Catch-up on LWOP, then public opinion

Reading: Chapter 6 of Decline of DP and Discovery of Innocnce

October 6, 2014
Quiz from last week: decent!

Quiz 3 results. That's more like it.

If you took the test, the average grade was 9, and the mode was a perfect 10. Unfortunately, 21 people did not come that day.
Catching up / Clarifying from the lecture

- Death as bargaining chip in a plea agreement.
  - Think about that. Not everyone agrees with the DA’s on that one.
- “One and done” appeals if LWOP
  - Not true
  - Reduced scrutiny compared to Capital sentence, for sure
  - But you can appeal
“Finality” and “Endless Appeals”

• Some key concepts

• Presumption of innocence
  – Changes to presumption of guilt after the trial!

• Right to a “fair trial” – not a “perfect trial”
  – Fair: your lawyer has the opportunity to raise issues
  – Perfect: your lawyer does a good job, and so does the DA. No assumption of this.
Grounds for appeal: Procedural errors

- Judge should not have ruled in a certain way
- Prosecutor should not have been allowed to do something
- Instructions to the jury were faulty
- Etc.: Some error was made in the administration of the trial
Not grounds for appeal: Your lawyer failed to raise an issue

• The first trial finds the facts.
• Subsequent courts do not “re-try the facts.”
• Rather, they review that the original trial was fair.
• Fair does not mean perfect.
Motions v. appeals

• Inmates in prison can write letters (motions) to judges asking for a hearing on an issue.

• These are routinely turned down, but can sometimes be successful.

• Need to point out a legally relevant issue. Not: You made a mistake, I’m innocent.
Two opposing values

• “Finality” – at some point the judicial system has to determine that the judgment rendered is “final.”
  – “endless appeals” “frivolous appeals” discouraged

• Problem is when new facts or new evidence become known after the trial is over.
  – Up to the judge to decide whether to allow a hearing on the matter. No guarantees.
Recanted testimony as an example

• Troy Davis case exemplifies this
• How would the judicial system go forward with that evidence?
  – Speaking to a journalist / advocate / signing a statement ≠ risking charges of perjury in court.
  – People have to be willing to testify
  – They must be more believable in the recantation than they were in the original statement
Finality in a death case

• When the execution occurs, there is no longer any legal case. The case is literally closed. The state of Georgia will never re-investigate whether Troy Davis was “truly guilty.” They have already determined, finally, that he was.

• Strong pressure in some cases to do this. Cameron Willingham in Texas, Carlos deLuna, Troy Davis. Never been done. But see this case:

Finality in a non-death case

• Theoretically it remains possible throughout the lifetime of the inmate.
• People have also been exonerated after having served a sentence.
• Practically speaking: Those under capital sentence have enhanced legal protections.
• So, there is a clear paradox in the system.
• However, it is not true that LWOP means “one and done” appeals.
Public Opinion

• Polls go back to 1930s, Gallup:
• http://www.gallup.com/poll/1606/death-penalty.aspx
Who supports, who opposes?

• Support higher among:
  – Whites
  – Males
  – Southerners
  – High school education
  – Republicans

• But it also shows aggregate trends over time
  – That is our focus on the chapter
Depends on the question asked

• See the different results obtained from various questions from Gallup.
• At other times: do you support the death penalty for convicted terrorist bomber Timothy McVeigh? (Very high results)
• No “best way” to ask the question.
• So we look at trends across all questions.
States Vary by Opinion, Obviously

Public Opinion in 2002


Proportion in Support

Mean: 79, Min: 44, Max: 81
Source: Pacheco, American Politics Research 2014
But they vary a lot more in executions!
Our point: how this changes over time

• Depends on the question, of course:
  • “Are you in favor of the death penalty for persons convicted of murder?”
    – (GALLUP, 42 administrations of this question)
  • “If you could choose between the following two approaches, which do you think is the better penalty for murder – the death penalty or life imprisonment, with absolutely no possibility of parole?”
    (GALLUP LIFE, 18 administrations)
  • “Do you favor or oppose the death penalty for persons convinced of murder?”
    – (NORC-GSS MURDER, 25 administrations)
3 questions, different results, same trend
So we make an index
About the index

• See pp. 175 and following in the book
• Lots and lots of questions
  – 67 different survey companies
  – 350 different questions
  – 763 different administrations

• That is, we took all usable information
• Weighted average, shows trends
What does the index mean?

• It goes up or down.
• We can’t very well interpret the raw numbers, however.
• The wording of the question matters a lot for the LEVEL of support.
• As it turns out, it has very little impact on the TRENDS of support over time.
• So we can look at trends but not really levels.
• Need to look back at the individual questions for that.
Pro-, Anti-, and Net Support

![Graph showing the percentages of Pro-Death Penalty Opinion, Anti-Death Penalty Opinion, and Net Support from 1953 to 2005.](image-url)
Net Support

• About 0 in 1965
• Rises to about +30 by 1980, stays there until 1995
• Declines to about +10 or so in 2006

• Most likely continuing down today, but I have not checked.
Explaining Net Opinion:

• Predicting that series, like we predicted Death sentences last week, same idea
• Table 6.1
• Homicides: 1,000 more homicides > 3.4 increase in net opinion support
• Net Tone: 10 more pro-death penalty stories > 1.5 shift in net opinion

• Very slow adjustments: just 17 percent of disequilibrium per quarter
What the heck is this professor saying?

- Opinion moves very slowly
  - No single event can be expected to cause shifts
    - People aren’t paying attention
    - People have moral views on the issue and don’t like to call those into question
  - Only the accumulation of years of similar events, shifting social norms over a decade or more, can be expected to shift opinion
Long-run trends, blips don’t matter

• 1965-1995, one such period: lots of pro-death penalty events, opinion shifted, slowly became more accustomed, accepting of the death penalty
  – Note: some people will NEVER be moved by this.
  – But in the aggregate, opinion moves on average.

• 1995-present, another such period: lots of “bad news” relating to the death penalty
  – Innocence, costs, laws restricting use, less use, abolition by 5 states, botched executions
Remember your first quiz results

• People are not paying attention, obviously

• So, no single event will move national opinion

• But we see an accumulation over time, ever so slowly.
Should you die because of public opinion?

• It turns out, from Chapter 7 in the book and what I presented last week, that:

• We can predict the number of death sentences handed down by juries by:
  – Opinion
  – Tone of news coverage
  – (Homicides had no effect)

• So, timing matters. Same trial in 1993 v. in 2013 might or might not lead to death... Ouch!