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Plea Bargaining to Life Sentences

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Abstract:

This study examines the disposition of murder cases in a sample of large urban counties to determine if there is a connection between the availability of the death penalty and the number of cases that are disposed of by guilty plea with a life sentence or a long term of years. Consistently with expectations, significantly more defendants plea bargain to a life or long sentence in states where the death penalty is available. The average county with the death penalty disposes of 18.9% of murder cases with a plea and a long sentence, compared to 5.0% in counties without the death penalty. The difference is statistically significant at the $p<.05$ level. Implications for the claim that repeal of the death penalty will save substantial public funds in trials are discussed.

Introduction

In recent years, the financial cost of the death penalty versus life imprisonment has come to be a larger part of the debate. For example, the California Commission on the Fair Administration of Justice [CCFAJ] (2008) claims that a capital case costs $500,000 more than a noncapital case. One issue that has received insufficient attention in this area is the effect of the death penalty on the willingness of defendants to plead guilty and receive a life sentence. Logically, one would expect that very few defendants would plead guilty with a life sentence when life is the maximum sentence available under the law, and therefore more cases would have to go to trial for murders where a sentence less than life, or a term so long as to be effectively life, is not acceptable. There is anecdotal

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evidence to this effect, but apparently only one systematic study on the question.

A recent, widely cited study on the costs of the death penalty in Maryland (Roman et al., 2008) makes no mention of this effect. With the death penalty as an available punishment, one-third of the death-eligible murder cases in the sample end with a guilty plea, and the study assumes that would not change with the removal of the death penalty. The discussion of cost in the report of the New Jersey Death Penalty Study Commission (2007) similarly makes no mention of this effect. The discussion of cost in the report of the CCFAJ (2008) mentions guilty pleas in life-without-parole cases in passing, citing a doubtful source for an estimate of the number. However, the report fails to account for the possibility that a repeal of the death penalty might cause an increase in trials in cases presently plea bargained for sentences of life with or without parole. A study in North Carolina (Cook & Slawson, 1993) considers this effect and acknowledges that it is essential to a complete accounting. However, considerations unique to that state, including a prohibition on sentence bargaining in first-degree murder cases and a relatively low sanction for second-degree murder, probably cause the plea-bargaining effect to have less impact there than it would have elsewhere. A study by a subcommittee of the Washington State Bar Association (2006) noted the plea bargaining effect as a likely offset of the higher cost of capital trials but discussed the issue only in general terms.

Kuziemko (2006) studied the impact of the death penalty on plea bargaining using two different sets of data. The first was a comparison of New York cases before and after

the 1995 restoration of capital punishment in that state. Kuziemko found that the availability of capital punishment increased the willingness of murder defendants to "sentence bargain," pleading guilty to the original charge but with a sentence less than the maximum. The second part of her study used the same data set as the present study but a different methodology. Kuziemko examined the degree of crime rather than the sentence, and the proportion of death sentences in the prior year rather than classifying a state as having the death penalty or not. She found that "the death penalty makes defendants more likely to plead guilty to their original charge" (p. 140), as opposed to pleading to a reduced charge, but the effect on plea bargaining overall was not statistically significant.

Research in this area is hampered by the cost of collecting raw data. For example, a feasibility study on costs by RAND Corporation in California concluded that simply collecting the data for a full accounting of costs of the death penalty versus alternatives would be far more expensive and time-consuming than they anticipated (Everingham, 2008). Absent the funding for a large data-gathering effort, researchers must rely on the statistics already collected by the federal government, including the Bureau of Justice Statistics and the Federal Bureau of Investigation. These statistics are not gathered for the purpose of studies on the death penalty or on plea-bargaining, so it is only coincidental when the existing data sets contain the items needed for a study. Fortunately, there is one existing data set which, although somewhat dated, contains the necessary information for an estimate of the effect of the death penalty on plea-bargaining in murder cases.

The specific questions to be studied are (1) whether guilty pleas in murder cases are more common in states with the death penalty than in states without the death penalty; and (2) whether the same is true for guilty pleas in murder cases with sentences of life in prison or a long term of years.

Background

Murder is the most serious and most severely punished of all commonly committed crimes. The exact definition of this crime can be complex and varies from state to state, but by far the most common type is simply the intentional killing of another person (LaFave, 2003). Also, in nearly all states, a killing committed in the course of a major felony, such as robbery or rape, is murder without a showing of intent. In some circumstances, an intentional killing can be mitigated to the lesser crime of manslaughter. Again, the exact definitions vary by state, but they are generally along the lines of the common law rule that "a provocation which would cause a reasonable person to lose his normal self control" (LaFave, § 15.2) is sufficient. Thus, a group of crimes identified as "murder" represents similar crimes across jurisdictional lines, with relatively minor variations.

The same is not true for degrees of murder. The division of murder into degrees has been entirely by statute, and in most states it was for the purpose of limiting the crimes subject to the death penalty (LaFave, 2003). Some states do not divide murder into degrees at all. In those that do, a typical definition of first-degree murder includes premeditated murder and murder in the course of specified felonies (Cal. Penal Code §

189). However, the New York Legislature enacted an extremely narrow definition of first-degree murder at a time when it thought it needed to define a class of murders for which the death penalty would be mandatory (Donnino, 2004). First-degree murder in New York at the time of the data collected for this study was therefore limited to relatively rare cases of murder of police officers and murder by life prisoners (N.Y. Stats. 1974, ch. 367, § 4). For these reasons, a group of offenses designated as first-degree murder or second-degree murder does not represent the same class of crimes across jurisdictions.

For the purpose of comparing murders across jurisdictions, then, the sentence imposed is a more meaningful criterion than the designation of degree. The most aggravated murders are those for which the sentencing decision makers will not accept any sentence that does not keep the murderer incarcerated for most or all of the remainder of his life. They will be the cases for which the legislature has made such a sentence available, the prosecutor will not accept a plea bargain to a lesser sentence, and the sentencer (which may be a judge or a jury) will not impose a lesser sentence.

A murder case goes through a number of steps after the arrest. There is an initial screening at which the case may be rejected by the prosecutor's office or by a judge at a preliminary hearing for insufficient evidence or other problems with the case. Of those cases which survive the initial screening, some will be disposed of by guilty pleas and others will go to trial (Dawson & Boland, 1993). For major felonies such as murder, a guilty plea is usually induced with an agreement to reduce the charge to a lesser crime

or to impose a sentence less than the likely sentence after trial. A sentence less than the maximum is the essence of the bargain from the defendant's viewpoint (Scott & Stuntz, 1992). If the case goes to trial, it may end in an acquittal, a conviction of the crime charged, or a conviction of a lesser offense. A defendant going to trial on a charge of first-degree murder may be convicted of second-degree murder, for example. After conviction, the judge imposes a sentence within the range permitted by statute for the crime of conviction. In capital cases, the jury returns a verdict or recommendation as to sentence in most states, but in noncapital cases the sentence determination is usually for the judge alone. A prison sentence may be for a fixed term of years, life in prison with a possibility of parole after some minimum time, or life in prison with no possibility of parole.

Dawson and Boland (1993) report the disposition of cases in the sample used in this study. For every 100 suspects arrested by the police and charged with murder, 19 cases were rejected at initial screening and 81 went forward. Of the 81, 42 went to trial and 39 pleaded guilty. Of the 42 trials, 8 were acquittals and 34 were convictions. Thus, of the 81 cases carried forward, 73 ended in convictions of some crime, though not necessarily of murder. Of these, 65 were sentenced to incarceration of more than one year.

Data

The data set used in this study was collected for the Bureau of Justice Statistics study "Murder in Large Urban Counties, 1988" (Dawson & Boland, 1993). The data set

is available for download from the National Archive of Criminal Justice Data as study number 9907. Unlike most federal homicide statistics, which combine all murder and voluntary manslaughter cases as a single category, this data set specifies the degree of homicide originally charged and the degree, if any, of which the defendant was convicted (Bureau of Justice Statistics, 1996). The data are from 33 counties, sampled to represent the 75 largest counties in the United States.

The downloaded data set included four data files: incident data, defendant data, victim data, and offense data (Bureau of Justice Statistics, 1996). The variables used for this study all came from the defendant data file, as follows:[1]

County: This is a four-letter code for the county, with the third and fourth letter being an abbreviation for the state. The code is translated into the spelled-out name in an accompanying SPSS data definitions file. Most of the counties are identified by the name of the largest city rather than the actual county name, *e.g.*, "Chicago" rather than "Cook," presumably for ease of recognition.

Charg1-Charg5: These five variables are codes for offenses that the defendant had been charged with at various stages of the proceedings. The codes of interest in this study are 0 for capital murder (Texas only); 1, 2, and 3 for first-, second-, and third-degree murder, respectively; and 4 for voluntary manslaughter.

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1. In the code book and data file, the variable names are in all caps as was customary at the time. For better readability, they are changed to initial caps here.

ActveAt1-ActveAt5: These five variables are alphabetic codes for the stage or stages at which the corresponding charge was "active": "a" for arrest, "i" for indictment, and "c" for conviction, with a combination of two or all three of these codes for a charge active at more than one stage. For example, a defendant arrested and indicted for first-degree murder and no other offense but convicted of second-degree murder would have a code of "1" for Charg1 and "ai" for ActveAt1 and a code of "2" for Charg2 and "c" for ActveAt2.

Findispo: This variable is a code for the final disposition. Codes indicating a conviction at the trial court level are "3" and "4" for trials with guilty verdicts by the judge or jury, respectively, "10" for guilty plea, "11" for guilty plea to a lesser offense, "12" for a conviction overturned on appeal, and "15" for "convicted but [it is] not clear if [by] guilty plea or trial conviction" (Bureau of Justice Statistics, 1996, p. 17).

Pritime: This variable is prison time in days to which the defendant was sentenced. A life sentence was coded as 36136 (99 * 365 + 1), and a death sentence was coded as 36137. The codebook indicates, "Note that for indeterminate sentences, the lower end of the sentence was entered in PRITIME" (Bureau of Justice Statistics, 1996, p. 18). Under this coding rule, a California sentence for second-degree murder of 15-to-life was coded as 15 years. From inspection of the California cases where second-degree murder is the only conviction, it appears that the number of days was computed by multiplying the years by 365 without considering leap years.

After downloading and examining the data, there was one apparent error in the data

set, a spurious "hard return" that split one record into two. This error was corrected. The four-letter county code for Dallas was changed from "date" to "datx" for consistency with the other Texas counties. No other changes were made to the original data.

Method

This study was fairly simple, and the methodology was straightforward. Only cases charged as at least second-degree murder and terminating in a conviction for murder or voluntary manslaughter were considered. There were 1861 such cases out of the total of 3143. Of these, 13 cases had a disposition code 15, indicating a conviction but not whether the cases ended in a trial or a plea. These cases were excluded, leaving 1848 cases. None of the 1848 had a disposition code indicating reversal on appeal, so all were unambiguously coded as trials or pleas.

From the 1848 selected cases, four variables were tallied for each county: the total number of cases, the number ending in a sentence of 20 years or greater (including life sentences and death sentences), the number disposed of by guilty plea, and the number ending in a guilty plea and a sentence of 20 years or greater. The last three were then calculated as a percentage of the county total. Counties were classified as being in states with active death penalty laws or not. Massachusetts, Michigan, and New York were the non-death penalty states in the sample. The others had constitutional death penalty laws in force.

The essential question is whether the counties in states where the death penalty is available as a sanction are different as a group from those where it is not in terms of

disposing of murder cases by plea rather than trial. To answer this question, the county tallies described above were analyzed with the standard analysis of variance (ANOVA) procedure.

Results

The results of the county tallies are listed in Table 1. The results of the ANOVA are listed in Table 2. There are 33 counties in the sample: 27 from states with the death penalty and 6 from states without it. Overall, 48.8% of the cases resulted in a sentence of 20 years or greater. This figure is 50.7% in counties with the death penalty and 40.5% in those without. The difference is not statistically significant, $p = .233$. Of the total homicide convictions in crimes originally charged as murder, 53.9% are obtained by guilty plea in counties with the death penalty and 42.6% in those without. With $p = .133$, this difference does not reach the traditional criterion for "statistical significance" of $p < .05$, but that criterion is a rule of thumb and not something to be sanctified (Cohen, 1990). The result tells us that more likely than not there is a real difference in total plea bargain rates between states with the death penalty and those without it. Murder convictions with sentences of 20 years or more were obtained by plea in 18.9% of the cases in counties with the death penalty and 5.0% in those without. This difference is also statistically significant, $p = .043$. The highest percentage of guilty pleas with long sentences in a county without the death penalty was 10.5% in Cambridge (actually Middlesex County), Massachusetts, and that was 2 cases in a county that had only 19 cases.

Table 1. Disposition of Cases Charged as Murder and Resulting in a Conviction of Murder or Manslaughter in 33 Counties, 1988.

Death Penalty State	County*	Number of Cases	Sentence >=20yr (%)	Guilty Pleas (%)	Pleas w/ Sent.>=20 (%)
Yes	Tucson, Arizona	18	55.6	33.3	11.1
	Bakersfield, California	32	31.3	62.5	6.3
	Los Angeles, California	125	22.4	66.4	3.2
	Orange County, California	45	42.2	42.2	4.4
	Riverside, California	36	36.1	38.9	2.8
	San Diego, California	62	27.4	56.5	3.2
	Denver, Colorado	26	69.2	46.2	23.1
	Littleton, Colorado	7	85.7	57.1	57.1
	New Haven, Connecticut	14	71.4	57.1	35.7
	Fort Lauderdale, Florida	96	43.8	65.6	15.6
	Miami, Florida	90	34.4	57.8	10.0
	Orlando, Florida	17	52.9	52.9	17.6
	Chicago, Illinois	135	67.4	37.0	23.7
	New Orleans, Louisiana	37	62.2	27.0	0.0
	Prince George's Co.,	28	75.0	53.6	46.4
	St. Louis, Missouri	27	51.9	66.7	22.2
	Albuquerque, New Mexico	20	20.0	70.0	10.0
	Columbus, Ohio	18	61.1	50.0	33.3
	Dayton, Ohio	11	18.2	81.8	0.0
	Oklahoma City, Oklahoma	42	85.7	35.7	31.0
	Philadelphia, Pennsylvania	134	34.3	32.1	7.5
	Pittsburgh, Pennsylvania	39	46.2	33.3	7.7
	Memphis, Tennessee	80	46.3	87.5	37.5
	Austin, Texas	23	73.9	65.2	39.1
	Dallas, Texas	121	65.3	64.5	32.2
	Fort Worth, Texas	50	54.0	68.0	28.0
	Seattle, Washington	43	34.9	46.5	2.3
	Total	1376			
	Mean		50.7	53.9	18.9
No	Cambridge, Massachusetts	19	47.4	36.8	10.5
	Detroit, Michigan	164	54.9	14.6	6.1
	Brooklyn, New York	91	45.1	56.0	8.8
	Manhattan, New York	110	19.1	64.5	0.9
	Queens, New York	62	33.9	56.5	0.0
	Rochester, New York	26	42.3	26.9	3.8
	Total	472			
	Mean		40.5	42.6	5.0
	Grand Total	1848			
	Overall Mean		48.8	51.8	16.4

* See the Data section of the text for note on county names.

Table 2. Analysis of Variance Results.

| | Death Penalty, N=27 | | No Death Penalty, N=6 | | |
	Mean(%)	S.D.	Mean(%)	S.D.	Prob.
Sentences ≥20 years	50.7	19.6	40.5	12.5	.233
Guilty Pleas	53.9	15.6	42.6	19.6	.133
Plea & Sent. ≥ 20 yrs.	18.9	15.8	5.0	4.2	.043

Discussion

Authorities in both states with the death penalty and those without it apparently conclude that public safety requires a lengthy or life prison sentence for a large majority of those convicted of murder. However, there is a large difference in their ability to achieve that result through pleas as opposed to trials. For cases resulting in a sentence of 20 years or more, there is a striking ratio of 3.8 between the two groups. This result is consistent with the findings of Kuziemko (2006), apparently the only other systematic study on the subject.

This fairly simple study does have significant limitations. The available data set was only for one year and only for a limited number of counties. The correlation noted here does not establish conclusively that the death penalty is the cause of the difference in the two groups of counties. There are certainly local variations at work unrelated to death penalty, as indicated by the large standard deviations. For example, it appears there are no plea bargains to murder in New Orleans, only manslaughter. As with any area that has not been sufficiently studied, further research with different and larger

samples and spanning different time periods would clarify the picture.

Notwithstanding these limitations, it is probable that the death penalty is an important factor in the differences observed here. The result is consistent with what we would expect from people acting in their self-interest. A person who pleads guilty gives up a possibility of acquittal, however remote, and accepts a certain conviction, and we would expect few people to do that without a substantial incentive in terms of sentence.

Both this study and Kuziemko's indicate that repeal of the death penalty would likely result in fewer pleas to life or long sentences, requiring that prosecutors either take more cases to trial at a substantial financial cost or accept bargains to lesser sentences at a substantial cost to public safety. This result has important implications for the current debate going on in several states. The higher cost of death penalty trials is frequently cited by proponents of repeal. The prosecutors in the counties with the death penalty in this study obtained sentences of 20 years or more in 654 of the 1376 cases. Of these, 233 were guilty pleas. At the average 5.0% rate of the non-death penalty counties, only 69 defendants would have pleaded guilty, and an additional 164 murder cases would have had to go to trial if not bargained down to a lesser sentence. The additional trial costs for the relatively few cases that go to a capital trial are offset, at least in part, by avoiding the cost of trial altogether in a larger number of cases that end with a guilty plea.

As a rough estimate, if the counties with the death penalty tried 68 cases as capital[2] but disposed of an additional 164 cases with no trial at all, then capital trials could cost as much as 2.4 times noncapital trials, and the tradeoff would be a wash overall. Some estimates of the cost difference are lower than that. The Kansas Legislative Division of Post Audit (2003) found a ratio of 1.6. The Tennessee Comptroller (Morgan, 2004) found a ratio of 1.5[3]. For appeals, estimating the net cost or savings of keeping or repealing the death penalty would require a similar analysis. While a guilty plea does not completely eliminate appeals, the grounds for appealing a plea are extremely limited in comparison with the grounds for appealing a verdict entered after a trial (LaFave et al., 2007). The greater costs of death penalty appeals must be balanced against the avoided cost of appeals in pleaded life sentence cases. It is quite possible that net trial and appeal costs would be greater without the death penalty than with it.

This discussion includes only trial and appeal costs. There are, of course, other costs and savings associated with the death penalty. Claims made on these other costs often have omissions or doubtful assumptions similar to the failure to consider the plea-bargaining effect. For example, the Urban Institute study of costs in Maryland calculated costs of imprisonment on death row on the assumption that death row

2. The data set in this study does not indicate how many cases went to trial as capital cases, but 34 death sentences were entered. One California study indicated that about half the cases tried as capital resulted in death sentences (California Appellate Project, 1985, as cited in California Commission on the Fair Administration of Justice, 2008). Applying this ratio, there were about 68 cases tried as capital.

3. Estimates by advocates opposed to the death penalty are typically higher (*e.g.*, ACLU of Northern California, 2008).

inmates will live their full life expectancy (Roman et al., 2008). If Maryland had an effective death penalty where sentences are typically carried out within five years of sentence, as Virginia does (Virginia Attorney General's Office, personal communication, Feb. 12, 2008),[4] this cost would be dramatically lower.

Conclusion

The widespread assumption that repeal of the death penalty would produce an immediate and dramatic savings in trial costs is not justified on the information currently available. If a state repeals the death penalty but is unwilling to accept a greater number of murderers going free after relatively short sentences, then greater number of life-sentence cases will probably have to go to trial rather than being resolved by plea. Further research is needed before a reliable estimate of net costs or savings of a state having the death penalty as an available sanction can be made.

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4. The Virginia Attorney General's Office calculates that for cases decided after the 1995 procedural reform in that state, the mean time from sentence to execution is 3.7 years. Coupled with that state's high court disposition of the direct appeal in less than a year (Latzer & Cauthen, 2007), the total average time from sentence to execution is under five years.

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