

DOES THE DEATH PENALTY DETER HOMICIDES?

by

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Dedication

I would like to dedicate this paper to my grandmother, Benita Valles. She passed away before she could see how successful I would become. I said I love you, but when you left, I felt like I never said it enough. When I too am gone and am no longer able to say I love you when I pray at night, this paper will continue to resonate my love for you.

Forever your loving grandson, Lore

Abstract

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This study assessed the long debated question over the death penalty's deterrent effects. The majority of the empirical research on this topic is dated and does not display the current status of capital punishment. The death penalty argument is divided between criminologists who suggest that capital punishment holds no deterrent effects and criminologists who suggest that it does. This examination revisits the argument with an analysis of state panel data and executions between the years of 2000 and 2014. The findings suggest that the application of the death penalty does not deter would be offenders from committing homicide.

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Chapter 1

Introduction

Does capital punishment (death penalty) deter violent crime (homicides)? Early classical theory could possibly answer this question. Theorists such as Beccaria believed that if the pain of punishment outweighs the pleasure of crime, then criminal activity in the offender will be deterred. On that note, deterrence theory states that swift, certain, and a punishment suitable to the crime committed will successfully deter criminal activity. Capital punishment for many states has served as a final form of justice in our penal system. Has this form of punishment actually served as a deterrent and lessened the rate of homicides?

In order to understand the magnitude of the issue at hand, there are many elements to discuss. It is important to determine whether the death penalty serves as a successful deterrent of violent crime because of the following reasons: If results suggest that capital punishment is an unsuccessful deterrent, is it justifiable to continue using the death penalty and on what premises? Do executions of inmates on death row lead to a general deterrence effect that dampens violent crime? If offenders on death row have to wait countless years for their execution, would this be considered cruel and unusual punishment due to the psychological toll of awaiting death? In addition, does the practice of confinement for years before execution fail in the case of deterrence because it is not a swift punishment? Statistics derived from the Report of the Judicial Council Death Penalty Advisory Committee (2014) in Kansas demonstrate that capital punishment cases seem to be more costly than non-capital punishment cases. Costs of the death penalty displayed by the Death Penalty Information Center (DPIC) displays that in California, cases without capital punishment cost on average \$740,000, while cases with capital punishment cost on average \$1.26 million. In addition, it costs \$90,000 per year to maintain one death row

inmate. In Texas, every capital punishment case costs tax payers \$2.3 million on average. If this holds true, and capital punishment is not a deterrent of crime, then why continue its costly use?

The death penalty is an important issue that must be addressed. This study addresses the question as to whether the death penalty has a general deterrent effect on violent crime (homicides) using state data from 2000 to 2014. Although this topic has been addressed before in research prior to this study, much of the data collected is dated and may not display current statistics. For this reason, a re-evaluation is necessary in order to obtain findings that pertain to our current time period. The following section starts by addressing what previous research on this topic has shown. This analysis will provide aspects that analyze deterrence theory and examine the ethics involved in capital punishment. In addition, constitutional issues will be addressed, which will assess question as to whether it is considered cruel and unusual punishment to continue using capital punishment. Further, I will then describe the methods and data used and present the results of the analysis. Lastly, a discussion will conclude the findings.

Chapter 2

Deterrence Theory

Early classical theory was developed due to a cruel and ineffective system in the 1700s as a reform to help deter crime. The first and most known among theorists and criminologists was Cesare Beccaria. According to Paternoster (2010), Beccaria despised the legal codes under the ancient regimes and believed that they were ineffective in terms of crime control because of their irrationality. Beccaria theorized that unless people are deterred by swift, severe, and certain punishments, they may commit offenses that will harm others in their quest for self-interest. In addition, he theorized that if the pain of punishment outweighs the pleasure of crime, then criminal activity in the offender would be deterred. Kennedy (2008) states that deterrence theory deduces that people are sufficiently rational to know that their actions will have penalties; thereby motivation to commit such actions will be diminished. Furthermore, Beccaria's, *On Crimes and Punishments*, argues that offenses should be met with appropriate punishments. Beccaria also states his strong belief that certain punishment will always be a more successful deterrent than severe punishment: "One of the greatest curbs on crimes is not the cruelty of punishments, but their infallibility...the certainty of punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible..." (Beccaria 1986).

Following the work of Beccaria, Jeremy Bentham with his development of utilitarianism aided in making strides towards a better understanding of why people act as they do. Bentham (1988), a reproduction of his work in 1781, *An Introduction to the Principles of Morals and Legislation*, begins by stating that man is governed by two elements: pain and pleasure. Bentham states that these elements determine the things we say, the actions we take, and our thoughts. In

addition, he claims that there are four sources of pain and pleasure: physical, political, moral, and religious. Bentham suggests that taking these pains and pleasure into account and understanding their force or meaning to the individual, is how the individual determines their value. In doing so, the individual will be able to measure if the pleasures or pains of an action are worth the risk.

Bentham shows his utilitarian mindset when he suggests that all law should augment the happiness of the population and exclude anything that takes away from that happiness. Bentham goes on to propose that punishment should only take place if it excludes a greater evil or cruel and unusual punishment. Rules by which Bentham believes offenses should be mediated include that of having the value of punishment be greater than the value of the profit of the offense. He also believes that when two offenses are in competition, the greater offense should have a greater punishment in order to deter the offender from committing the greater offense. If this last proposition by Bentham holds true, and the consequences of homicides are capital punishment, then the punishment via death would produce a deterrent effect from committing homicides.

Although Beccaria and Bentham proposed their ideas long before today, according to Blomberg and Cohen (2003), it was not until the 19th century that correctional measure and institutionalization became the standard response to crime. The reason for this was primarily because of growing influence of science, and the change of perspective as to why offenders commit crimes. Views shifted from a failing social system, to individual pathology (Taylor, Walton, and Young 1973). The *Journal of Law and Criminology* published 3 articles in the mid-nineteenth that display such changes in perspective. An article by von Hentig (1938) states that it is simple minded to believe that Bentham's pleasure's and pains are the sole reason behind people's actions. Hans von Hentig believed that it is necessary to evaluate the factors that operate on an individual to understand why they take certain actions. In addition, he believes that the

failure of deterrence is inevitable because of the close proximity of pleasure, and the distant future of their pain. Toby (1964) cites Emile Durkheim's 1947 work, *The Division of Labor in Society*, when he states that the use of punishment as a deterrent of crime is not needed because "the socialization process prevents most deviant behavior...and only the individual fits the model of classical criminology and is deterred from expressing deviant impulses by a nice calculation of pleasures and pains". Appel and Peterson (1965) contend that in order for deterrence through punishment to be successful, there must be extreme and repeated use of punishment.

Amongst the majority of the research that opposed punishment in the mid-nineteenth century, Andenaes (1952) states that punishment has a "general preventative effect". This effect according to Andenaes has an effect that moralizes and instills a habit of conformity in individuals. His article argues that through punishment, there can be obedience. He does however realize that there is a lack of empirical evidence to support these claims: "the empirical data are still lacking...and we shall not have firm ground to stand on before a systematic investigation is made into the effect of penal law and its enforcement on the citizen's behavior."

Theory allows for a better understanding by providing explanation for why things happen. The work that began with Beccaria, which then stemmed to Bentham, has provided explanations for why people commit criminal acts and how to approach these offenses in a way that will deter future crime. Self-interest as well as pleasures and pains are a common denominator amongst everyone, and when the benefits of committing a crime outweigh the costs, anyone can engage in criminality. Theory and its rationale for why people engage in criminality has been questioned throughout the nineteenth century by science and changing perspectives. The question in this study is that of the effectiveness of deterrence in reference to capital punishment.

Chapter 3

Lack of Deterrence and a Brutalization Effect

Reviewing prior literature, we are able to observe that each study has varying results and conclusions in regards to the death penalty's deterrent effects. Examining Sellin's (1959) work, a reasonable assumption might be that if capital punishment were to have a deterrent effect on homicide, there would be fewer murders in states with a death penalty than those without. In addition, murders would increase if the death penalty was to be abolished and decline if it is restored once more. His findings offer a different story. He concluded that there is no apparent deterrent effect of the death penalty on homicide and that states with a death penalty statute have an equal or greater murder rate than states without a capital punishment statute. Furthermore, states who had previously abolished and then restored the death penalty showed no defining changes in homicide rates.

Cochran and Chamlin (2000) examine a variety of studies conducted between 1975 and the late 1990s that display contradicting outcomes in reference to the death penalty's deterrent effects. Although their studies showed the presence of deterrence, they also showed a brutalization effect. In other words, while some studies concluded that capital punishment held deterrent effects (Ehrlich 1975, 1977; Layson 1985; Phillips 1980; Stack 1987, 1990, 1995, 1998), others held that capital punishment actually increased homicide rates (Bailey 1983; Bowers and Pierce 1980; Cochran et al. 1994; Decker and Kohfeld 1990; King 1978; Thomson 1997).

A brutalization effect in criminology pertains to a cause and effect relationship that occurs as a result of executions. A brutalization effect proposes the exact opposite of the

outcomes expected through deterrence theory. While deterrence theory states that people will be deterred from committing homicides when a capital offender is punished, a brutalization effect proposes that people will become more inclined to engage in homicides. Perhaps brutalization occurs because after executions, respect for humanity lessens, "...after every instance in which the law violates the sanctity of human life, that life is held less sacred by the community among whom the outrage is perpetrated" (Rantoul, 1854). The state (government) and the people within the state are overseen by the social contract. Actions committed by the people who enforce the social contract may resonate to the people living within. This would suggest that if government's response to capital offenders is execution, then people who have been wronged would feel that it is justified to take matters into their own hands and execute those who have wronged them. "Executions demonstrate that it is correct and appropriate to kill those who have gravely offended us...In effect, the message of the execution may be lethal vengeance, not deterrence" (Bowers and Pierce 1980).

Looking back upon the theoretical premise of deterrence, Beccaria says that if the punishment for a crime is certain, swift, and severe enough, then there will be less crime. Robinson (2008) displays the number of executions and the number of inmates on death row in the United States between the mid-twentieth century and the early twenty first century. Executions in the United States dropped from 1,289 in the 1940s, to 120 in the 1980s. The 1990s to the early 2000s was the resurgence of executions as there was a median of 442 executions during this time. On the contrary to declining executions, the death row population increased from about 200 total inmates in 1974 to about 3,600 total inmates by 2001. Although the United States was executing far less, the death row population continued to grow. Findings offered by Donohue and Wolfers (2006) convey that in 2003 there were 16,503 homicides, and 144 of these

offenders were sentenced to death. Although 144 offenders were sentenced to death, only 65 of the 3374 total inmates on death row were executed by the end of the year. Judging by the rate at which the United States is sentencing offenders to death and when they are actually executing them, we can assume that the delay in “punishment” may remove the deterrent effect that capital punishment could have on would be offenders. In addition, supporting findings provided by Katz, Levitt, and Shustorovich (2003) convey that the execution rate is only two times the death rate from accident and violence amongst all American men.

Punishment must be certain in order to possess deterrent qualities. Empirical research on the topic of general deterrence in regards to the death penalty implies that deterrence through execution will continue to fail because it is missing an important element of the theory: certainty. In addition, even if certainty was met, capital punishment would not be successful because it is done in secret: “...deterrence is a communication theory, and it is the *perceived* severity, certainty, and celerity of punishment that result from sanctioning practices that are predicted to influence offense rates” (Bailey and Peterson 1997).

Ekelund et al. (2006) displayed results that suggest that homicides actually increased as a result of having a death penalty statute. Finding provided by Shepherd (2005) introduce a phenomenon known as a threshold effect. The threshold effect suggests that executions will create a brutalization effect until such threshold is surpassed. In the study, Shepherd finds this threshold to be nine executions. In other words, the homicides that deterrence can lessen will only outweigh the homicides that brutalization produces if states execute more that nine times. Examples given by Shepherd include two states: Oregon and Texas. She states that Oregon’s first execution produced 175 homicides, but that the more Oregon executed, the less brutalization occurred. An avid execution state such as Texas provides deterrence of homicides with every

execution because the certainty of execution is high. Reiterating once more, according to this study, only if a threshold of nine executions is surpassed will deterrence outweigh brutalization. Evidence, much like Sellin's findings, displays that murder rates are lower in states without the death penalty than states with it (Peterson & Bailey 2003). Further, even when executions are highly publicized, there tends to be no change in murder rates (Bohm 2003; Peterson and Bailey 2003). One of the latest analyses conducted on this topic is that of Kovandzic, Vieraitis, and Boots (2009) which analyzed death penalty law status, frequency of execution, and probability of execution. Their results indicated that capital punishment holds no correlation to lower rates of homicides. Overall, these studies support the proposition that capital punishment is not a general deterrent and that it is not an effective form of punishment: "The available evidence remains clear and abundant that, as practiced in the United States, capital punishment is not more effective than imprisonment in deterring murder" (Baily and Peterson 1997).

Chapter 4

Deterrence through Capital Punishment

Lester (1979, 1998) display that between the years of 1930 and 1965, executing one or more people in one year resulted in a decrease in homicides 54 percent of the time. In other words, one or more executions in one year resulted in lowered homicides the following year 54 percent of the time. Zimmerman (2004) states that the deterrent effects found in his study arise from executions themselves and not simply having a death penalty law in place. In addition, he states that its publicity plays a major role when he says: "...executions appear to deter murder only through their announcement, i.e., if potential murders do actually witness an execution in proximity to the time in which they plan on committing their offense, then they will be less likely to commit a homicide." This is reinforced by the work of Phillips (1980) that displays that although executions did not suggest any long-term effects, executions have a short-term effect on homicides. The findings show that homicides decrease immediately by 35 percent following an execution that has been publicized. This would coincide with Zimmerman (2004) in reference to the occurrence of deterrence if an execution is in proximity to a would be offender who plans to commit a crime.

In 2000, six studies examined whether simply having a death penalty statute in place would result in fewer homicides. In these studies, the presence of the death penalty in a state was coded as "1", and the lack of the death penalty in a state was coded as "0". Of the six studies, five displayed deterrent effects that suggest that having the death penalty lowered homicides rates (Dezhbakhsh et al., 2003; Dezhbakhsh and Shepherd, 2006; Donohue and Wolfers, 2005; Mocan and Gittings, 2003; Zimmerman, 2006). Dezhbakhsh et al. (2003) used county level data, which shows that about 18 lives were saved each year as an effect of an execution. Dezhbakhsh

and Shepherd (2003) and their analysis of the moratorium in 1972 displayed that the removal of the death penalty increased homicides. Thus, this suggests that restoring the use of the death penalty would reduce the homicides. According to Mocan and Gitting (2003), having a death penalty statute in place resulted in 64 fewer homicides per year. Lastly, Zimmerman (2006) displayed similar deterrent effects for the death penalty. This study suggested that the deterrent effects were the same for all five methods of execution examined.

A study conducted by Yang and Lester (2008), used a meta-analytical method in order to analyze the change and conclude what the majority of the research says about the death penalty in relation to deterrent effects. Their findings show that 30 years following the Ehrlich (1975) study, 60 of the 95 studies indicated an overall deterrent effect while only 35 of the studies indicated a brutalization effect or a significant difference statistically speaking.

Research regarding the deterrence of the death penalty is mixed. While some display deterrent effects, others display no effect at all. Yang and Lester's (2008) meta-analysis gave us a view of the research as a whole, which displayed an overall deterrent effect. The methods in which the studies observed in the meta-analysis were conducted varied and included time series, panel, cross sectional, single execution studies, and publicity studies. Analyzing various data in unlike methods could provide inaccurate results. Due to the various amount of contradicting research, it is difficult to say whether the death penalty does or does not hold deterrent properties. The objective of this study is to analyze recent rates of homicide and use of the death penalty to determine deterrence of the sanction.

Chapter 5

Ethics of Capital Punishment

If one is to support the use of capital punishment on the grounds that it is a more effective deterrent than other forms of punishment, then they should hold proof of its deterrent capabilities. Theorists, who believe that punishment such as the death penalty is an effective deterrent, are tasked with showing proof of what they claim. A book review of Bedau (1983) illustrates that theorist Ernest Van Den Haag holds that the inability to undo a murder justifies the use of capital punishment until deterrence is negated. The real question here is, is it ethical to use capital punishment?

If we view capital punishment through a deontological lens for the judicial system, we can see that the outcome might be different. The judicial system must too uphold their duty, which in the case of homicides would be to examine all aspects of each case and derive a just verdict. The word “justice” may have different meanings to both the family of a victim and the court in charge of determining the appropriate sanctions. If we approach the death penalty through the eyes of the victims involved, a deontological approach can justify the ethics of retributive justice. An “eye for and eye” only seems fair. Victims are entitled to see their offender brought to justice. In terms of homicides, the families of the victims might push to see the offender meet the same fate their loved one met. Is this vengeance, justice, or both?

Immanuel Kant’s categorical imperative would refute any form of vengeance, as it states “Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end” (Wick, 1949). Although the categorical imperative refutes vengeance, Kant is a firm believer in the use of the

death as punishment and does not view it as vengeance, but rather part of the universal law that exists within the categorical imperative. Kant views capital punishment through the eyes of the government primarily, and the offender indirectly. He contends that the state should punish, but must respect the worth of an individual.

Taking John Stuart Mill's utilitarian approach, the best for the majority that is, would contradict Kant's categorical imperative on not treating an individual as a means to an end. Executing a capital offender to enhance the safety of the majority is nothing more than using a means to an end. Although Mill's utilitarian approach and Kant's categorical imperative, which has a "do unto others as you would have them do unto you" approach, would seem to contradict each other, they both state to be firm believers in the death penalty, even if for different reasons. Markel (2005) and Reiman (1985) believe that punishment for capital offenders is not only being used as a means for immediate safety, but also as a form of deterring others from committing murders.

Thomas Hobbes, English philosopher from the seventeenth century affirms his belief that the death penalty is a reasonable punishment that government can use as the ultimate judge of human reason. Hobbes believed that men create a sovereign government and a social contract in exchange for safety and order (Martinez, Richardson, and Hornsby 2002). Individuals entering the social contract agree to laws that will keep them and others safe. When someone breaks that social contract by committing a criminal act, government must punish accordingly or will appear weak amongst the rest of the population. A government that does not punish, and allows such acts to occur without penalty, risks having civil unrest. Hobbes implies that government has no option but to enforce the law in a swift and severe manner. In doing so, others will be deterred

from committing such acts because they will become aware that their crime is not only against the individual, but also the state (Martinez et al., 2002).

Similar to Hobbes perspectives, John Locke views the social contract as one in which everyone who agrees to be a part of it will behave accordingly. If an individual does not behave in accordance to the social contract, then he/she must live by another order and not the one established by the sovereign government. Locke states that before entering the social contract, people have the right to punish wrongdoers under the state of nature. Once a part of the social contract, the person displaces their right to punish their offenders and gives it to the government. The state of nature makes an offender an enemy of those under the law, and that punishment is for mutual protection (Suess 2015).

Vindictory retributivists believe that the punishment given to an offender is justified because of their negative deserts. These deserts being the person who deserves punishment, the type of punishment they deserve, and the virtue in which it is deserved. Vindictory retributivism should not be confused with vengeance. A system of law will not aim to solely punish, but to help uphold the dignity of the victim or victims involved. Lastly, Kramer (2014) states that in instances when the vindictory retributivism is directed towards society, the punishment given to the offender is a way for the system to show that it is still in control by tightening the reins.

Chapter 6

Capital punishment & the Eighth amendment

If we analyze the court cases involving capital punishment, we become aware that there are more than a few factors to consider when sentencing someone to death. The constitutionality of the death sentence has been questioned more than once with claims of eighth amendment violations leading the argument. What constitutes cruel and unusual punishment when it comes to a murderer? Do the laws still apply for a murderer on death row? Does the continued use of capital punishment in our judicial system violate the eighth amendment in the constitution? Using previous court cases involving capital punishment, we will attempt to provide answers to these questions.

Wilkerson v. Utah (1878), an early case of capital punishment, held that it was not unconstitutional to execute by firing squad. This case emphasized that in order for the punishment to be viewed as cruel or unusual, it must contain torture and unnecessary cruelty. Standards of decency have evolved since *Wilkerson* and the use of a firing squad is no longer used as a method of execution, although it is still legal. In *re Kemmler* (1890), the use of electrocution as a method of execution was challenged. The court held that it was not cruel and unusual punishment to execute in this manner. The court stated that torture, a slow death, and something barbarous would constitute an eighth amendment violation, and electrocution did not. In addition, in 1947 in *Louisiana ex rel. Francis v. Resweber*, the court held that a second electrocution after a failed first attempt did not constitute cruel and unusual punishment. The court viewed the occurrence as an unforeseeable accident and unintentional. Finally, in 2001, the Georgia Supreme Court became the first appellate court to determine that electrocution was a violation of the eighth amendment. The court held that this method of execution used

unnecessary physical violence and mutilation. The court also held that cruel and unusual punishment was a concept that evolved along with society (Sack 2001). These eighth amendment challenges involved the method by which executions were carried out. However, there have been challenges also related to the penalty itself.

In 1969 with the *Boykin v. Alabama* court case, the U.S. Supreme Court came to a consensus to review the constitutionality of capital punishment and not simply the procedures involved. The defendant, Boykin, argued that being sentenced to death for committing robberies was cruel and unusual punishment. Perhaps the case that began to further expose the flaws of capital punishment sentencing and the procedures involved was *Furman v. Georgia* (1972). The defendant in this case was sentenced to death for the murder of a Coast Guard petty officer in a burglary. After learning that the trial attorney failed to mention that the defendant suffered from convulsive disorders and psychotic episodes, the case was reevaluated. The defense argued that the jury was not given any guidance on how they should decide between capital punishment and life imprisonment, so the sentence of death violated the eighth amendment. This court case did not only void 40 death penalty statutes, but also voided more than 600 death row sentences in 32 states (DPIC 2015).

The court has also opposed hearing cases that claim that long stays in death row, awaiting execution, constitutes cruel and unusual punishment. In addition, the Supreme Court has ruled that the eighth amendment is not violated for lack of comfort during imprisonment on death row with cases such as *Rhodes v. Chapman* (1981). Furthermore, executions of elderly and sick death row prisoners have not been deemed as an eighth amendment violation. One such case involving a both sick and elderly death row prisoner was that of Clarence Ray Allen in 2006. After spending more than two decades on death row in San Quentin State Prison in California, the

defendant became blind, mostly deaf, suffered from diabetes, and was in a wheel chair. Allen argued that executing him would be considered a violation of his eighth amendment rights, but the Supreme Court disagreed and he was executed via lethal injection.

As of 2004, the Innocence Protection Act addressed concerns about innocent people being sentenced to death. The sections of this act concentrated on creating rules and procedures for DNA testing, enhancing the quality of representation for capital offenders, and compensation if wrongfully convicted (Public Law 108-405 2004).

Aspects of the death penalty have changed over time. The procedures involved in sentencing to death, as well as the execution itself, have been challenged. The manner of execution has changed from firing squad, to electrocution, and lastly to lethal injection. Unmentioned mental disorders in a defendant led to juries now having guided discretion that facilitates in developing a just verdict. Long stays on death row and the execution of ill inmates does not violate the eighth amendment. The purpose of the literature reviewed in this section provided background as to how and why the death penalty evolved. The following portion of this study will first give a brief overview of the methods section. Subsequent will be the introduction of the hypothesis, sample, method of analysis, and time frame.

Chapter 7

Methods and Results

The current study took a quantitative approach, as the data collected came from state panel data that displayed the number of executions and the number of homicides per state, per year. The data was used to collect yearly homicides was derived from the Uniform Crime Report Statistics (UCR). Execution rate data per state (executions per state per year) was collected from the Death Penalty Information Center (DPIC). Together, the data was analyzed in an attempt to find a significant difference in executions conducted and the rates of homicides amongst all states. In addition, an analysis of only active states (states with a death penalty statute throughout the entire time frame) was performed in an attempt to find any significant difference in homicides in states that execute in greater amounts. Finally, the method of examination consisted of using a chi square analysis and the time frame for this study was for the years 2000 to 2014.

Hypothesis

This study assesses whether capital punishment serves as a successful general deterrent in terms of homicide rates. To do this, an examination of homicide rates in both states that have a death penalty statute and states that do not have a death penalty statute was conducted. I hypothesized that the homicide rates within the time frame of this study would suggest that capital punishment does hold deterrent effects. Therefore, I believe states without capital punishment will display higher homicide rates than states with capital punishment. Lastly, when comparing death penalty states with each other, I hypothesize that states that execute more would display lower homicide rates than states that execute less. The null hypothesis in this study

would suggest that there is no statistical difference in state homicide rates with and without the death penalty. Further, the amount of executions will not have an impact on homicide rates.

Sample & Method of Analysis

This study used the population for analysis, as a sample of the population would fail to provide sufficient evidence to support any claim for or against deterrence of capital punishment. For this reason, the current study was structured to examine all 50 states. Homicide rates per state per year were collected from the UCR. Executions per state per year were collected from the DPIC. Active states and non-active states were then analyzed to determine if states with the death penalty provided a lesser amount of homicides than non-death penalty states. Lastly, execution rates per year in only active states were examined to determine if a greater number of executions caused a difference in homicides. Do death penalty states that execute more result in fewer homicides than death penalty states that execute less?

Before starting the chi square analysis, a descriptive table was produced as well as line graphs and scatter plots to demonstrate homicide and execution trends within the time frame. In attempting to find a difference between death penalty states and non-death penalty states when examined against homicide rates, a chi square test of independence was performed. When conducting the chi square analysis, I primarily tested variables “Total Executions” and “Total Homicides”. In addition, I tested the “Active” and “Total Homicides” variables with each other in an attempt to produce results that can suggest whether or not having an active capital punishment statute affects homicides. Lastly, the “Executions” and “Homicides” variables were tested, but only amongst death penalty states. This allowed for a determination of whether or not states that execute in greater amounts have fewer homicides.

Minor coding was necessary to conduct the analysis. On the first data set, states were placed in alphabetical order and numbered from 1-51 (all 50 states including the District of Columbia). Coding for the “Active” variable was as follows: 0=No, and 1=Yes. “No” meaning there is no capital punishment in that state, and “Yes” meaning there is capital punishment. The “Active” variable pertains to states that held a death penalty statute throughout the entire time frame. States that held a death penalty statute that was revoked during the time frame were labeled as “No”, which meant they were no longer active. Executions that occurred in states that revoked the death penalty during the time frame were included in the analysis (one execution in Connecticut, two executions in Maryland, and one execution in New Mexico). On the second data set consisting of only death penalty states, states were also placed alphabetically and numbered 1-31. Since all states in the second data set were death penalty states, there was no use for the “Active” variable in the second analysis.

Time frame

The time frame used for the current study is an analysis of the years 2000-2014. All homicide and death penalty data used for this study was extracted starting in the year 2000 and ending in the year 2014. Most of the research on this topic is dated, and there are only a few analyses that pertain to the 21st century. Half of previous research suggests a deterrent effect, while the other half puts forth that capital punishment only creates a brutalization effect. This study attempted to use this time frame in order to develop a more current picture of where capital punishment stands today in regards to general deterrent effects, if any.

TABLE 1 DESCRIPTIVE STATISTICS

(2000-2014)

STATES	Active (Yes/No)	Total Executions	Total Homicides
ALABAMA	Yes	37	4943
ALASKA	No	0	501
ARIZONA	Yes	18	6206
ARKANSAS	Yes	6	2541
CALIFORNIA	Yes	6	31774
COLORADO	Yes	0	2441
CONNECTICUT	No	1	1648
DELAWARE	No	6	589
DISTRICT OF COLUMBIA	No	0	2593
FLORIDA	Yes	45	15058
GEORGIA	Yes	32	9050
HAWAII	No	0	388
IDAHO	Yes	2	453
ILLINOIS	No	0	12043
INDIANA	Yes	13	5050
IOWA	No	0	715
KANSAS	Yes	0	1657
KENTUCKY	Yes	1	2808
LOUISIANA	Yes	3	7981

MAINE	No	0	322
MARYLAND	No	2	6967
MASSACHUSETTS	No	0	2433
MICHIGAN	No	0	9520
MINNESOTA	No	0	1635
MISSISSIPPI	Yes	17	3496
MISSOURI	Yes	39	5622
MONTANA	Yes	1	423
NEBRASKA	Yes	0	810
NEVADA	Yes	4	2559
NEW HAMPSHIRE	Yes	0	231
NEW JERSEY	No	0	5574
NEW MEXICO	No	1	2129
NEW YORK	No	0	12443
NORTH CAROLINA	Yes	28	7871
NORTH DAKOTA	No	0	196
OHIO	Yes	52	7580
OKLAHOMA	Yes	92	2992
OREGON	Yes	0	1237
PENNSYLVANIA	Yes	0	9989
RHODE ISLAND	No	0	460
SOUTH CAROLINA	Yes	19	4693
SOUTH DAKOTA	Yes	3	302

TENNESSEE	Yes	6	5986
TEXAS	Yes	319	19421
UTAH	Yes	1	782
VERMONT	No	0	166
VIRGINIA	Yes	37	5635
WASHINGTON	Yes	2	2765
WEST VIRGINIA	No	0	1013
WISCONSIN	No	0	2490
WYOMING	Yes	0	205

Table 1 is a representation of all 50 states, including the District of Columbia. The “Active” column displays whether or not the state examined has a death penalty statute in place during the period of this study. The columns “Total Executions” and “Total Homicides” display the sum of the executions and homicides per year between the years 2000 and 2014.

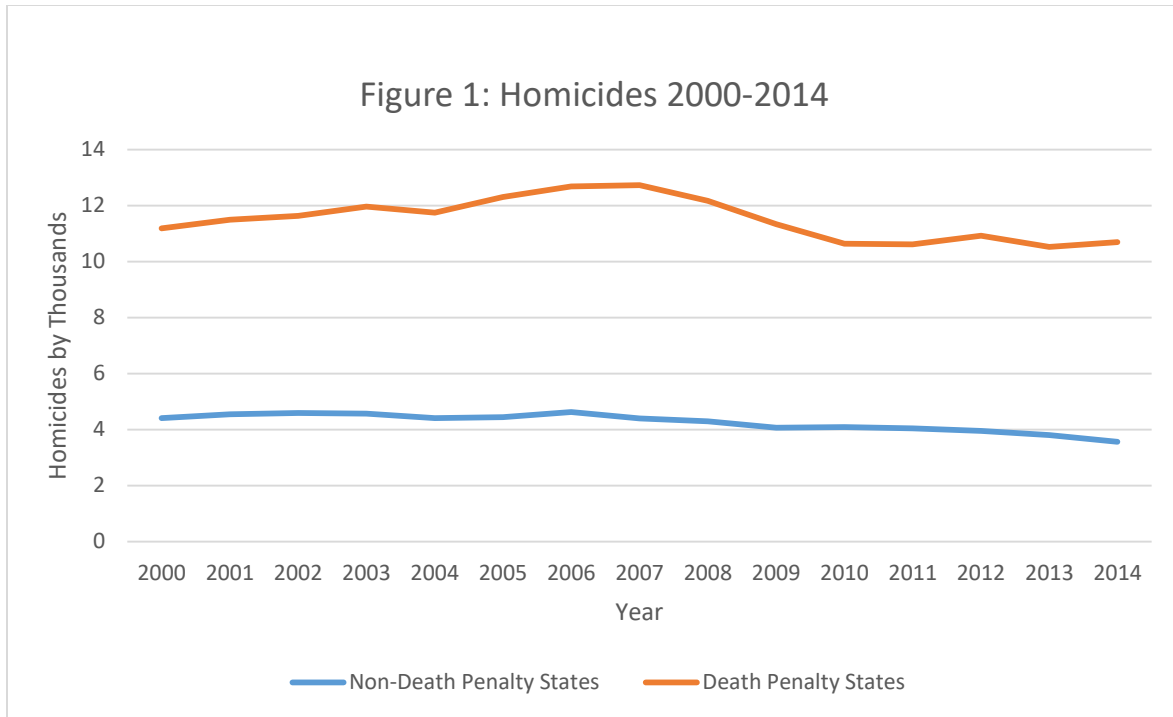


Figure 1 displays the trend of homicide rates for both death penalty states and non-death penalty states. Analyzing the graph, we observe no real change between the two types of states. The data shows a steady and subtle rise in homicide rates in death penalty states through 2007, but then slowly declines the years after through 2014. Homicide rates in non-death penalty states are steady throughout 2007, and slowly decrease the years after though 2014. Something in need of mention when analyzing the figure is that the gap in homicides between death penalty states and non-death penalty states remains constant throughout. Although the data displays higher homicide rates in death penalty states when compared to non-death penalty states, both have managed to stay somewhat consistent through the decade and a half.

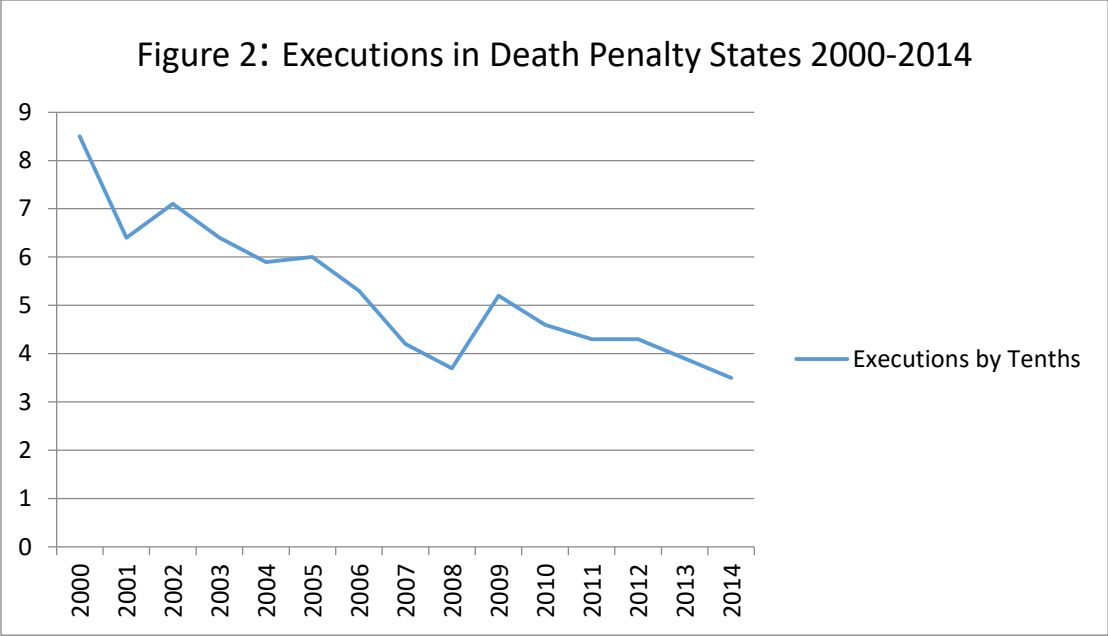


Figure 2 displays the execution rate per year for 2000 to 2014 for only “Active” states. After analyzing the data, we can see that the executions per year have been dropping at a rapid rate with the exception of sharp increase between 2008 and 2009. In 2000, 85 death row inmates were executed. By 2014, only 35 inmates were executed in all states combined.

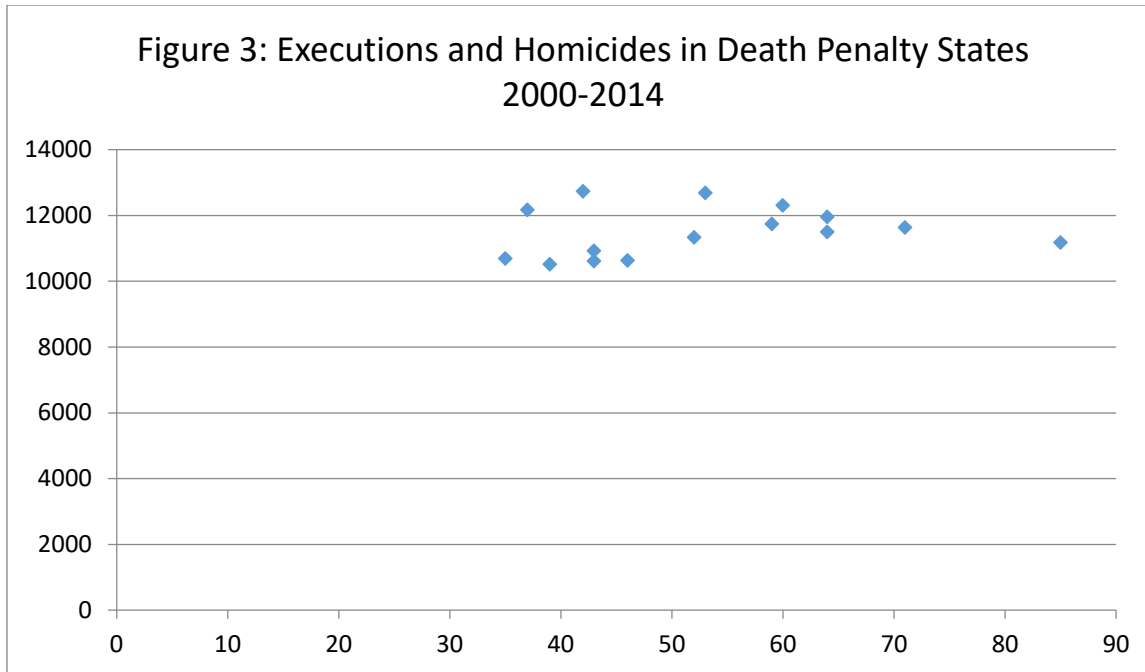


Figure 3 displays executions and homicides in death penalty states. The x-axis pertains to the number of executions and the y-axis pertains to the number of homicides. The scatter plot displays no correlation between the number of executions and the number of homicides committed. According to this table and the data collected, approximately the same amount of homicides are committed if both 35 and 85 inmates are executed.

Table 2: Chi-Square Test: Total Executions v. Total Homicides

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	867.000 ^a	850	.335
Likelihood Ratio	217.492	850	1.000
Linear-by-Linear Association	8.675	1	.003
N of Valid Cases	51		

Table 2 displays a chi square analysis between the variables “Total Executions” and “Total Homicides” in all 50 states. According to the Pearson Chi Square analysis, a value must be below .05 to have statistical significance. The value derived here is .335, which means that there is no statistical significance between the two variables. The results displayed show that there is no difference between total executions and total homicides.

Table 3: Chi-Square Test: Active v. Total Homicides

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	51.000 ^a	50	.434
Likelihood Ratio	68.310	50	.044
Linear-by-Linear Association	2.071	1	.150
N of Valid Cases	51		

Table 3 displays a chi square analysis between the variables “Active” and “Total Homicides”. This analysis shows no significant difference. The value obtained is .434 and in order to be significant, the value must be below .05. In other words, this indicates that there is no difference in homicides by having an active death penalty statute.

Table 4: Chi-Square Test: Executions v. Homicides (Only death penalty states)

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	527.000 ^a	510	.292
Likelihood Ratio	164.163	510	1.000
Linear-by-Linear Association	5.488	1	.019
N of Valid Cases	31		

Table 4 displays a chi square analysis between Total Executions and Total Homicides for only death penalty states. The chi square test showed no statistical significance when it came to the two variables, as the value obtained was .292, which is greater than .05. This indicates that there is no difference between executions and homicides in death penalty states. The results displayed in this table would coincide with the findings in Figure 3, which displayed no difference in homicide rates for a greater or lesser amount of executions.

Reviewing the results of the multiple examinations conducted, the analysis was unable to reject the null hypothesis of no significant difference between the variables evaluated. Homicide rates were much higher in states that have a death penalty statute in comparison to states that do not. Although executions per year seem to have dropped a substantial amount from 2000 to 2014, the homicides rates stayed the same for both death penalty and non-death penalty states. The chi square examinations in Table 2, 3, and 4 all failed to reject the null hypothesis. Table 3 displayed that there is no deterrent effect from simply having a death penalty statute in place. In addition, Table 4 compared only death penalty states and displayed no deterrent effect in reference to executing in greater amounts.

Chapter 8

Discussion

The findings in this study are not surprising, as there is a large amount of research that supports these results. This study was most similar to those of Dezhbakhsh et al. (2003), Dezhbakhsh and Shepherd (2006), Donohue and Wolfers (2005), Mocan and Gittings (2003), and Zimmerman (2006). These studies used the death penalty statute as a determining variable in their examinations, much like this study, but revealed deterrent effects. This could possibly be because their studies examined years prior to the ones in this study. Dezhbakhsh and Shepherd (2006) examined data from the 1972 moratorium, Donohue and Wolfers (2005) examined data from 1960 to 2000, Mocan and Gittings (2003) examined data for 1977 to 1997, and Zimmerman (2006) used panel state-level data over the years 1978 to 2000.

Disproportionate Homicide Rates in Death Penalty States

According to the data, executions have been on a consistent decline. Homicides have also slightly declined though not at the dramatic rate of executions. As mentioned earlier in this study, Donohue and Wolfers (2006) state that 144 people were sentenced to death in 2003. In addition, their study displays that in the same year; only 65 of the 3374 inmates on death row were executed. In other words, this would suggest that the United States is sentencing to death more than they are executing. By the trend displayed in Figure 2, it is possible to assume executing will only continue to drop, and possibly eventually become outdated. The homicide trend displayed in Figure 1 tells a different story. The findings display a disproportionate amount of homicides in death penalty states when compared to non-death penalty states.

The most common approach in the evaluation of the death penalty's efficacy has been comparing homicides rates in death penalty states and non-death penalty states. Examinations such as these display that homicide rates are two to three times higher in states with death penalty law than the states without (Shuessler 1952; Sutherland 1925; and Sutherland and Cressey 1970). Some criminologists state that empirical evidence of the deterrent effect of capital punishment lacks because it hasn't been given a "fair chance" at being evaluated in a broad theoretical sense (Puttkammer 1953). In other words, Bailey (1975) argues that the only principle of deterrence that has been tested in reference to capital punishment is severity. They state that the remaining principles of punishment have been forgotten: "Little attention has been paid to the certainty of the death penalty, with examinations of the remaining three aspects of punishment being completely absent in empirical literature." Supporting arguments from Jeffery (1965) state: "...the lesson to be learned from capital punishment is not that punishment does not deter, but that the improper and sloppy use of punishment does not deter..."

Statistics display that the trend of higher homicide rates in death penalty states has existed before and after this study. The biggest difference in homicide rates between death penalty states and non-death penalty states came between the years 2003 and 2008, where there percentage of difference never fell below 40 percent (DPIC). In addition, Bonner and Fessenden (2000) state that according to data they collected from the Federal Bureau of Investigation, 10 out of the 12 states without capital punishment held homicide rates lower than the national average. On the other hand, half of the death penalty states at the time held homicide rates that were higher than the national average.

A Final Look at Brutalization

Brutalization suggests that an increase in homicides will be the product of capital punishment. Earlier the literature stated the reason behind this occurrence could be attributed to the amount of human sanctity lost when people are executed. Bowers and Pierce (1980) states that the ability for government to execute, opens the door for individuals to execute if they feel they have been offended. Their study examined data for California and Pennsylvania and found that after each execution, there was a two to three fold increase in homicides in the month that followed. These results are similar to those of Dann (1935), which found that after each execution, there was an average increase of 4.4 murders. A look at Oklahoma's return to the death penalty in 1990 displayed a brutalization effect for the total amount of homicides when crossed with other aspects such as killing strangers and non-strangers. This study found an increase in one stranger homicide per month in the year that followed an execution (Bailey 1998). Furthermore, an analysis in Georgia by Stack (1993) suggested that the more publicity that an execution received, the higher the homicide rates. His results show that that after a publicized execution, there was an increase of 26 murders in the month the execution took place. Lastly, a study in Arizona found that following executions, there were a large number of in-the-moment murders and an increase in gun related murders (Thomson 1997). The brutalization effect produces results that contradict deterrence. For the studies analyzed, brutalization is real and it is the effect of capital punishment, but what does the public say? Do people support the use of capital punishment? Does public opinion show support for or against the death penalty?

Publicity and Public Opinion

Today, unless a person is related to the victim or offender of a capital case, it is highly unlikely that they will be aware of any executions. Publicity for executions may result in favorable outcomes because it promotes awareness. This awareness is why publicity for executions may be important for general deterrence. In order for general deterrence to be successful, people must hear about the punishment and see it fulfilled. Individual outside of the correctional system must be made aware of the consequences of failing to abide by the social contract. Without awareness of these consequences, would be offenders cannot possibly be deterred and will therefore engage and continue committing criminal acts. The judicial system's lack of effectively publicizing executions may be the variable resulting in unfavorable outcomes, these outcomes being defined as higher rates of homicides.

Public opinion for the death penalty as shown by the DPIC has changed from the beginning of this study. Oliphant (2016) displays that support for the death penalty has fallen under 49 percent in 2016. The last time support for the death penalty was at its lowest, 49 percent, was in a Gallup poll in 1971. In addition, 63 percent of Blacks, 50 percent of Hispanics, 51 percent of 18-29 year olds, 51 percent of college graduates, and 58 percent of democrats now oppose the death penalty. Furthermore, 59 percent of the young generation supported the death penalty in 2011, but then dropped to 42 percent in 2016.

Just five years before this in 2011, a Gallup poll displayed that support for the death penalty was 61 percent and 64 percent in 2010 (Newport 2011). The support for the death penalty remained steady at 64 percent for the years 2005, 2004, and 2003, which is lower than it was at the beginning of this study in 2000; 67 percent support (Saad 2005). In sum, the support for the death penalty since the beginning of this study has dropped from 67 percent to under 49

percent. These statistics suggest that less people favor having the death penalty in recent years. Execution trends show that executions are at an all-time low, and polls show that favorability for the death penalty is slowly fading.

Limitations

This study examined whether having a death penalty law in place would deter homicides. Limitations in assessing deterrence of capital punishment took many forms. The method of evaluation conducted brings upon the first limitation of this study. This was a narrow assessment, as it only viewed the death penalty variable against homicides. In terms of deterrence theory, the only element tested was severity, which left the remaining elements, certainty and swiftness, out of the equation. The second limitation was the overlooked proximity of one execution to another (swiftness). This study failed to observe the time period from one execution to another, which may have held deterrent properties. Executing more consistently may have increased the swiftness of punishment, therefore creating a deterrent effect. In addition, if proximity from one execution to another were very close, one could have argued that executions close proximity may increase the certainty that would be offenders will face execution. A third limitation to this study was the overlooked element of publicity. In order for general deterrence theory to be successful, people must be unmotivated from committing offenses by seeing the consequences. Although in the brutalization portion of this discussion a study found that publicity increased homicides (Stack 1993), deterrence theory stands no chance of ever being successful if it is not publicized. This creates a dilemma of contradiction when choosing whether to publicize executions or not. A fourth limitation would be not including or taking into account social, political, and economic changes. For example, radical law and order legislators may increase severity in sentencing and increase criminal justice resources; therefore there may be an increased amount of sentencing

and executions. These changes were not evaluated and may have played a role in the number of executions and homicides committed. The fifth and last limitation to this study was aggregating all state data (both executions and homicides) to find differences. This may have hidden any deterrent effects that individual states may have. An examination of states for one year at a time instead of a span of 15 years may have rendered different findings.

Conclusion

In sum, the inability to reject the null hypothesis suggests that the death penalty has no deterrent effect on homicides. The overwhelming amount of empirical data on the death penalty's lack of deterrence is supported by this analysis. The burden of proof here then lies on criminologists to provide empirical evidence that supports executions deterrent effects. General deterrence theory fails when one of the three elements (swiftness, certainty, and severity) is missing. The data analyzed indicates that the fear of severe punishment holds no deterrent effects. With execution rates falling every year, swiftness and certainty of will be long forgotten elements of deterrence theory in reference to capital punishment. The ethics of a changing society may slowly be outdating a long used form of punishment, which according to the findings in this study, is not providing any deterrent effects. Capital punishment is costly and its continuation is questionable due to the large amount of research that displays its lack of deterrent properties. For this, I recommend that policy makers discontinue ungrounded claims about the deterrent effects of capital punishment, and should instead focus their resources on attempting to develop new policy.

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Biographical Information

Lorenzo Antonio Mendoza-Valles grew up in a single parent household alongside his mother, grandmother, and sister. He received his high school diploma from Palmview High School in Palmview, TX just two months after his grandmother passed away. His grandmother always used to say that the only way to be successful, was to be educated. After graduating from high school, he left home to prove that he could be successful and independent. In doing so. He received his Bachelor's degree in Criminology from Texas A&M University at Kingsville in 2016. After finishing his degree in Kingsville, TX, he decided to pursue his Master's degree in Criminology and Criminal Justice at the University of Texas at Arlington, which he completed in 2018. Overall, his collegiate career lasted only 5 years due to advancement courses he took while attending high school. Lorenzo believes that he is only but a stepping stone, and that his accomplishments serve as nothing more than an example for other minorities such as himself. Some of Lorenzo's research interests include death penalty deterrence, the impact of violence and drugs on minorities, and juvenile delinquency in single parent households. Lorenzo has finished yet another chapter in his life, and now moves forward to the chapters to come. In the years to come, he plans to make a difference when it comes to cartel violence and drug trafficking in the community he grew up in along the border of Mexico.