Further Study

Although this research paper provides a greater understanding of state variation on death verdicts and state relief, there are definite limitations to this study. The original study contained five large data sets that looked at all capital punishment states, year by year. These data sets were: state characteristics, state and county characteristics, direct appeals, state appeals, and habeas corpus appeals. In order to conduct data analysis

the researcher had to collapse data so that each state had included information from 1973-1995 into one data set. The independent variables were turned into rates so that population was controlled for. Not only does percentage of Black population change, rate of White homicides, average of welfare expenditures, inmates per 1000 homicides, direct expenditures on the courts, marriage rate, and prior felony needed to be included in this study but so did a number of other independent variables that would have proven state variation. As discussed in the literature review of this study, there has been a wide range of studies that have been conducted on capital punishment. It would have been useful if the original data would have considered the following topics: race, clemency, abolishment, public opinion, jury information, and elected government officials. The original study did include information based on the race of the defendant and victim but it would have been useful if the study would have included the race of the judge, jury, and prosecuting attorneys for each capital case. The only one variable that included clemency was reason for removal of death sentence. The topic of abolishment would have proven to be useful in showing state variable by included states that went through times of abolishing capital punishment. Public opinion and its fluctuations for and against between the years 1973-1995 would have been a useful variable in this study. It would have shown political responses to public opinion. Another useful variable would have been information of the type of jury a defendant had a capital case or appeal case. The makeup of the jury how many men v women, how minority v majority, how many were republican v democrat. Seeing who was elected governor for each state would have been useful to see if that governor was republican v democrat or if that governor provided

clemency to a defendant. It would have been useful if the original data had information of the type of attorney a defendant had during their initial trial, direct appeal or state appeal. This variable was only seen in the habeas corpus data. This original study also included state and county level data, in this study the research could have included information of on the variation among each of the states counties.

As mentioned in the previously some independent variables that may have proven to be useful for this study were the following: race, clemency, abolishment, public opinion, jury information, and elected government officials. There is a need to prove that there remains state variation when dealing with capital verdicts and appeals. It would prove to useful to carry out further analysis on this study by included these variables to see how they played a role death penalty verdicts and appeals. Considering more variables would provide a better profile of each of the capital punishment states. Table 4 shows states who have given out the most relief and the most death verdict between 1973-1995. It would be useful if further study took these states into consideration to see why the rank so high in giving out the death penalty and giving out relief.

This study shows that capital punishment varies from state to state based on characteristics indicative of an unequal power structure and investments in formal social control. This research highlights the fact that some states have higher rates of death penalty, and higher rates of relief based on appeal, than other states. From a minority-majority conflict perspective one might argue that minority presence, defendant characteristic (race, marital status, prior felony conviction), the amount of money allotted to a the formal system of social control, i.e., state court and welfare system, the amount of

inmates in prison, and the type of crime committed and prosecuted (black on white crime), all play a role in the power struggle for the majority group to stay in power.

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