

Political Influence on State Executions

A Multivariate Analysis on the Effect of Gubernatorial Political Party on the Execution Rate

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April 23, 2009

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1 Introduction

1.1 Introduction

When Bill Clinton was behind in the polls, and looked ready to lose his election, he was happy to go back to Arkansas and prove that he could be tough on crime by allowing a brain damaged African-American man to be executed.¹ The political minority has a lot to prove. The desire to be perceived as “tough on crime” can be overwhelming for a candidate in an active political election. From Michael Dukakis² to Bill Clinton³, from John Kerry⁴ to Barack Obama⁵ – American history is littered with a juxtaposition between those politicians whose opposition or hesitation to impose capital punishment has hindered their ability to seek higher office, and those politicians who had no such qualms to impose the ultimate sentence, and who were far more successful in their pursuits.

But where death sometimes takes center stage in presidential politics, it is often state politics where it is significantly more consequential. This is because almost all executions in America happen at the state level, despite the existence of the federal death penalty. Governors have a lot of political pressure to allow executions to go forward or risk being perceived as weak or soft on issues of crime and punishment. This is especially true of the American South, where executions are so common that they have almost become part of the culture going back many years.

This paper looks at what influence the Governor, the political party of the Governor, and the overall political climate have on the number of executions that occur in a state in a given year. It addresses the central question: what effect does a changing political climate have on the execution rate? This paper limits

¹Christopher Hitchens, *No One Left to Lie To: The Triangulations of William Jefferson Clinton*, (New York City: Verso Books, 2005).

²Michael Dukakis opposed the death penalty in all cases, and this opposition was a major factor in his defeat to George H.W. Bush. See Roger Simon, *Death-Penalty Question Was Death Knell For Dukakis*, (The Seattle Times, November 1990).

³Bill Clinton supported the death penalty. See Bob Elgelko, *Where candidates stand on crime, death penalty*, (San Francisco Chronicle, February 2008).

⁴John Kerry was questioned as being too soft on crime for voting against expansion of the federal death penalty. He also removed support for the death penalty from the Democratic party platform. See *ibid.*

⁵Barack Obama supports the death penalty. See *ibid.*

its findings to the years 1935 to 2002, and it looks separately at the American South⁶ (defined as Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia) and the American “North” (all other states, including Western states.) It finds statistically significant evidence that Republicans in the South were especially more likely to execute people in the time period examined. It also finds evidence that when the Governor presides over a time period in which most Governors of that state are of a different party, executions also tend to go up.⁷ With the North, it fails to find statistically significant evidence that one political party was more likely to preside over executions than another, though it finds some suggestions for further research.

The conclusion is that the Governor’s party is significant, and that politics plays a definite role in the number of executions, with more study needed to determine the full breadth of this paper’s findings. There is evidence that Governors who are in the political minority are more likely to allow more executions to go forward, perhaps to “prove” their ability to be tough on crime.

2 Gubernatorial Authority

2.1 Can Governors Stop Executions?

When Alexander Hamilton proposed the original executive clemency power that the President of the United States currently enjoys, he envisioned an executive who would act independently of outside influences. He imagined that the President would have exclusive and unfettered authority to review judicial decisions and grant leniency where he deemed it was fit to do so.⁸ While this has remained largely unchanged at the federal level, state legislatures have taken great steps to reduce the influence of the

⁶One reason for doing this is the distinctive nature of the American South when it comes to death penalty policies. See David C. Nice, ‘The States and the Death Penalty’, *The Western Political Quarterly*, 45 December (1992):4, p. 1045.

⁷The exact method of calculation will be discussed later in the paper, but the basic idea is that the “minority number” variable is stronger when the Governor is a member of a party which has had few Governors in the surrounding years. The paper will find that when the Governor is more in the minority, executions tend to go up.

⁸John Dinan, ‘The Pardon Power and the American State Constitutional Tradition’, *Palgrave Macmillan Journals*, (2003), p. 393.

Governor. They have enacted legislation that establishes third-party review boards charged with reviewing the sentences and appeals of criminal defendants.⁹

For example, the state of Texas has one of the most strict clemency provisions in the United States. In Texas, the Governor does not have the sole discretion to commute sentences; the only power he can exercise without the influence of outside powers is to issue a single 30-day stay of execution. In order to commute a death sentence, the Texas Board of Pardons and Paroles must first recommend that the sentence be commuted, and then if the Board grants a reprieve, the Governor has the choice to accept or reject the recommendation.¹⁰ This still gives somewhat broad authority to the Governor - especially since the Board is filled with political appointees - but less so than in many states, where the Governor has ultimate commutation power.

In total, there are eight total states with pardoning/commutation systems that are similar to that of Texas.¹¹ In addition, six states have removed the pardoning power from the Governor, though these states still allow the Governor to appoint the commission that determines pardons and commutations.¹² Four states make the Governor the chair of the board that determines pardons.¹³ All the other states typically have some form of advisory board, but the Governor in these 32 states has the ultimate power to grant a pardon or commutation.¹⁴

Even in the minority of states that do not give the sole power of commutation to the Governor, Governors still have great authority to curtail, stall, and even end given executions. He can influence the number of executions with many other policy decisions: he can make appointments of liberal justices or of conservative justices, he can make choice appointments to the political pardon or other boards, he can enact policies which delay or prevent executions or which expedite them, and he can push for legislation that

⁹Dinan (as in n. 8), p. 392.

¹⁰G. I. Giardini and R. G. Farrow, 'The Paroling of Capital Offenders', *Annals of the American Academy of Political and Social Science*, (1952), p. 89.

¹¹Arizona, Delaware, Louisiana, Massachusetts, Montana, Oklahoma, Pennsylvania, Texas. See Margaret Colgate Love, *Relief from the Collateral Consequences of a Criminal Conviction*, (The Sentencing Project, July 2005).

¹²Alabama, Connecticut, Georgia, Idaho, South Carolina, Utah. See *ibid*.

¹³Florida, Minnesota, Nebraska, Nevada. See *ibid*.

¹⁴*Ibid*.

limits or ends executions more generally.

Furthermore, most states still comply, however grudgingly, with the basics of the Hamiltonian ideal. The Governor in most states, like the President, has the power to commute sentences, even where there exist advisory boards.

2.2 Governors Allowing Executions to go Forward

Most of the time, most Governors allow an execution to go forward when it comes to them for review. It was not unusual for Bill Clinton to allow Ricky Ray Rector, the brain-damaged African-American man, to be executed.¹⁵ Even with the authority to grant pardons and commutations, Governors tend to view the political risks of a bad commutation as outweighing the danger of not commuting someone whose sentence might be worthy of a commutation.¹⁶ American history is littered with examples of Governors in capital cases considering the political and public reaction with greater weight than the merits of individual cases.¹⁷

The very essence of the commutation power is to grant leniency when the law provides no further recourse. But Governors are often very hesitant to use this power, perhaps interpreting any extra-legal support for leniency as an endorsement of the crimes that the inmate committed. In a typical example, Governor Reagan refused to grant clemency to stop an execution from going forward in 1967, citing the lack of legal reasons for clemency to justify his refusal.¹⁸

Perhaps none of this is inherently bad public policy. It is theoretically possible that only the most deserving prisoners receive commutations from death row, and that public opinion serves as a check to ensure that Governors do not give out too many commutations and pardons. In an ideal world, Governors would be able to review cases individually and decide which are most deserving without regard to their

¹⁵Hitchens (as in n. 1), p. 39-41.

¹⁶As an example, some Governors go out of their way to refuse all pardons. See Jennifer Thompson, *Some Question Mitt Romney's Refusal to Grant Pardons*, (Associated Content, June 2007) (URL: http://www.associatedcontent.com/article/279315/some_question_mitt_romneys_refusal.html).

¹⁷Austin W. Scott, 'The Pardoning Power', *Annals of the American Academy of Political and Social Science*, 284 November (1952), p. 100.

¹⁸Carl K. Senecker, 'Governor Reagan and Executive Clemency', *California Law Review*, 55 May (1967):2.

personal political affiliation. This study will examine if that happens - it will try to determine if politics influences the decisions these Governors make. However, it seems likely that Governors that categorically refuse all pardons are to some degree influenced by politics.

2.3 Governors Stalling or Postponing Executions

There have been several notable examples of Governors who went out of their way to oppose the death penalty; these examples serve to demonstrate the potential for broad exercise of Gubernatorial discretion in death penalty cases. Perhaps the most noted example of this is Governor George Ryan, the Republican Governor of Illinois from 1999 to 2003. Right before leaving office and heading off to federal prison, he commuted the death sentence of every single inmate on the Illinois death row to life in prison.¹⁹ There have been three other mass commutations of death sentences since 1977, and there were five notable mass commutations prior to the 1967-1977 nationwide moratorium.²⁰

Moreover, anti-death penalty Governors are able to influence executions in many additional ways. For example, Governor Martin O'Malley refused to issue new lethal injection regulations for approximately a year when the Court required him to do so, effectively stalling the death penalty in Maryland without being forced to issue formal commutations or stays for the inmates on death row.²¹ If nothing else, the Governor ensured that no Maryland prisoners were executed during that year. Furthermore, Governors often have the power to impose temporary moratoriums and enact other policies that stall or limit the number of executions. This power was used by Paris Glendening to enact a moratorium in order to examine the racial bias of capital sentencing in Maryland.²²

While it is very easy to find examples of overt actions that some Governors have taken to expedite

¹⁹George Ryan, 'I Must Act', in: Hugo Bedau and Paul Cassell, editors, *Debating the Death Penalty*, (New York: Oxford University Press, 2004), p. 218-234.

²⁰Death Penalty Information Center, *Commutations in Capital Cases On Humanitarian Grounds*, <http://www.deathpenaltyinfo.org/clemency> (accessed March 28, 2009).

²¹Julie Bykowicz, *O'Malley calls for delegates to drop death penalty repeal*, (The Baltimore Sun, <http://www.baltimoresun.com/news/local/bal-md.death14mar14,0,5633762.story> (accessed April 11, 2009), March 2009).

²²Henry Weinstein, *Governor of Maryland Orders Moratorium on Death Penalty*, (The Tech, April 2009).

executions, the more subtle actions are difficult to find. Since the overt actions are so rare and confined to so few cases, it is these subtle actions that must be studied. A Governor has much control over the people who review death penalty cases, and by making certain appointments, he could theoretically lower the number of executions without putting himself at a political risk. In the South, there are no notable mass commutations, and yet there is considerable variability as to the number of executions over time and by state. This study will examine one reason for why that variability may exist.

3 Statistical Analysis

3.1 Prior Research

Much prior research has been done on the political influence of the death penalty. The matter has been studied by sociologists, political scientists, and economists. One sociological study conducted in 2002 found that states with strong Republican legislatures (at the time of the study) were more likely to have a stronger death penalty, but that this stemmed largely from a more pro-death penalty public than from partisanship.²³ This finding is important, as it suggests that politics plays a factor in the legalization of the death penalty, but it does not address the central issue of this paper. After all, even in states with exceptionally strong death penalties, there are years when executions reach record-highs, and there are years when executions almost entirely come to a stop.

In the field of economics, two recent papers addressed issues close to this paper. In one paper published in 2007, Andrei Leigh measures the effect of the party of the Governor on thirty-two independent variables from 1941-2002, one of those variables being the execution rate.²⁴ On most dependent variables, including execution rates, he found no significant relationship between party and execution rate. This is an important finding, and it suggests that by and large the political party of the

²³David Jacobs and Jason T. Carmichael, 'The Political Sociology of the Death Penalty: A Pooled Time-Series Analysis', *American Sociological Review*, (2002), p. 109-131.

²⁴Andrew Leigh, 'Estimating the Impact of Gubernatorial Partisanship on Policy Settings and Economic Outcomes: A Regression Discontinuity Approach', *European Journal of Political Economy* (2007).

Governor might not have an effect on the execution rate nationwide. The analysis must go further, however. Our paper deals with the issue using a slightly different model, and furthermore separates its analysis of the South from the rest of the country, because the South's political party system and political climate was and continues to be vastly different from that of the North.

The second important paper was published in the *Journal of Legal Studies*, and it conducted a multinomial regression analysis of every prisoner on death row from 1977 to 1997.²⁵ It mapped each prisoner to the outcome of his case (death, commutation by governor, commutation by legal system, and several other possibilities - such as dying on death row - to ensure the stability of the model.) It then controlled for many variables in order to determine what effect politics had on decisions to commute sentences, and it concluded that Democratic governors and lame duck governors were far more likely to commute the sentences of death row inmates. This study is perhaps the most convincing of its kind, and the present paper cannot hope to rival it; our goal is to add to it by doing an analysis of several other political factors, analyzing a slightly larger time period, and by analyzing the South separately from the North.

3.2 Data Gathering

In order to determine the influence that the political party of the Governor has on the number of executions, we gathered data from several sources. The primary source of the data was the data for executions - we gathered this from the ESPY file, which lists every execution known from 1608 to 2002.²⁶ From this, we were able to calculate the number of non-Federal executions for each year broken down by state.

The next key variable was the party of the Governor for each year from 1935-2002. This data was gathered from the National Governors Association, and it contains either "Democrat" or "Republican" or "Independent" for each year from 1915-2002, (the extra 20 years were necessary in order to calculate the political climate for every year from 1935-2002) in each of the 50 states for as far back as they existed.²⁷

²⁵Laura M. Argys and H. Nact Mocan, 'Who Shall Live and Who Shall Die? An Analysis of Prisoners on Death Row in the United States', *Journal of Legal Studies*, (2003), p. 255-282.

²⁶M. Watt Espy, Howard Allen and Jerome M. Clubb, *Executions in the United States, 1608-1940: The ESPY File*.

²⁷National Governors Association, *View all governors*, (URL: <http://www.nga.org/portal/site/nga/menuitem>).

For the few states that did not exist in 1935, such as Hawaii, all data started with the year of statehood. Once this data was gathered, it was intersected with the previous data. This means that, for every state and every year, there was an associated party that controlled the Governor's mansion. In the case of third parties, the closest party was chosen; in the three cases this was impossible (Minnesota and Maine twice) the data was left as "Independent."

Finally, population data was gathered for every year from 1935 to 2002 from the United States Census Data.²⁸ This data was intersected with the Governor data so that executions per capita could be calculated for each year.

The years 1967-1976 were excluded from every measure in the proceeding analysis. There was a nationwide moratorium in effect for these 10 years, and so it is impossible to discern what effect Gubernatorial policies had on executions during those years.²⁹

3.3 Summary Statistics

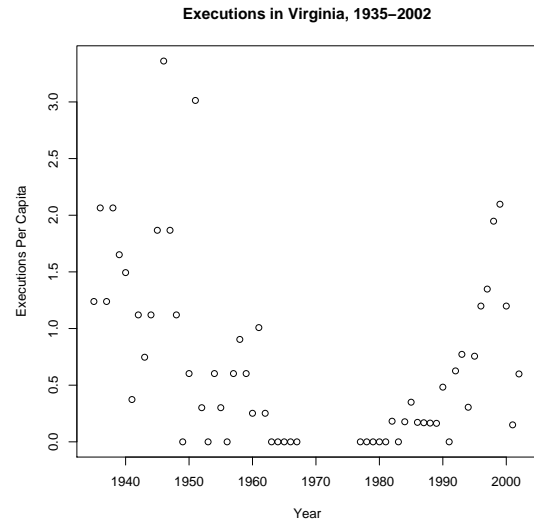
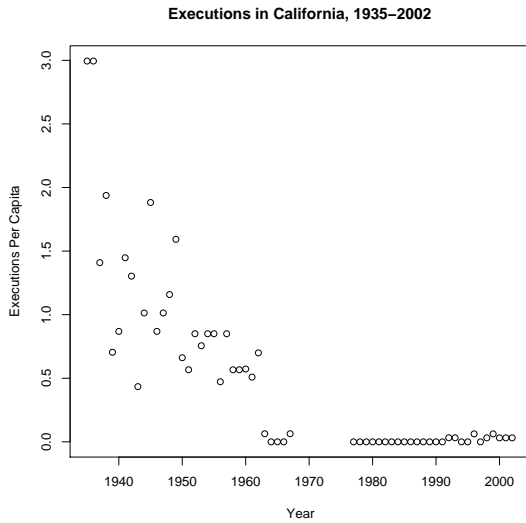
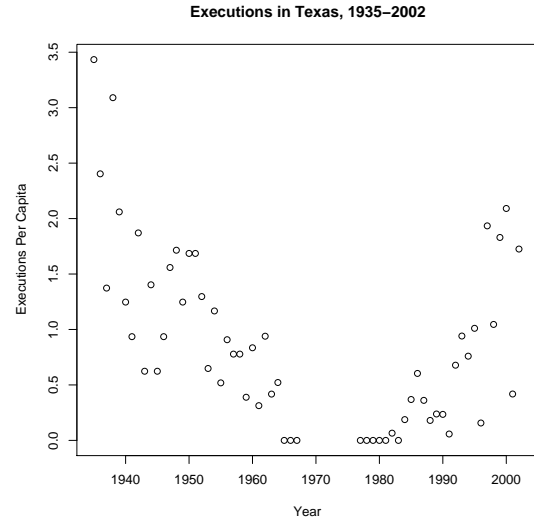
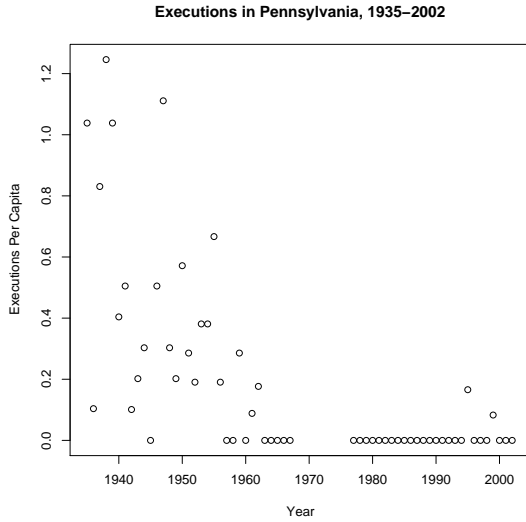
In almost every state, there was a definitive downward trend of executions per capita from 1935 to 1967 - the only states in which this did not happen were the few states that rarely executed people from 1935 to 1967. In fact, five states had zero executions during the entire time period studies. But for all states that had executions in 1935, they took a general downward trajectory until 1967. This occurred in both the Southern and the Northern states. However, after 1976, some states had a large upward trend in executions (mostly Southern states), while Northern states were slower to increase their pace of execution.

The following graphs demonstrate the difference by looking at representative Northern and Southern states:

216dbea7c618ef3f8a278110501010a0/?vgnnextoid=21cca0ca9e3f1010VgnVCM1000001a01010aRCRD).

²⁸U.S. Census Bureau, *Census of Population and Housing*, (URL: <http://www.census.gov/prod/www/abs/decennial/index.htm>).

²⁹Ruth D. Peterson and William C. Bailey, 'Murder and Capital Punishment in the Evolving Context of the Post-Furman Era', *Social Forces*, 66 March (1988):3, p. 775.



It is important to add that not all Southern states saw such a dramatic increase in executions after the moratorium ended. Many states saw only modest increases in executions. However, no Northern states showed increases like the ones in the Southern states above. By and large, the Southern states have seen a rise in executions since 1977 that the Northern states simply have not experienced.

3.4 Methodology

We need to construct a regression model to determine what effect the party of the Governor has on the number of executions. We will also construct a regression to determine what effect the “minority status” of the Governor has on the number of executions - that is, will the Governor be more likely to support executions when his party has held the Governorship for few of the neighboring years in that state?

We need to develop two basic equations to model this with a non-parametric regression based on the Generalized Additive Model as developed by Trevor Hastie and Rob Tibshiran.³⁰ We present the two equations below:³¹

$$\sqrt{c} = \alpha + \gamma p + f(\beta_0 y) + \sum_{i=1}^n \beta_i s_i + \epsilon \quad (1)$$

$$\sqrt{c} = \alpha + \gamma m + f(\beta_0 y) + \sum_{i=1}^n \beta_i s_i + \epsilon \quad (2)$$

In these equations, the p and m variables respectively refer to the “party number” (which is a dummy variable where 0 represents Democrats and 1 represents Republicans) and the “minority number” (which is a number from 0 to 43 to represent the number of same-party members who served as Governor in that state in the surrounding years - so if Texas had all Democratic Governors for the 43 surrounding years and the Governor was a Democrat, he’d have 43, and if he was the only Republican, his number would be 0.) Basically, if the “minority number” is lower for a given year, then that Governor was in the political minority of the state’s current environment.

The other variables in the equation represent the other variables we will control for. “C” is the executions per capita, “y” is the year, and the summation represents the states (s_i is 0 or 1 to say if the line of data is for that current state or not - in this way, we generate a coefficient for each state.) The Greek

³⁰T. J. Hastie and R. J. Tibshirani, *Generalized Additive Models*, (Chapman & Hall/CRC, 1990).

³¹The general goal of our equations is to generate a model that we can use to predict the number of executions per capita. The equation has many independent variables (state, year, party number/minority number.) It takes these independent variables, applies coefficients to them, and generates an estimated number of executions. If the model does this successfully, we can determine the effect that each of these independent variables has on the final value of executions per capita.

coefficients are the coefficients of regression, α is the y-intercept, and ϵ is the error term.

When we run this model on the Southern states, we get the following values:^{32,33}

parameter	estimate	std error	t value	p-value
party number	0.1194368	0.0516184	2.314	0.02097 *
stateArkansas	0.0509400	0.0797617	0.639	0.52326
stateFlorida	0.2253785	0.0797665	2.825	0.00486 **
stateGeorgia	0.3246189	0.0802401	4.046	5.81e-05 ***
stateLouisiana	-0.0326217	0.0797809	-0.409	0.68275
stateMississippi	0.0081228	0.0797809	0.102	0.91893
stateNorth Carolina	0.0066900	0.0797809	0.084	0.93320
stateOklahoma	-0.2138910	0.0799965	-2.674	0.00768 **
stateSouth Carolina	0.0955741	0.0798385	1.197	0.23168
stateTennessee	-0.3310522	0.0799343	-4.142	3.88e-05 ***
stateTexas	0.1255533	0.0799343	1.571	0.11671
stateVirginia	0.0006522	0.0798049	0.008	0.99348

Note: * is significant at .05, ** is significant at .01, *** is significant at .001

The line of interest is the “party number” line, which tells us that it has a positive effect (the more Republican the Governor, the more executions) and also significant at the .05 significance level. The R^2 value of the distribution was .605, and the model was able to explain 61.7% of the deviation.

What follows is a table that contains three separate regressions, one that does the same thing as the above regression but for the “minority number” variable and two that do the same as above but for the North. For simplicity, we present only the parameter of interest here:

³²S.N. Wood, ‘Fast stable direct fitting and smoothness selection for generalized additive models.’ *Journal of the Royal Statistical Society* 70 (2008):3, p. 495-518.

³³R Development Core Team, *R: A Language and Environment for Statistical Computing*, Vienna, Austria: R Foundation for Statistical Computing, 2008 (URL: <http://www.R-project.org>).

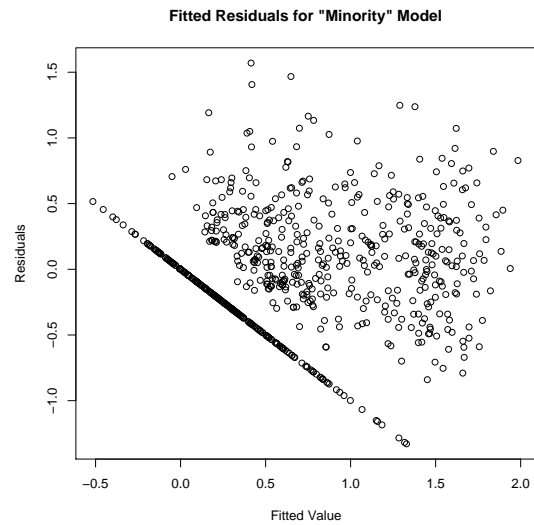
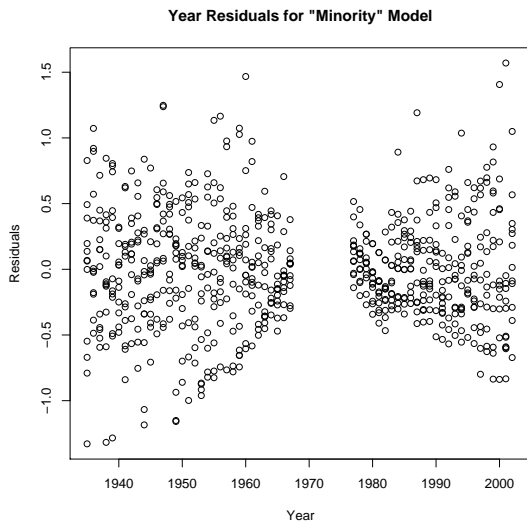
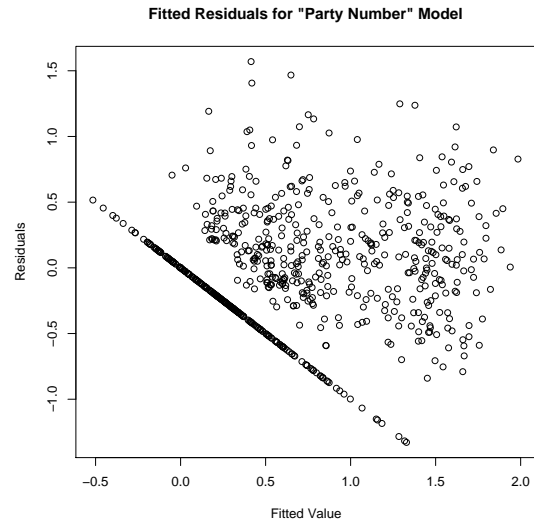
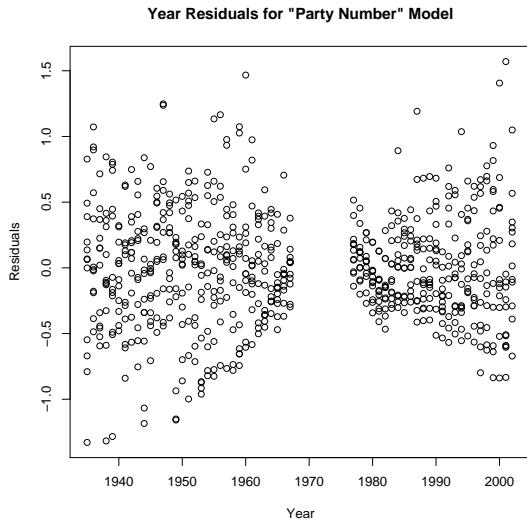
parameter	estimate	std error	t value	p-value
minority (south)	-0.007024	0.003267	-2.150	0.03193 *
party number (north)	-0.022165	0.020476	-1.083	0.279144
minority (north)	-0.0004767	0.0014614	-0.326	0.744297

The results for the North are not significant, and the model does not fit the data particularly well. This is probably because the data on the North is much more varied than the data for the South, and the effect of partisanship is therefore inconclusive.

However, the results for the Southern states show a very different picture. Once again, the parameter of interest (whether the Governor was in the minority) is significant at the .05 significance level. The model again has an R^2 of .605, and it explains 61.6% of the deviance. It suggests that when the Governor is in the political minority (has a lower “minority number” value), he will likely have more executions.

3.5 Strength of the model

Two of the above models produced significant results: the first was the “party number” model for the Southern states, and the second was the “minority” model for Southern states. In order to accept the conclusions that these models presented, we need to be certain that the models were appropriate. We will do this by examining the residuals:



The first graph shows the residuals for each year (that is, the difference between the predicted number of executions and the actual number for each given year.) It shows that the results were scattered in a normal pattern, and so we can be fairly confident that we were able to normalize the distribution of executions over the years. That is, even though the number of executions for each year was very non-linear, the smoothing function was able to transform the years information.

The second graph is a graph of the overall fitted expected v. actual results. The model predicted a

certain number of executions for given values of state, year, and party number, and the residuals show that by and large, there was scattering. The only issue with the graph is that there is a thick line. This thick line represents every time the model predicted a *negative* value when in fact there were zero executions. Since we can generally consider that a negative amount of executions is a “good” prediction when there are zero executions (since we know there cannot be a negative number of executions, and that the true minimum is zero) we can avoid being too worried by these residuals.

The third and fourth graphs are very similar to the first two, indicating that both models are of an approximately equal amount of validity.

4 Conclusion

4.1 Summary and Discussion

Whether an inmate lives or dies should probably not be decided based on which party won the last political election. But perhaps his fate at least partially depends on these political forces. The analysis we have conducted suggests that the American South - the epicenter of the modern death penalty system - is host to a system where executions go up and down with politics as a significant factor. When a Democratic politician is elected in the American South, executions tend to decrease after controlling for the state and the year. Further research is needed to study the effect of politics in the Northern States. There is non-significant evidence that the North follows similar patterns to the South, but part of the difficulty in analyzing execution rates in the North is the fact that the North has much less executions in general. However, the influence of politics may be felt in other decisions such as pardons.

Our study finds two primary political factors that influence the execution rate. The first is simply the party of the Governor. In the South, if the Governor is a Republican, he will tend to have a higher execution rate. The other factor is the “political minority” of the Governor. If the Governor tends to be a member of a political minority - that is, if most Governors of the time period in a given state were of a different party

than the Governor - he will *also* tend to have a higher execution rate. The significance of this correlation is established in our study, but more in-depth analysis would need to be done to see if it is a red herring or if it is truly significant in and of itself. While there is strong evidence that the regression is significant, a study of individual cases could possibly produce even stronger evidence for this paper's conclusion.

Because politics seems to influence the execution rate of a given state in the South, it suggests that the death penalty is an issue that varies not merely over time and not merely on a state-by-state basis, but that it also varies by which political forces come to power in a given state. A political party that wants to prove itself "tough on crime" in an unfriendly political landscape might make an effort to increase the number of executions, while other politicians, less concerned about these factors, might make an effort to decrease the number of executions, whether through pardons, political appointments, or other means.

This paper supports and builds on the findings of other studies, most notably the Argys study that established that political factors (such as a Democratic Governor and a lame-duck Governor) have a significant effect on the number of pardons.³⁴ It seems that politics may affect every step of the post-conviction process: who gets pardoned, who gets commuted, who gets leniency and who gets executed.

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³⁴Argys and Mocan (as in n. 25), p. 280.

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