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USE OF THE DEATH PENALTY V. OUTRAGE AT MURDER: SOME ADDITIONAL EVIDENCE AND CONSIDERATIONS

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In this paper we summarize and analyze Glaser and Zeigler's attempt to empirically examine three explanations of why murder rates have generally been highest in states where capital punishment has been used the most. Examination shows their analysis to suffer from serious methodological shortcomings. Neither their data nor additional evidence presented here lends much support to their conclusion that (1) both frequent use of the death penalty and high murder rates are consequences of a low valuation of life and (2) homicide rates can be reduced by abolition of the death penalty.

In a recent article appearing in this journal, Glaser and Zeigler attempt to empirically examine the question, "Why have murder rates generally been highest in those states where capital punishment has been used most?" They examine three explanations, the first proposed by proponents of the death penalty and the second and third presented by abolitionists: (1) "Capital punishment rates and murder rates vary together only because the more that murders occur in an area, the more are executions required to deter murder." (2) "Executions by the state ... serve as examples to the populace; they have the unintended effect of making murder less repulsive ... , thereby increasing the frequency of homicide."  

2. Id., p. 333.
3. Ibid.
4. Id., pp. 333-34.
5. Id., p. 333.
While Glaser and Zeigler should be commended for attempting to examine the above arguments empirically, careful analysis of their investigation shows it to suffer from serious methodological shortcomings that account, in part, for the conclusions they reach. In addition, in testing the above arguments, they fail to take into consideration some previous death penalty investigations that bear directly on the questions they consider.

The Present Investigation

In the discussion to follow, we shall further examine each of the above death penalty arguments—first, by scrutinizing Glaser and Zeigler’s methodology; second, by inspecting some additional empirical evidence that bears directly on these questions; and third, by drawing upon the findings of previous death penalty investigations to provide a more comprehensive analysis.

The Pro-Capital Punishment Argument

Glaser and Zeigler find that the pro-capital punishment explanation for the positive association between executions and murder rates “is rebutted by the fact that the national pattern of a close relationship between homicide rates and use of the death penalty does not occur within regions where some states have and others do not have capital punishment.” 8 They reach this conclusion by comparing rates of murder and non-negligent homicide for neighboring death penalty and abolition states for 1962, 1967, and 1972. 9 They argue, for example, that “in New England, capital punishment has always existed in Vermont, New Hampshire, Connecticut, and Massachusetts but has been abolished for about a century in Rhode Island and Maine, yet neither of these two states has been consistently lower than the others in its murder rates.” 10 In support of their conclusion they provide similar comparisons of abolition and retentionist states in the North Central and Pacific regions of the country. 11

While the homicide figures Glaser and Zeigler report for 1962, 1967, and 1972 are consistent with other investigators’ findings of little to no difference in rates of contiguous death penalty and abolition states, it is unclear how these data disprove the pro-capital punishment explanation of why murder rates are generally “highest in those states where capital punishment has been used most” (emphasis added). 12 The figures they report on homicide rates in retentionist and abolitionist states

7. It is noteworthy that the study by Graves is the only empirical investigation of the death penalty cited by Glaser and Zeigler.
9. Unfortunately they do not tell us why they selected these three years for analysis or how representative these years are.
11. They do not perform this analysis, but tests of significance reveal that in the North Central region (Table 1, p. 334) homicide rates are significantly different in death penalty and abolition states only in 1962 (p < .04) and 1967 (p < .02). It is also of interest to note in examining their Table 1 that average homicide rates are higher in abolition states for all three years in the Pacific region, while this pattern is reversed for the North Central and New England states. Glaser and Zeigler fail to speculate why the Pacific region does not correspond to their argument that higher murder rates are found in death penalty states because both high homicide rates and legal executions reflect a low valuation of life.
simply do not permit this question to be addressed or the pro-death penalty explanation to be accepted for this occurrence.

As pointed out repeatedly by Sutherland, Sellin, Schuessler, Bedau, Gibbs, Zimring and Hawkins, and others who have examined the effect of the death penalty on homicide, a clear distinction must be maintained between (1) the statutory provision for the death penalty and (2) the actual use of the death penalty. That is, nothing can be said about the effects of the use of the death penalty if its use is not examined. Unfortunately, Glaser and Zeigler fail to keep this distinction in mind in rejecting the pro-death penalty argument.

THE FIRST ANTI-CAPITAL PUNISHMENT ARGUMENT

The first anti-death penalty argument, which Glaser and Zeigler consider and partially accept (also partially reject), suggests that “executions by the state set an example that the citizenry follows by committing murder.” While they acknowledge that this is basically a “chicken or the egg” type of question, they conclude that the recent nation-wide decline in the use of the death penalty coupled with a generally rising homicide rate tends to counter the notion that executions encourage murder. However, citing a study by Graves, which shows that in California (1946-1955) there were significantly more homicides on weekends following legal executions than on other weekends, they also conclude that this argument “cannot be dismissed as having no validity whatsoever.”

Again, we find the methodology used by Glaser and Zeigler to address this anti-punishment argument quite limited and their discussion of previous research somewhat misleading. First, the fact that there has been a decline in the use of the death penalty and a rise in the homicide rate in recent years tells us little if anything about whether executions encourage murder. At best, all that this trend indicates is that executions are obviously not the only determinant of the level of homicide. This is clearly made evident by both (1) the occurrence of homicides in abolition states and (2) comparable homicide rates in many contiguous death penalty and abolition jurisdictions.

A more adequate test of this hypothesis would be direct examination, year by year, of the association between actual executions and rates of homicide in death penalty states. If there is any merit to the notion that executions encourage murder, we would expect a significant positive correlation between executions and homicide rates. Table 1 reports the


15. Ibid.


17. Glaser and Zeigler, supra note 1, p. 335.
association between the number of executions performed in death penalty states and rates of homicide between 1930 and 1967 (the year of the last execution in the country).\textsuperscript{18}

Glaser and Zeigler are correct that there has been a trend of a decreased use of the death penalty and an increase in homicide. Table 1 shows that with but two exceptions (1966 and 1967) the correlation between these two factors is positive. That is, for the period 1930 to 1965, states that have tended to use the death penalty most have higher homicide rates than those using it the least. Overall, however, for all years combined (1930-1967), the average correlation between executions and homicide is very slight and not statistically significant.\textsuperscript{19}

As noted above, Glaser and Zeigler are reluctant (as we are) to reject completely the first anti-punishment argument in the light of Graves's finding of a significant positive relationship between executions and criminal homicides in California. However, they ignore two other frequently cited studies which fail to show that executions have an effect on homicide.


\textsuperscript{19} The average coefficient of determination ($r^2 = .113$) for all years combined indicates that executions can account for only about 11 per cent explained variation in the homicide rate. In addition, further inspection of Table 1 shows much variation in the size of the correlations with $r$ values ranging from .045 to .783, which would indicate that the presumed effect of the death penalty is not uniform from year to year.

\begin{table}[h]
\centering
\caption{Correlation between number of executions for homicide and homicide rates per 100,000 population by year and number of states, 1930-1967.}
\begin{tabular}{|c|c|c|c|}
\hline
Year & $N$ & $r$ & $r^2$ \\
\hline
1930 & 32 & .064 & .004 \\
1931 & 32 & .150 & .023 \\
1932 & 32 & .073 & .005 \\
1933 & 34 & .172 & .030 \\
1934 & 34 & .121 & .015 \\
1935 & 34 & .175 & .031 \\
1936 & 34 & .564 & .318 \\
1937 & 34 & .504 & .254 \\
1938 & 35 & .182 & .033 \\
1939 & 36 & .476 & .227 \\
1940 & 36 & .563 & .317 \\
1941 & 36 & .199 & .040 \\
1942 & 36 & .401 & .161 \\
1943 & 36 & .467 & .218 \\
1944 & 37 & .225 & .051 \\
1945 & 37 & .355 & .126 \\
1946 & 37 & .783 & .613 \\
1947 & 37 & .433 & .187 \\
1948 & 36 & .375 & .141 \\
1949 & 36 & .242 & .059 \\
1950 & 36 & .527 & .278 \\
1951 & 36 & .224 & .060 \\
1952 & 36 & .444 & .197 \\
1953 & 36 & .236 & .056 \\
1954 & 36 & .277 & .077 \\
1955 & 37 & .045 & .002 \\
1956 & 37 & .300 & .090 \\
1957 & 38 & .335 & .126 \\
1958 & 38 & .218 & .048 \\
1959 & 38 & .231 & .063 \\
1960 & 38 & .180 & .032 \\
1961 & 38 & .343 & .118 \\
1962 & 38 & .083 & .007 \\
1963 & 38 & .155 & .024 \\
1964 & 38 & .515 & .265 \\
1965 & 33 & .072 & .005 \\
1966 & 33 & -.039 & .002 \\
1967 & 33 & -.091 & .008 \\
\hline
\end{tabular}
\footnotesize{a. Product moment correlation ($r$) is a measure of the strength and direction of relationship between two variables with coefficients ranging in value from 0 to ± 1.00. The square of}
\end{table}
In an early analysis of this question, Dann, examining homicides occurring in Philadelphia for sixty days before and sixty days after the highly publicized mass execution of five killers, found no significant difference (increase or decrease) in rates in the latter period. Similarly, in a more recent investigation in Philadelphia, Savitz found no significant difference in the rate of capital crimes eight weeks before and eight weeks after the well-publicized sentencing (not actual execution) of four men to death.

In sum, we are in agreement with Glaser and Zeigler that the evidence is not conclusive and studies like Graves's (and Dann's and Savitz's) should be conducted in other areas of the country. The weight of evidence as we see it, however, suggests it may be premature to conclude, as they do, that this anti-death penalty argument has partial validity. In our assessment, this issue remains an open question and one obviously in need of further examination.

THE SECOND ANTI-DEATH PENALTY ARGUMENT

The second anti-death penalty argument that Glaser and Zeigler examine is concerned with whether "both the high use of capital punishment and high murder rates reflect a low valuation of life." To test this question, they categorize death penalty states into five groups according to the total number of executions performed between 1930 and 1970 per 100,000 population, and then they compute the mean and median number of months served by paroled male homicide offenders between 1965 and 1970. This analysis revealed an inverse relationship between the historical rate of executions and the average period of confinement before parole; i.e., states that have used execution the most are most lenient in length of confinement required before parole. This observation leads Glaser and Zeigler to accept the second anti-death penalty argument and conclude that high homicide and execution rates and a state's readiness for forgiveness (early parole) of killers reflect a low valuation of human life.

As with the two previous death penalty arguments, the conclusion reached by Glaser and Zeigler also appears to be an artifact of their methodology. First, in examining the relationship between historical execution rates (1930-1967) and average length of prison sentence of paroled killers, they use the Pearson correlation coefficient ($r$) to measure the strength and direction of the linear relationship between execution rates and sentence lengths. Unlike $r$, the coefficient of determination ($r^2$) can be interpreted as the proportion of variation in the dependent variable (homicide rate) that can be explained by variation in the independent variable (executions). Unlike $r$, $r^2$ has a lower limit of 0, indicating no association between the two variables, and an upper limit of 1.00, indicating a perfect association.

b. N sizes vary because of changes in the number of states providing for the death penalty for murder and the availability of homicide figures.

c. $p < .05$
d. $p < .01$
e. $p < .001$

22. Research of this sort could be relatively easily undertaken by examining the correspondence between the dates of executions, which are provided in the Teeters-Zibulka Inventory, and the incidence of homicide immediately following these dates. In addition, research could also be undertaken to examine the effect of execution publicity on homicide rates.

23. Glaser and Zeigler, supra note 1, p. 335.
murderers (1965-1970), they examine noncomparable periods. Had they examined the relationship between these two variables for comparable years, would their results have been the same?

Second, to what extent are their findings a result of solely considering the length of prison sentence served by paroled murderers, thus ignoring those released from prison after serving their entire sentence without parole?

To address both of these questions at least partially, we have examined the association between (1) states' execution rates (operationally defined as the proportion of reported homicides that result in execution) for 1951, 1960, and 1964 and (2) the average length of prison sentence served by all murderers released in these years. Our analysis was restricted to these three years because adequate prisoner release figures are not available for other periods.\(^2\)

Despite this limitation, if Glaser and Zeigler and the second anti-death penalty argument are correct, we would expect a significant negative association between length of imprisonment and execution rates. A correlation analysis reveals the association between these two factors to be in predicted inverse direction for all three years (1951, 1960, 1964) but none of the coefficients is statistically significant.\(^2\) In sum, contrary to their argument, states that use the death penalty most do not imprison murderers for a significantly shorter time.

Further comparison of imprisonment practices in death penalty and abolition states sheds some additional light on this argument. In line with the reasoning of Glaser and Zeigler, we would expect convicted murderers to receive lighter prison sentences in retentionist states (which, they suggest, have a general disregard for human life) than in abolition states (said to have a greater regard for human life). To test this question, we computed the length of prison sentence served by all released murderers released in both types of states in 1951, 1960, and 1964 (see Table 2).

Contrary to what the second anti-punishment argument predicts, these figures for 1951 and 1964 show that the mean and median lengths of sentences are higher for death penalty than for abolition jurisdictions. Only for 1960 is the pattern reversed. In sum, like the evidence presented above, these data do not generally suggest a significant negative association between length of imprisonment and execution rates.

### TABLE 2

<table>
<thead>
<tr>
<th>Year</th>
<th>Type of State</th>
<th>Months Served</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Mean</td>
</tr>
<tr>
<td>1951</td>
<td>All States</td>
<td>128.5</td>
</tr>
<tr>
<td></td>
<td>Death Penalty</td>
<td>132.1</td>
</tr>
<tr>
<td></td>
<td>Abolition</td>
<td>100.8</td>
</tr>
<tr>
<td>1960</td>
<td>All States</td>
<td>62.1</td>
</tr>
<tr>
<td></td>
<td>Death Penalty</td>
<td>57.2</td>
</tr>
<tr>
<td></td>
<td>Abolition</td>
<td>93.0</td>
</tr>
<tr>
<td>1964</td>
<td>All States</td>
<td>68.5</td>
</tr>
<tr>
<td></td>
<td>Death Penalty</td>
<td>69.2</td>
</tr>
<tr>
<td></td>
<td>Abolition</td>
<td>64.2</td>
</tr>
</tbody>
</table>


\(^{25}\) The correlations for each year are as follows: 1951 ($r = .115, r^2 = .013$), 1960 ($r = -.084, r^2 = .007$), and 1967 ($r = -.097, r^2 = .009$). None of the correlations is statistically significant at the .05 level, with the largest (for 1951) permitting only about 1 per cent explained variance in the homicide rate. In short, for all practical purposes, length of imprisonment and execution rates are independent factors.
support the second anti-death penalty argument.

Conclusion

After examining the evidence they assemble, Glaser and Zeigler argue that a clear policy lesson is suggested by their findings: "to reduce homicide rates, a state should express its abhorrence of homicides not through the cold-blooded means of capital punishment but through severity and certainty in its confinement penalties for those who kill."26 They also suggest two additional expressions of respect for the sacredness of life, but conclude that "these alternatives are impaired . . . when the government resorts to the murderer's methods."27

While we would, on an ideological level, agree with Glaser and Zeigler on the need to abolish the death penalty, we fail to see how this recommendation follows from their data. First, they do not provide a convincing case in support of the second anti-death penalty argument (which the above policy recommendation rests upon) that frequent use of the death penalty and high rates of murder are both consequences of low valuation of human life. Nor do we find much support for this hypothesis in the evidence we presented above.

Second, Glaser and Zeigler provide no direct evidence to support their assertion that homicide rates could be reduced by abolishing the death penalty. Had they examined any of the numerous empirical investigations of the effects of abolition (and reinstatement) of the death penalty on rates of homicide, their conclusion might have been quite different. As Sellin and many others have pointed out, there is no evidence that abolition is followed by an increase in homicide and there is also no evidence that abolition is followed by a reduction in homicide.28 In short, historical analyses both in this country and abroad have repeatedly shown that "the presence of the death penalty—in law or practice—does not influence homicide death rates."29 In addition, at least two cross-sectional analyses of states' execution rates (proportion of homicides that result in the death penalty) and rates of homicide show these two factors to be negatively and not, as Glaser and Zeigler argue, positively correlated.30

Third and finally, these investigators conclude that homicide rates can be reduced through the severity and certainty of confinement penalties for those who kill. They fail to inform us, however, how the severity and certainty of existing penalties might be altered to achieve this end. They fail even to speculate on (1) what forms of confinement and other modes of treatment might best reduce homicides; (2) how lengthy (severe) must confinement be to reduce killings; (3) how certain must con-
finement be to reduce homicides: (4) what is the relationship (additive or interactive) between murder rates and the severity and certainty of punishment; (5) which of these two dimensions of punishment would have the greatest effect in reducing homicides: (6) how the celerity of punishment might also be altered to reduce murder: (7) how and where the justice system should be modified to reduce murder rates: etc.

Had these investigators consulted a number of recent empirical investigations by Gibbs, Tittle, Chiricos and Waldo, Logan, Bean and Cushing, Phillips and Votey, Bailey and Smith, Ehrlich, Sjoquist, Antunes and Hunt, Orsagh, and Bailey, Martin, and Gray, all directly concerned with these questions, their recommendations might have been more concrete. As it stands we simply have no idea what changes in the confinement of killers Glaser and Zeigler are proposing or how and where these changes should be implemented.

In conclusion, as noted above, Glaser and Zeigler should be commended for attempting to examine empirically some very difficult questions concerning the death penalty. However, neither the evidence they present nor the additional evidence presented here permits any conclusive answers to be reached or lends much support to the policy recommendations they feel are “clearly” suggested.

While we share with them a deep concern over the death penalty, we must agree with Bedau, Van den Haag, and others that a number of very important questions concerning capital punishment remain to be addressed. In short, the abolition and retentionist arguments examined by Glaser and Zeigler are, as trite as it may sound, clearly in need of additional research. Perhaps the type of investigations discussed by these authors and reviewed here, and the work of others, will permit a more empirical approach to the death penalty issue.

analysis performed here and our suggestions will provide some promising possibilities for future investigators.

For the most part, however, only one aspect of capital punishment—its severity—has been examined. Little attention has been paid to its certainty, and examinations of the remaining three aspects of punishment are completely absent in the empirical literature. As for methodology, most death penalty investigations rest upon a number of unproven empirical assumptions, three of which appear highly questionable: (1) homicides as measured by vital statistics are in a generally constant ratio to criminal homicides; (2) the years for which the evidence has been gathered are representative and not atypical; (3) infrequency of imposition does not significantly weaken the deterrent effect of a penalty.