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Justice on Trial: A Multifaceted Analysis of Capital Punishment

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Justice on Trial: A Multifaceted Analysis of Capital Punishment

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Justice on Trial:
A Multifaceted Analysis of Capital Punishment

There is an ongoing debate surrounding the criminal justice system, focusing specifically on the controversial topic of capital punishment. Highlighting a startling statistic—one in nine death row inmates being exonerated—a pivotal question arises of what factors influence sentencing outcomes? Seven variables, number of sentences, income of offender, region of sentencing, race of offender, gender of offender, and political affiliation of sentencing state, are considered to understand the variations in sentencing outcomes and assess the fairness of the current judicial process. Using an OLS regression analysis of data from all 50 U.S. states, the paper seeks to better understand capital punishment sentencing. Emphasizing the consequential decisions for individuals on death row, the study highlights the importance of understanding and addressing disparities in sentencing outcomes within the criminal justice system. The independent variables of region of sentencing, year since sentencing, and party affiliation were all significant. The remaining variables were not statistically significant.

Abby E. Long

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Chapter One: Introduction

One in nine offenders on death row are exonerated.¹ This astonishing statistic is what prompted my study of capital punishment and, specifically, the factors affecting an individual's death sentencing outcome. Crime and punishment, since their inception, have remained a topic of contention as different governments and groups develop justice systems. Specifically, capital punishment - sentencing an offender to death at the hands of the state - is one of the most highly debated issues within criminal justice debates. My study seeks to answer two questions: First, what is justice, and should capital punishment exist in the United States' justice system? And second, what factors affect capital sentencing outcomes?

While the common perception regarding death sentences is that when an offender is sentenced to death, they will die at the hands of the state, the statistics are clear. This is not always the case. Understanding what factors impact an offender's sentencing outcome is essential to better understanding the various sentencing outcomes. Seven variables are considered: the number of sentences held by the offender, the income of the offender, the region where the offender receives a sentence, the racial background of the offender, the gender of the offender, and the political affiliation of the state where the offender is sentenced. Each of these variables seeks to better understand the reasoning behind variation in sentencing outcomes.

The overarching theme behind these variables is to consider whether the current sentencing process brings fair and just results for all offenders regardless of racial,

¹ Equal Justice Initiative, 2019, "Death Penalty," <https://eji.org/issues/death-penalty/>.

financial, political, and gender backgrounds. Highlighting and analyzing potential areas of disparity in the criminal justice system would be a helpful step in bettering the status quo.

Geographical considerations come into play with the examination of regional sentencing patterns, particularly focusing on the southern part of the United States, where the death penalty is more prevalent. The impact of race on sentencing outcomes is scrutinized, acknowledging the historical context of racial injustice and its potential evolution over time. I also consider the passage of time, looking into the ways improvements in technology and changing societal attitudes might affect the likelihood of sentence outcomes. Gender and political affiliation further contribute to the nuanced understanding of capital punishment outcomes, shedding light on disparities in sentencing between men and women and the potential influence of political ideologies on jury decisions.

Ultimately, the question I seek to answer is the multifaceted nature of capital punishment sentencing. Why do offenders who have been sentenced to death so often have their sentences changed? Recognizing the various factors that intersect to shape the fate of individuals on death row is essential. This is because decisions made for offenders on death row are incredibly consequential. It truly is life or death. The judicial system plays a vital role within the United States. The judicial branch is responsible for ensuring that each defendant receives a fair trial. If there are discrepancies in sentencing outcomes, it is important to understand why those differing outcomes occur.

This paper analyzes data from all 50 United States in a cross-sectional time series. An Ordinary Least Square (OLS) regression is utilized to discuss seven independent variables and one dependent variable. This is utilized to test the relationship between my

dependent variable of current case status and my seven independent variables. In the literature review, I will discuss the current literature surrounding this issue to provide a history of punishment and justice and the background of capital punishment in the United States. Then, I will explain the theory behind the seven independent variables I chose. After presenting my hypotheses, I will provide an explanation of the data and methods utilized in this study. After providing background on the methods used, I will present my findings and explain the overall impact of the study.

Chapter Two: Literature Review

To properly analyze the U.S. American criminal justice system, it is essential to first begin with a history of punishment and justice. Perhaps the most well-known instance of punishment is found in the Gospel accounts of the crucifixion of Jesus. Then, preempting even the crucifixion is *Lex Talionis*, a law given to Moses by God in the Book of Exodus, which provides the Jewish people with a limitation on punishment.² The word "talio" is Latin in origin and means "equivalent or equal".³ Today, *Lex Talionis* is commonly known as an eye for an eye. It is important to note that this law's spirit is not vengeful. Instead, the purpose is a war on excess. This means that under *Lex Talionis*, punishment should not exceed the crime committed; they should be equal.

The Magna Carta combats this same issue of excessive punishment.⁴ Chapter fourteen specifically emphasizes this prohibition emphasizes punishment should be determined according to the gravity of offenses.⁵

² Anthony F. Granucci "Nor Cruel and Unusual Punishments Inflicted: The Original Meaning," *California Law Review* 57, no. 4 (1969) 860.

³ Ibid, 844.

⁴ Ibid, 845.

⁵ Ibid.

In 1689, the English Bill of Rights continued this theme by coining the term "cruel and unusual punishment".⁶ So often, when considering the meaning of "cruel and unusual punishment," one is inclined to think that cruel refers to a punishment that is barbaric or torturous; however, that is not the intended meaning of the phrase. The punishments inflicted throughout 18th-century England were far from humane. The majority of these executions consisted of being sent to the gallows. Two hundred twenty-two crimes could result in being sentenced to the gallows, and this sentencing was not limited to adults. Scholars believe that the cruel and unusual punishments clause of the English Bill of Rights was accomplishing two goals: objecting to punishments unauthorized by statute or outside the court's jurisdiction, and a reiteration against disproportionate penalties.⁷

Perhaps one of the most important minds in criminal justice and a pioneer of modern criminology is Cesare Beccaria and his highly influential work *On Crime and Punishment*. Properly understanding this work is essential when discussing criminal justice, specifically capital punishment. Beccaria produced one of the first works of modern criminology and transformed the discussion around capital punishment. His famous treatise focuses mainly on the purpose of justice, "Observe that by justice I understand nothing more than that bond which is necessary to keep the interest of individuals united... All punishments which exceed the necessity of this bond are in their nature unjust."⁸ His argument advocates against capital punishment, stressing that human life should remain

⁶ "English Bill of Rights 1689," William C. Fray and Lisa A. Spar, *The Avalon project Yale law School: Documents in Law, History and Diplomacy*, (new Haven, Connecticut: 1996).

⁷ Charles Duff, "The History of Hanging," *Historic UK*, Date Accessed: December 8, 2021.

⁸ Cesare Beccaria, *On Crimes and Punishments*, Translated by Edward D. Ingraham (Philadelphia, Pennsylvania: Philip H. Nicklin, 1819) 12.

outside the government's jurisdiction.⁹ Although Beccaria serves as a pioneer in the discussion of criminal justice and capital punishment, much literature has been produced since 1764, when his famous treatise was first published. Throughout time, scholarship in this field continues to develop, establishing similar ideologies against excess.

In modern times, a prevalent voice within the criminal justice discussion is the *Equal Justice Initiative*. A non-profit organization founded in 1989 that has worked to provide insight into the American criminal justice system through the production of reports, short films, and discussion guides. The work centers on criminal justice reform, racial justice, anti-poverty, and public education.

Within its discussion of criminal justice reform, capital punishment is at the forefront. Many reports published through the *Equal Justice Initiative* provide incredible insight into the capital punishment system and specifically highlight the stories of prisoners whose sentences have been reversed. The primary purpose of these reports is to pinpoint the reasons behind inaccurate sentences. Bryan Stevenson, *Equal Justice Initiatives* founder, explains that factors such as race, poverty, and inadequate legal assistance influence unjust sentences.¹⁰

Scholarly literature expands on this concept. Margaret Gonzalez-Perez, in her article "The Potential for Bias in Capital Juries," provides an explanation for differing outcomes in criminal sentences. Through an analysis of five variables – party identification, education, income, religious practices, and race – the author searches for a potential bias in capital

⁹ Ibid.

¹⁰ Bryan Stevenson, n.d. "Anthony Ray Hinton," Equal Justice Initiative, <https://eji.org/cases/anthony-ray-hinton/>.

jurors.¹¹ This 2002 study concluded that race was the dominant factor impacting a juror's attitude toward the death penalty.¹² The author notes that this conflicts with other scholars work in the field, arguing that race is no more significant than other factors or that race is not an important factor impacting attitudes toward capital punishment.¹³ Despite conflict regarding the impact of race on capital sentences, Gonzalez-Perez provides an informative analysis defending the correlation between the two.

A robust selection of literature exists regarding significant factors impacting both attitudes toward capital punishment and sentences given to potential death row inmates. While it is commonly accepted throughout existing literature that there is potential for bias within capital juries, a question arises: what factors cause bias within capital juries? Much emphasis has been placed on the impact of race and social class on death penalty outcomes. Stephen B. Bright, in his article, "Race, Poverty, the Death Penalty, and the Responsibility of the Legal Profession," provides a compelling argument emphasizing the impact of these factors and the moral repercussions this impact places on attorneys.¹⁴ Bright defends the argument that race plays a significant role in capital sentencing by citing the United States Department of Justice's statistics revealing that over 75% of death row inmates are racial minorities.¹⁵ He also addresses an incredibly relevant issue – adequate legal representation for low-income individuals. In his assertion that the poor are disproportionately impacted by capital punishment, he cites the case of John Eldon Smith, whose execution violated his

¹¹ Margaret Gonzalez-Perez, "The Potential for Bias in Capital Juris," *The Justice System Journal* 23, no. 2, 2002: 235-247, <http://www.jstor.org/stable/27977108>.

¹² Ibid, 240.

¹³ Ibid, 241.

¹⁴ Stephen B. Bright, "Race, Poverty, the Death Penalty, and the Responsibility of the Legal Profession," *Seattle Journal for Social Justice*: Vol 1: Iss. 1, Article 6, <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1263&context=sjsj>.

¹⁵ Ibid, 78.

6th Amendment rights due to an under-representation of women in his jury.¹⁶ This showcases the inadequate representation given to low-income defendants. His lawyers failed to challenge the constitutionality of the jury, and Smith was denied a retrial despite the same court granting his co-defendant a retrial.¹⁷

The crux of Bright's argument is not simply to assert that there are flaws within the capital punishment sentencing system, although he does successfully defend that argument. He continues the discussion by asking the question, "Now what?" Knowing there are discrepancies within capital punishment sentences, what are the implications for the legal field? Bright argues that it is vital for the legal profession to act against these injustices and biases by offering quality representation. He also asserts that the legal profession must change its mindset toward providing a legal defense for low-income individuals, stating, "Representing the poor is not a sacrifice...Representing a person whose life or liberty is at stake is a privilege."¹⁸ He concludes his argument through a powerful utilization of two great minds, Dietrich Bonhoeffer and Dr. Martin Luther King Jr., urging attorneys to commit themselves to the service of all people and work to improve and fight against current injustices within the legal system and capital sentencing.¹⁹

Literature concerning capital punishment sentencing has demonstrated that attributes such as gender, race, social class, and political affiliation impact capital sentences. These attributes, whether held by the juror, defendant, or victim, impact the sentence initially given to defendants in capital cases. Hillary Dotson and J. Scott Carter, in

¹⁶ Ibid, 76.

¹⁷ Ibid.

¹⁸ Ibid, 80.

¹⁹ Ibid.

their article, "Changing Views Toward the Death Penalty?" dive into the individual factors of race and gender and their impact on capital sentencing.²⁰ Similarly, they also look into the impact of these factors on attitudes toward capital punishment and the relationship and implications of these findings.²¹ Their study found that white respondents were more likely to support capital punishment than black respondents.²² Similarly, they found that men are more likely to support capital punishment than women.²³

Race and social class are not the only noteworthy factors that impact capital sentences. Gender has also considerably affected whether a death sentence will be given. Elizabeth Rapaport, in her article "The Death Penalty and Gender Discrimination," asserts that women are less likely to receive a death sentence than men.²⁴ She expands on this bias further by explaining that on the rare occasions where a woman is sentenced to death, she has often killed fellow inmates and committed other heinous crimes.²⁵

While the discussion of factors influencing sentences given to defendants is essential, the conversation does not end there. If there are injustices and discrepancies within capital sentences given, how does this impact the outcome of death row sentences? One study found that 80% of state court reversals and 75% of federal court reversals were due to inadequate representation.²⁶ When considering State Direct Appeals as a cause for

²⁰ Hilary Dotson & J. Scott Carter, "Changing Views Toward the Death Penalty? The Intersecting Impact of Race and Gender on Attitudes, 1974-2006," *The Justice System Journal* 33, no. 1 (2012): 1–21, <http://www.jstor.org/stable/23268727>.

²¹ Ibid.

²² Ibid, 1.

²³ Ibid, 2.

²⁴ Elizabeth Rapaport, "The Death Penalty and Gender Discrimination," *Law & Society Review* 25, no. 2 (1991): 367–483, <https://doi.org/10.2307/3053803>.

²⁵ Ibid, 369.

²⁶ Andrew Gelman, James S. Liebman, Valerie West, and Alexander Kiss, 2004, "A Broken System: The Persistent Patterns of Reversals of Death Sentences in the United State's," *Journal of Empirical Legal Studies* 1, no. 2 (July): 219, <https://doi.org/10.1111/j.1740-1461.2004.00007.x>.

sentence reversals, the same study found that incompetence and bias among the jury and attorneys were the primary causes.²⁷ The article concludes by emphasizing that because modern capital punishment - lethal injection, electrocution, gas chamber, hanging, and firing squad - has been in practice for around thirty years, there are patterns and established error rates to be analyzed.²⁸

Literature discussing capital punishment within the United States is, often, written through a partial lens either advocating for or against the death penalty. It is important to note that the literature I utilized within my study was written in opposition to capital punishment. David Dolinko, in his article, "How to Criticize the Death Penalty," provides a helpful perspective on the different angles scholars use to combat the use of capital sentencing. He concludes his work by asserting that the core question behind every argument regarding capital punishment and the implication of every study analyzing bias and discrepancies is in reference to the same moral issue, "can the state's deliberate taking of human life ever be morally justified, and if so, under what conditions."²⁹

Much scholarly literature is produced regarding capital punishment. This is because of the highly impactful implications this practice has on society. As Dolinko explains, when a death sentence is given, the state is taking a stance on a fundamental moral and ethical issue.³⁰ Understanding factors that impact sentences given to defendants is vital in developing a complete understanding of capital punishment in the United States. Further

²⁷ Ibid, 219.

²⁸ Ibid, 261.

²⁹ David Dolinko, "Foreword: How to Criticize the Death Penalty," *The Journal of Criminal Law and Criminology* (1973-)77, no. 3 (1986): 546-601, <https://doi.org/10.2307/1143430>.

³⁰ Ibid, 601.

digging deeper into works that discuss reversals and changes in sentencing outcomes may help uncover injustices and discrepancies within capital sentences.

Chapter Three: Theory

In the United States, when a person receives the death penalty, there is a one in nine chance they will later be exonerated.³¹ While it is commonly understood that offenders sentenced to death will die at the hands of the state, the numbers are clear - there are various outcomes for death row sentences. This variation suggests certain factors impact an offender's sentencing outcome. Based on literature regarding capital punishment in the United States, seven variables reasonably affect sentencing outcomes.

H1_a: The fewer sentences an offender has, the more likely their sentence outcome will change.

H1₀: The number of sentences an offender has received has no impact on the outcome of their sentence.

When an offender is prosecuted and charged for multiple crimes in unrelated proceedings, it is less likely for their sentence outcome to change. This is because if there is enough evidence to sentence an offender to death for multiple unrelated capital offenses, they are less likely to be unjustly sentenced. While there are flaws in sentencing processes and room for human error, it is less likely that an innocent person will be wrongly convicted on multiple occasions in different proceedings and by different jurors. The Death Penalty

³¹ Equal Justice Initiative, "Death Penalty."

Information Center developed a statistic called the multisentence identifier, which identifies the number of capital sentences an offender faces. I posit that when an offender has a multitude of these capital sentences, they are less likely to have their sentences reversed.

H2_a: The higher an offender's income based on the state's per capita average, the more likely their sentencing outcome has changed.

H2₀: An offender's income based on the state's per capita average does not impact the outcome of their sentence.

Literature has shown that a defendant's financial status impacts the likelihood of receiving a death sentence. Studies have found that the death penalty disproportionately affects low-income individuals.³² When an offender is wealthy, they are able to afford better attorneys. Further, after the initial sentencing proceeding has concluded, if an offender has wealth, they can continue fighting against their sentence outcome. This would make it more likely for individuals with higher personal incomes to have their death sentences overturned or reduced.

Because I do not have access to each offender's personal financial records, I am making generalizations based on their state's average annual income per capita. While this is not truly individual data, the average annual income per capita is being used as a proxy. This is because the other variables all provide information at the individual level, and in

³² Bright, "Race, Poverty, the Death Penalty," 78.

order to assess financial status as well, a generalization has to be made. However, this is still helpful as it provides insight into financial status that would otherwise be ignored within this study.

H3_a: Offenders sentenced in the South are more likely to have their sentencing outcome change.

H3₀: An offender's sentence occurring in the South has no impact on the outcome of their sentence.

The United States is a diverse country. One category of this diversity is regional. Different geographic regions hold different laws, affiliations, values, and governments. In particular, the southern part of the United States is more likely to sentence an offender to death, with 82% of executions occurring in the South.³³ Because the South utilizes the death penalty in much higher quantities, there is more room for error or reversal. Because northern states are typically hesitant to use capital punishment, those sentences rarely change. However, because southern states use capital punishment at much higher rates, it would be reasonable for southern states to consequently have more death sentence reversals.

H4_a: Offenders who are minorities are more likely to have their sentencing outcome change.

H4₀: An offender's ethnic background does not impact their sentencing outcome.

³³ The 2% Death Penalty: The Geographic Arbitrariness of Capital Punishment in the United States, 2015, Death Penalty Information Center, <https://deathpenaltyinfo.org/stories/the-clustering-of-the-death-penalty>.

The relationship between race and capital sentencing has been greatly scrutinized in the United States. This is because of its long and devastating history of racial injustice and the way racism bled into the criminal justice process before and after the civil rights movement of 1954.³⁴ Studies show that minority offenders are sentenced to death more frequently than Caucasian offenders.³⁵ Specifically, 75% of death row inmates are a minority.³⁶

Due to the higher frequency of minority death row inmates and the United State's complicated history of racism, it is more likely that a minority offender will have their death sentence reversed. Primarily, this is because there are more minority offenders on death row, so if an offender's sentence is reversed, it is likely that the offender is a racial minority. Likewise, as race relations in the United States have improved, potentially unjust sentences may be reversed as the country takes steps to decrease racism in the justice system. However, this is not simply a story about numbers. There are many cases within the capital punishment system where an innocent minority offender receives a capital conviction due to racial bias within the jury and justice system.

One of the most well-known examples is the story of Walter McMillian, a black man convicted and sentenced to death for the murder of a young white woman in Monroeville, Alabama, in the late 1980s.³⁷ The woman, Ronda Morrison, was murdered, and the police were unable to solve the crime for six months.³⁸ McMillian, a man with no prior criminal history, who was known for having an affair with a local white woman, had been recently

³⁴ Bright, "Race, Poverty, the Death Penalty," 78.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Equal Justice Initiative, "Walter McMillian," 2019, <https://eji.org/cases/walter-mcmillian/>.

³⁸ Ibid.

brought to the forefront of town discussion, leading to Mr. McMillian being accused of committing the crime.³⁹ A white man accused of crimes in another country made false statements against Mr. McMillian due to pressure from the police.⁴⁰ The sheriff arranged for Mr. McMillian to be placed on death row prior to his trial and conviction despite, at the time of the murder, Mr. McMillian was eleven miles away from the scene of the crime with dozens of African Americans who could testify to his innocence.⁴¹ This was ignored, and Mr. McMillian was convicted of capital murder by an all-white jury and sentenced to life in prison without parole.⁴² However, the Judge, Robert E. Lee Key, overrode the jury's sentence and sentenced Mr. McMillian to death, where he spent six years on death row.⁴³ Eventually, Mr. McMillian was represented by the EJI and regained his innocence.⁴⁴ A quote from Mr. McMillian when he advocated against capital punishment in front of the U.S. Senate Judiciary Committee states, "Justice is forever shattered when we kill an innocent man."⁴⁵

H5a: The more time passed since an offender's sentence was given, the more likely their sentence outcome has changed.

H50: The amount of time since an offender's sentencing has no impact on their sentence outcome.

³⁹ Equal Justice Initiative, "Walter McMillian."

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

This variable is simple; the longer it has been since an offender is sentenced, the more time there is for their sentence to change. Currently, much effort is put into rectifying racial injustices in criminal sentencing. This passing of time allows for improvements to occur in race relations both in society and systemically. Therefore, as more time passes, more opportunities for sentence reversals occur. One way this improvement presents itself is by exonerating offenders who are unjustly sentenced to death. Another notable reason time since sentencing may play a role in sentencing outcomes is the evolution of technology and forensic testing. As improvements are made in these areas, new evidence can come to light, changing earlier verdicts.

H6_a: Male offenders are more likely to have their sentencing outcome changed.

H6₀: An offender's gender has no impact on their sentencing outcome.

Capital sentencing statistics are clear. Men receive the death penalty disproportionately compared to women. There are multiple reasons why this may be the case. One is that men simply commit more capital crimes than women. Another is that societal and gender norms depict women as more nurturing and vulnerable.⁴⁶ Suppose it is true that juries are more hesitant to sentence a woman to death and require extreme circumstances. In that case, it is reasonable for men to have more inaccurate death sentences. This is more than sheer frequency but instead because there is a lower standard of guilt to sentence a male offender to death.

⁴⁶ Steven F. and Naomi R. Shatz, "Chivalry is Not Dead: Murder, Gender, and the Death Penalty," *Berkley Journal of Gender, Law, and Justice* 27, no. 1 (2012).

H7_a: offenders sentenced in a predominantly Republican state are more likely to have their sentence outcome changed.

H7₀: An offender sentenced in a predominantly Republican state has no impact on their sentencing outcome.

Much research tests the relationship between political affiliation and attitudes toward capital punishment. Studies have found that 77% of Republicans support the death penalty as opposed to only 40% of Democrats.⁴⁷ Consequently, in states that are predominately Republican, the people making up the jury are more likely to sentence a defendant to death. This would result in more death sentences given and, therefore, more sentences to be changed. Like with the variable discussing women, because Democrats are statistically less likely to inflict the death penalty, it is reasonable that when it is inflicted, the circumstances are more concrete. Again, this is not simply a story about numbers. Understanding, if there is a correlation between political affiliation and attitudes toward the death penalty, may better inform what the values and ideology within these political groups are.

Capital punishment sentencing is a highly important topic within the United States justice system. These decisions are truly life or death. The taking of another person's life is a decision of great weight, and the death sentencing process in the United States must be analyzed and the factors leading to these changes in sentencing outcomes must be identified and understood.

⁴⁷ American Support for Death Penalty Declining, Especially Among Democrats, (2015, April 16), Pew Research Center - U.S. Politics & Policy, <https://www.pewresearch.org/politics/2015/04/16/less-support-for-death-penalty-especially-among-Democrats/>.

Chapter Four: Data and Methods

When a criminal receives a capital punishment sentence in the United States, the expected outcome is that they will be executed at the hands of the state where they received their sentencing. However, this is not always the case. Many prisoners who receive the death penalty are not put to death. This begs the question of why some prisoners are executed while others are ultimately exonerated for their crimes.

This project seeks to investigate potential factors affecting capital punishment sentencing in the United States. It analyzes data regarding all 50 U.S. states from 1998-2020 in a cross-sectional time series. Current case status is the dependent variable, and seven independent variables are tested to see if any of these factors have a statistically significant impact on sentencing outcomes. These seven variables in order of expected significance are as follows: multi-sentence identifier, region of sentencing, race of offender, years since sentencing, gender of offender, political leaning of the sentencing state, and average income per capita of the sentencing state.

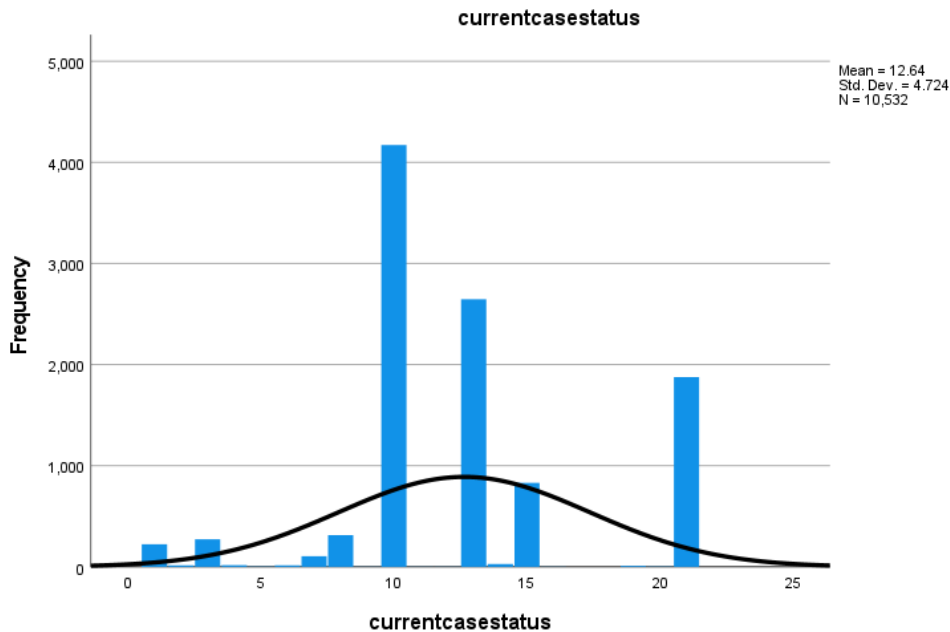
Statistics									
		currentcasestatus	multisentence	gdp	south	white	yearssincesenten cing	male	republican
N	Valid	10532	10530	2811	10511	10504	10532	10532	10144
	Missing	1	3	7722	22	29	1	1	389
Mean		12.64	.09	34647.51	.60	.48	32.48	.98	.50
Std. Deviation		4.724	.294	7854.492	.489	.500	44.690	.140	.500
Variance		22.314	.086	61693049.916	.239	.250	1997.222	.020	.250
Minimum		1	0	20174	0	0	3	0	0
Maximum		21	4	70643	1	1	2023	1	1

The dependent variable is the current case status. This variable was found from the Death Penalty Information Center along with the number of sentences, region of sentencing, race of offender, and years since sentencing. It provided insight into the current case status of every offender who has received a death sentence in the United States since 1972. However, because one variable only traced back to 1998, only offenders from that point on were considered due to missing data.

Using current case status as the dependent variable would provide the best insight into capital sentencing outcomes because it provides current information on the offender's case status. This ensures that whatever outcome is analyzed is the most recent and accurate case status. The different case statuses are ranked from 1 to 21, with "executed" being the 21st and "exonerated" the 1st. The remaining possible rankings were put in order of best to worst result for the offender. It is important to note that this ranking was subjective. There were 10,532 case statuses, with the minimum being 1 with a frequency of 233 and the maximum being 21 with a frequency of 1,876.⁴⁸ This data is ordinal and abnormally distributed.

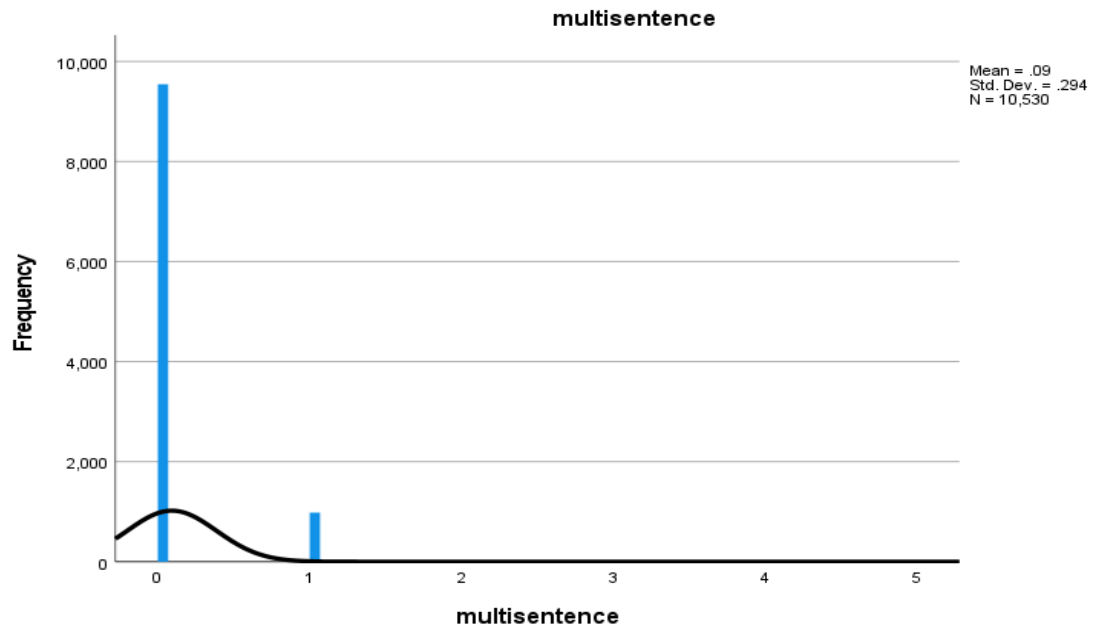
⁴⁸ "Death Penalty Census Data Base," Death Penalty Info, accessed April 19, 2023, <https://deathpenaltyinfo.org/database/sentences>.

currentcasestatus					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	223	2.1	2.1	2.1
	2	14	.1	.1	2.3
	3	272	2.6	2.6	4.8
	4	16	.2	.2	5.0
	5	3	.0	.0	5.0
	6	15	.1	.1	5.2
	7	105	1.0	1.0	6.2
	8	314	3.0	3.0	9.1
	9	2	.0	.0	9.2
	10	4172	39.6	39.6	48.8
	11	1	.0	.0	48.8
	12	1	.0	.0	48.8
	13	2646	25.1	25.1	73.9
	14	28	.3	.3	74.2
	15	831	7.9	7.9	82.1
	16	1	.0	.0	82.1
	19	9	.1	.1	82.2
	20	3	.0	.0	82.2
	21	1876	17.8	17.8	100.0
	Total	10532	100.0	100.0	
Missing	System	1	.0		
Total		10533	100.0		



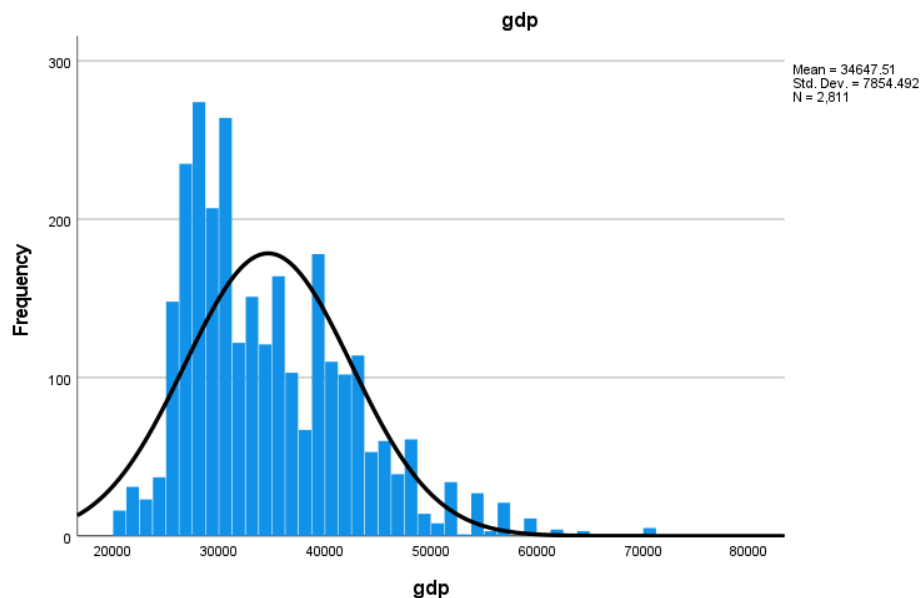
The first independent variable is named Multi-Sentence Identifier. This variable considers whether the offender has received multiple sentences or committed multiple crimes. One potential issue with this variable is that in the original data set, there was a separate entry for every sentence an offender received. This resulted in one offender's name appearing in the data set up to 4 times. To fit this data into the OLS model, I consolidated each sentence for an offender into one entry. Typically, the oldest sentence was the one kept in the data set; however, if there were conflicting current case statuses, the most recent case status was the one utilized in the study. There were 10,530 variables considered, with a minimum of 0 and a maximum of 4.⁴⁹

⁴⁹ Death Penalty Info.



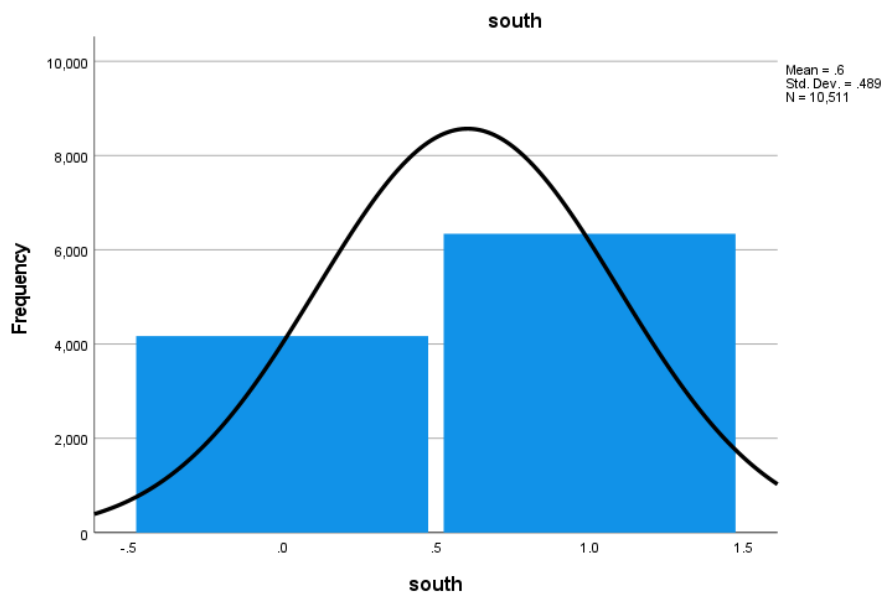
		multisentence			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0	9547	90.6	90.7	90.7
	1	980	9.3	9.3	100.0
	2	2	.0	.0	100.0
	4	1	.0	.0	100.0
	Total	10530	100.0	100.0	
Missing	System	3	.0		
Total		10533	100.0		

The second independent variable is the income per capita of the state in which the offender was sentenced. This data is from the Bureau of Economic Analysis, which provides each state's average income per capita from 1998 – 2022. Because analyzing each offender's economic status was not feasible for this study, the best way to attempt to account for the impact one's financial status has on sentencing outcomes was to analyze the average income per capita for the state where the offender received their sentencing. There were 2,811 observations, with a minimum of \$20,174 and a maximum of \$70,643.⁵⁰ This data is continuous and skewed to the right. This variable is my most limiting set of data, so there are multiple pieces of missing data. However, this does not impact my study because I still have access to 20 years of information.



⁵⁰ "SASUMMARY State annual summary statistics: personal income, GDP, consumer spending, price indexes, and employment," U.S. Bureau of Economic Analysis, accessed September 18, 2023, <https://apps.bea.gov/itable/?ReqID=70&step=1#eyJhcHBpZCI6NzAsInN0ZXBzIjpbMSwyOSwyNSwzMSwyNiwyNywzMFOsImRhGEiOltbIlRhYmxiSWQiLCI2MDAiXSxbIk1ham9yX0FyZWElLCIwIl0sWYjTdGF0ZSIzWyIwI1dLFsiQXJlYSIsWyJYWCIjdxSxbIlN0YXRpc3RpYyIsWyIxcjJdXSxbIlVuaXRfb2ZfbWVhc3VyZSIzIkxldmVscyJdLFsiWWVhciIsWyJtMSJdXSxbIlIlYXJlZWdpbiIsIi0xIl0sWYjZZWFyX0VuZCIzIi0xIl1dfQ==>.

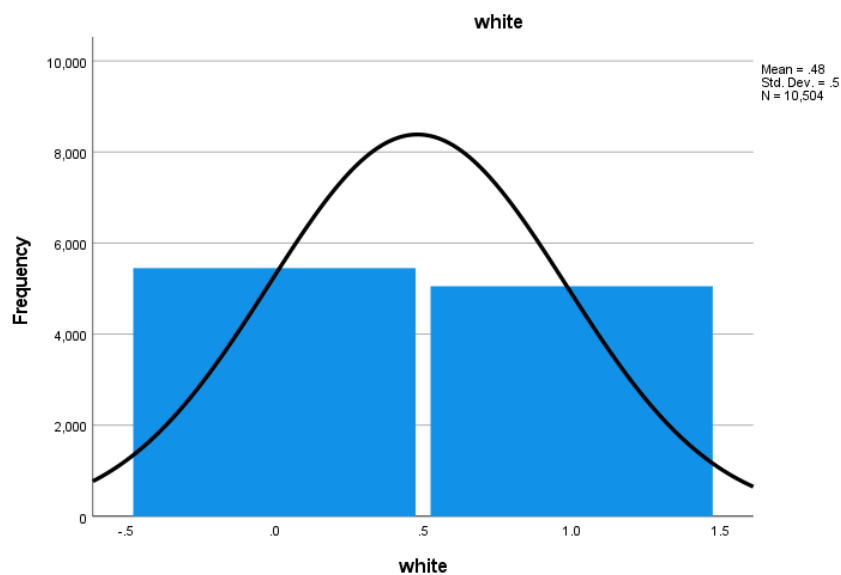
The third independent variable is the region where the offender is sentenced. In order to analyze the data, it is turned into a dichotomous variable by naming the variable "South." If an offender is sentenced in the south, they receive a 1, and if they are sentenced in any other region, they receive a 0. There are 10,511 variables.⁵¹ The minimum is 0, and the maximum is 1.8



		south			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0	4171	39.6	39.7	39.7
	1	6340	60.2	60.3	100.0
	Total	10511	99.8	100.0	
Missing	System	22	.2		
Total		10533	100.0		

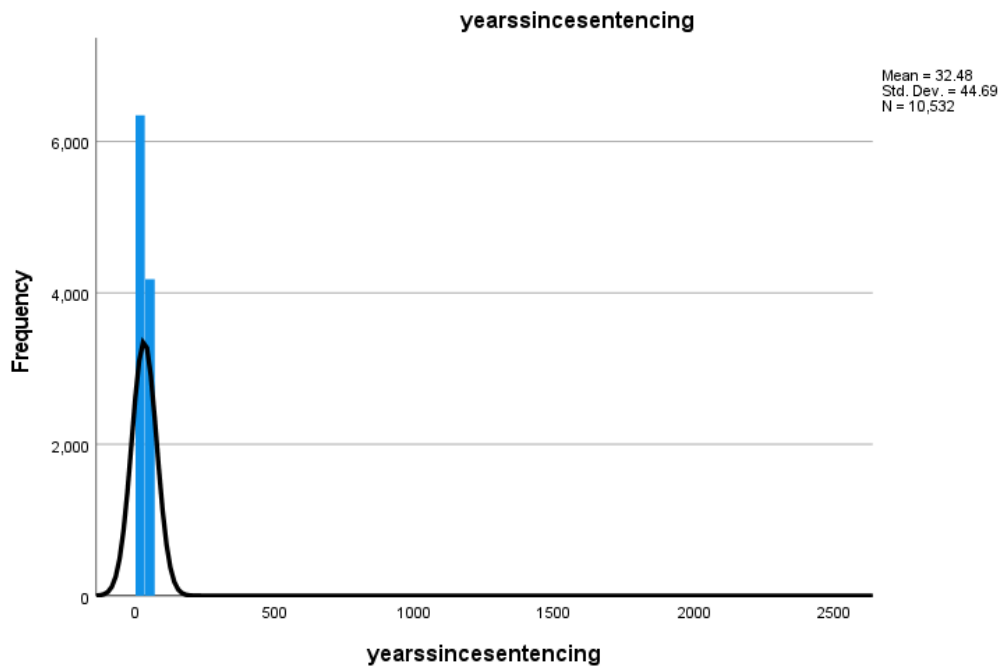
⁵¹ Death Penalty Info.

The fourth independent variable analyzes the effect of the offender's race on their sentencing outcome. The question's root is whether being a minority affected an offender's sentencing outcome. I make this a dichotomous variable by using a 1 for white offenders and a 0 for minority offenders. There are 10,504 variables, with 1 being the maximum and 0 being the minimum.(source) This data is dichotomous.



		white			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0	5451	51.8	51.9	51.9
	1	5053	48.0	48.1	100.0
	Total	10504	99.7	100.0	
Missing	System	29	.3		
Total		10533	100.0		

The fifth independent variable analyzes the effect the year an offender is sentenced has on their sentence outcome. The reasoning behind this variable is that offenders who were sentenced earlier in time are more likely to have their sentences reversed because more time has passed for this reversal to occur. There are 10,532 variables, with 3 being the minimum and the maximum being 51.⁵² This data is continuous and skewed to the right.

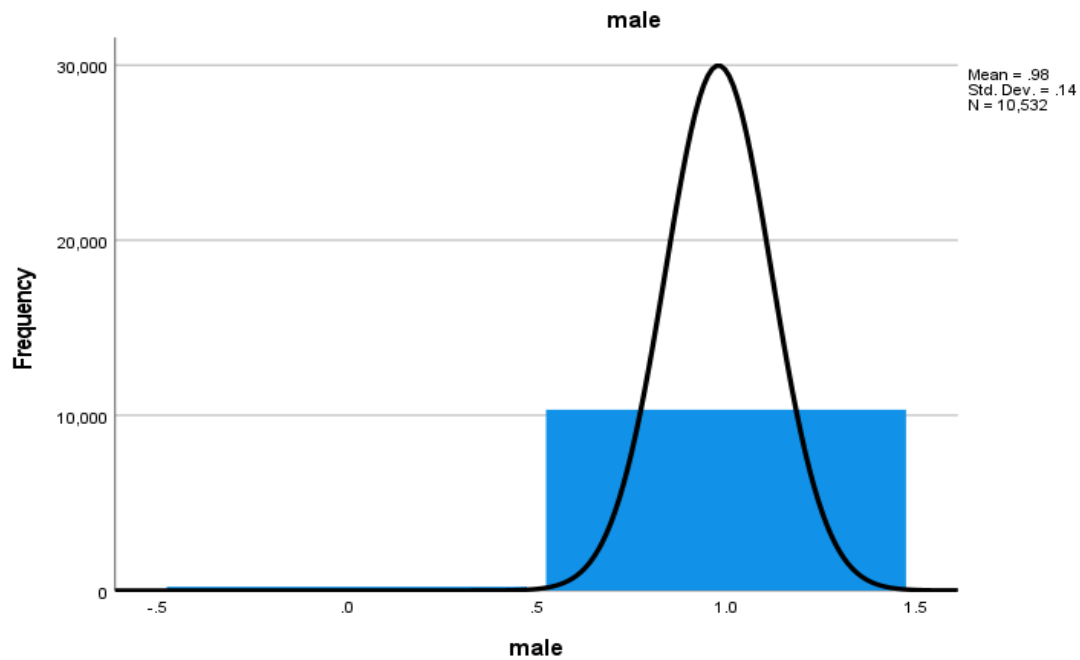


⁵² Death Penalty info.

yearssincesentencing					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	3	18	.2	.2	.2
	4	32	.3	.3	.5
	5	43	.4	.4	.9
	6	40	.4	.4	1.3
	7	31	.3	.3	1.6
	8	58	.6	.6	2.1
	9	67	.6	.6	2.7
	10	85	.8	.8	3.6
	11	79	.8	.8	4.3
	12	126	1.2	1.2	5.5
	13	110	1.0	1.0	6.5
	14	127	1.2	1.2	7.7
	15	117	1.1	1.1	8.9
	16	157	1.5	1.5	10.3
	17	112	1.1	1.1	11.4
	18	143	1.4	1.4	12.8
	19	140	1.3	1.3	14.1
	20	212	2.0	2.0	16.1
	21	172	1.6	1.6	17.7
	22	195	1.9	1.9	19.6
	23	262	2.5	2.5	22.1
	24	392	3.7	3.7	25.8
	25	331	3.1	3.1	28.9
	26	282	2.7	2.7	31.6
	27	319	3.0	3.0	34.7
	28	423	4.0	4.0	38.7
	29	308	2.9	2.9	41.6
	30	361	3.4	3.4	45.0
	31	302	2.9	2.9	47.9
	32	429	4.1	4.1	52.0
	33	270	2.6	2.6	54.5
	34	278	2.6	2.6	57.2
	35	326	3.1	3.1	60.3
	36	454	4.3	4.3	64.6

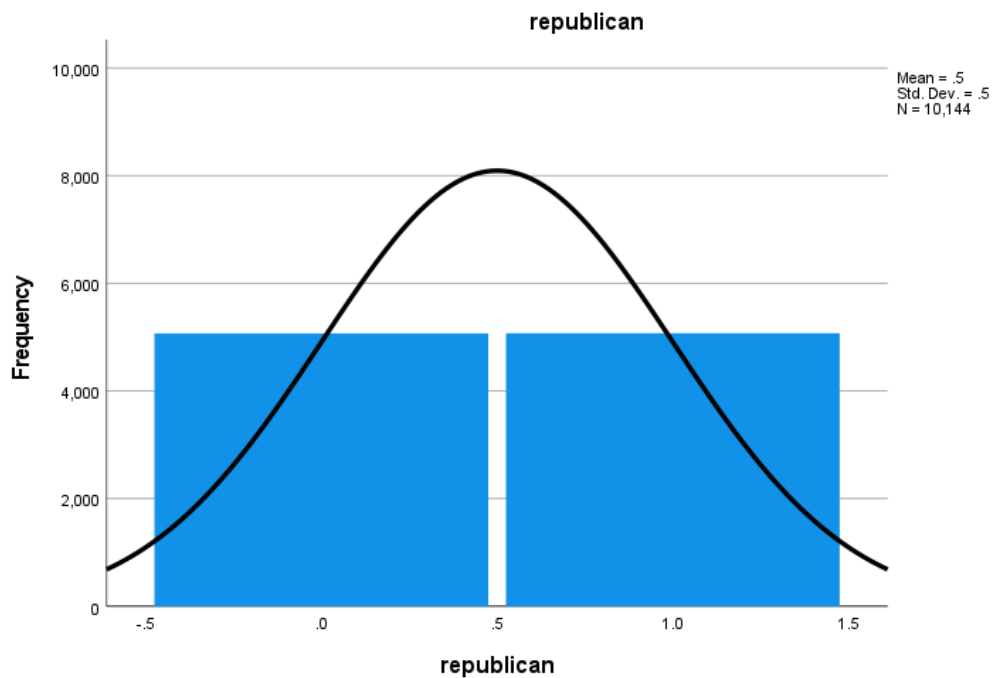
	37	335	3.2	3.2	67.8
	38	310	2.9	2.9	70.7
	39	300	2.8	2.8	73.5
	40	367	3.5	3.5	77.0
	41	295	2.8	2.8	79.8
	42	285	2.7	2.7	82.5
	43	204	1.9	1.9	84.5
	44	257	2.4	2.4	86.9
	45	235	2.2	2.2	89.1
	46	178	1.7	1.7	90.8
	47	247	2.3	2.3	93.2
	48	463	4.4	4.4	97.6
	49	177	1.7	1.7	99.3
	50	69	.7	.7	99.9
	51	4	.0	.0	100.0
	2023	5	.0	.0	100.0
	Total	10532	100.0	100.0	
Missing	System	1	.0		
Total		10533	100.0		

The sixth independent variable is the gender of the offender. There are 10,532 variables. I turn this into a dichotomous variable by identifying men with a 1 and women with a 0.



		male			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0	211	2.0	2.0	2.0
	1	10321	98.0	98.0	100.0
	Total	10532	100.0	100.0	
Missing	System	1	.0		
Total		10533	100.0		

The seventh independent variable is the state's political affiliation where the offender received their sentencing. The idea behind this variable is that more conservative states will be more likely to inflict the death penalty and would then be more likely to have current case statuses with less severe outcomes. This information comes from Open ICSR, a political and social science research center. It provided the Governor of each state from 1775-2020. I cross referenced the Governor affiliation from ICSR with the year and state from the Death Penalty Information Center to make an assumption about the states predominate political affiliation. There are 10,144 variables, with 1 being the maximum and 0 being the minimum, as it is a dichotomous variable. Republican Governors are represented with 1, and all other political affiliations as 0.



		republican			Cumulative
		Frequency	Percent	Valid Percent	Percent
Valid	0	5071	48.1	50.0	50.0
	1	5073	48.2	50.0	100.0
	Total	10144	96.3	100.0	
Missing	System	389	3.7		
Total		10533	100.0		

To test my hypotheses, I utilized an OLS Regression. This is because I want to test the relationship between my dependent variable of current case status against the independent variables to better understand what factors may be affecting capital punishment sentencing outcomes. The data within this chapter is testing offenders from 1998-2020 because of the constraints within the data on personal income from the Bureau of Economic Analysis.

Chapter Five: Findings

It is essential to understand the implications of capital punishment sentencing outcomes and the factors that influence them. This is because the common conception in the United States regarding capital punishment is that when a person receives the death penalty, they will die at the hands of the state. However, statistics are clear that this is not the case. After considering different factors discussed within the literature surrounding this topic, I identify seven variables to test against the dependent variable of death sentence outcome.

Hypotheses	Expected Relationship
H1: The fewer sentences an offender has, the more likely their sentence outcome will see positive change.	+
H2: The higher an offenders income based on the state's per capita average, the more likely their sentencing outcome will see positive change.	+
H3: Offenders sentenced in the South are more likely to have their sentencing outcome see positive change.	+
H4: Offenders who are minorities are more likely to have their sentencing outcome see positive change.	+
H5: The more time passed since an offender's sentence was given, the more likely their sentence outcome will see positive change.	+
H6: Male offenders are more likely to have their sentencing outcome see positive change.	+
H7: Offenders sentenced in a predominantly Republican state are more likely to have their sentence outcome see positive change.	+

These hypotheses are analyzed with an Ordinary Least Square or OLS regression because the dependent variable is ordinal. The purpose of this model is to describe the relationship between an independent and dependent variable. In a regression analysis, it is important to understand the coefficients.

R squared in the second, or the coefficient of determination. This number shows the variation in the dependent variable explained by the independent variables. This value ranges from 0 to 1 and, like R, is often expressed as a percentage. In this study, R squared is .022 or 2.2%. This means that only 2.2% of the dependent variable variation is explained through the independent variables utilized in this study.

Adjusted R squared is also found. This number modifies R squared based on the number of predictors in a model. The adjusted R squared is .019 or 1.9%. This means that the model provides a poor explanation for factors impacting capital sentencing outcomes.

Model Summary				
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.147 ^a	.022	.019	4.185

a. Predictors: (Constant), republican, white, male, multisentence, south, yearssincesentencing, gdp

A regression table is used to understand the relationship between each independent variable and the dependent variable. This includes five different statistics: the unstandardized beta, the standard error of the unstandardized beta, the standardized beta, the t-test statistic, and the probability value. This study uses unstandardized betas with standard errors in parentheses. An asterisk will represent statistical significance.

Regression Results

Multi-sentence	-.036 (.358)
GDP	.019 (.000)
South	.043* (.175)
White	.029 (.164)
Yearsincisentencing	.144* (.033)
Male	.000 (.531)
Republican	.044* (.173)
Standard Error in Parenthesis	*Indicates a P-value < 0.05

MultiSentence Identifier

For the first variable, the multisentence identifier, the unstandardized beta is $-.675$, and the P value was $.059$. This means that the variable is not a statistically significant factor impacting sentencing outcomes. This is surprising. However, there is some explanation for this. The multisentence identifier within my data set did not fit well into the OLS regression model. This is because one defendant is listed multiple times for every sentence they are given. In order to correct this, I had to make changes to the data. I would make one entry per defendant and then adjust the multisentence identifier. Based on the findings, instead of using the same numbering system as the data set, I should have changed it to a simpler number just stating “1” for one sentence or “2” for two sentences. This potentially will fit better into the model and yield better results.

Average Annual Income Per Capita

The unstandardized beta for this variable is 1.095 , and the P value is $.666$, meaning the variable is not statistically significant. Although I anticipated this variable to be significant due to the vast amount of literature supporting socioeconomic status as a relevant factor in sentencing outcomes, there are two explanations for this lack of significance. First, it is the only variable that is not truly on the individual level. The majority of my data is from the Death Penalty Information Center, which provides information about each individual defendant; however, for this variable, I make a generalization as I do not have access to each defendant's personal financial information. Instead, I use the average annual income per capita. Had I been able to use the defendant's true financial status, this may have yielded better results.

Secondly, I believe this variable is more relevant in the initial sentencing process. If an offender has the financial means to purchase high-quality representation, it is less likely they will be sentenced to death. Because I am looking at offenders who have already received a death sentence, it shows that financial status plays less of a role.

Region of Sentencing

The unstandardized beta for this variable is .368, and the P value is .036, meaning the variable is statistically significant. I anticipated this because southern states are much more likely to sentence an offender to death. Consequently, since more offenders receive the death penalty, it is likely that more offenders will have their sentences reversed. However, the implications of this are greater than just statistical significance. Southern states generally have much harsher precedents on the death penalty. Currently, twenty-seven states still utilize capital punishment, twelve of them being culturally southern states.⁵³ Twenty-three have currently abolished the death penalty. However, none of those include southern states.⁵⁴

One southern state that stands out is Alabama. The state fails to provide adequate counsel to people facing the death penalty at trial or on appeal.⁵⁵ This is because of the low compensation rates and lack of a statewide public defender system. Despite having now

⁵³ Death Penalty Information Center. "State by State." 2020. <https://deathpenaltyinfo.org/states-landing>.

⁵⁴ Ibid.

⁵⁵ Death Penalty Information Center, "Alabama," 2010, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/alabama>.

abolished judge override to impose death sentences despite juries sentencing defendants to death, nearly 20% of people currently on death row in Alabama were sentenced through judicial override, and Alabama continues to allow death sentences to be imposed even when jury verdicts are not unanimous.⁵⁶ Eighty percent of people currently on Alabama's death row did not receive unanimous jury verdicts for death.⁵⁷ This is one of the reasons that Alabama has consistently had the highest per capita execution rates.⁵⁸

One consideration regarding this variable is that there are better methods than explicitly looking at southern states compared to all other regions to answer the question I was truly attempting to address. The reason for choosing southern states is not because of their geographic location but instead because of the values and affiliations traditionally associated with southern states. In future research, it would be beneficial to identify a different variable that may better address this cultural question without neglecting states like Utah, Idaho, or Wyoming, which, although not geographically southern, traditionally hold similar values.

Race of Offender

The unstandardized beta for this variable is .245, and the P value is .134, meaning it is not statistically significant. This result is surprising because minority offenders are sentenced to death at a disproportionate rate in comparison to white offenders. However, an explanation for this lack of significance is that race plays a more relevant role in the initial sentencing, like with financial status. Likewise, much literature finds that race is more relevant to death sentencing

⁵⁶ Death Penalty info, "Alabama"

⁵⁷ Ibid.

⁵⁸ Ibid.

outcomes regarding the victim instead of the defendant. It may have been more beneficial to use information about the race of the victim. I originally opted not to do this because there was a separate set of data that provided victim information, but it was much more limited, so I chose to focus on the defendant because of the amount of individual-level data that was available.

Years Since Sentencing

The unstandardized beta for this variable is .111, and the P value is less than .001, meaning the variable is statistically significant. This was anticipated for three reasons. First, as time passes, many improvements are evolving in forensics and DNA testing. This allows new discoveries to be made in regard to evidence. Secondly, circumstances to inflict capital punishments have become more rigid, which would decrease the number of sentences to be reversed. One example is the removal of judicial override. The third is that race relations are improving in the United States. Much work is being done by organizations like the Equal Justice Initiative to provide representation advocacy to death row inmates who may have been unjustly sentenced.

Gender

The unstandardized beta for this variable is -.007, and the P value is .990, meaning the variable is not statistically significant. This is also surprising because statistics are clear that men are sentenced to death at much higher frequencies than women. One explanation for this is that there is so little differentiation within this data set because of how few women have been sentenced to death; when utilizing an OLS regression model, it is unable to interpret the statistical significance of the data accurately.

Party Affiliation

The unstandardized beta for this variable is .399, and the P value is .021, meaning the variable is statistically significant. This is anticipated because Republican states are much more likely to sentence an offender to death compared to Democratic states. Because of this higher frequency of death sentences given, it is reasonable to think that there will also be more sentence outcome reversals. Also, because southern states typically lean Republican and northern typically Democratic, these two variables are similar in substantive significance.

Chapter Six: Conclusion

Crime and punishment remain a topic of contention. When considering the purpose of justice and punishment in society, an individual might take various ethical and philosophical stances. Because multiple theories of justice exist and the capital sentencing system is imperfect, it is vital to define justice and determine whether capital punishment should play a role in criminal justice systems. Likewise, a better understanding of capital sentences and the factors that impact sentencing outcomes is important in solving this puzzle. In testing the relationship between my dependent variable, current case status, and seven independent variables, I sought to provide insight into the capital punishment sentencing process and potential issues within this practice.

My dependent variable, current case status, gave insight into the status of a defendant's sentence post-conviction. To understand why some offenders, receive death while others receive life in prison or other lesser sentences, I utilized an OLS regression model to test the relationship between these seven independent variables and current case

status. Three of the independent variables were statistically significant, with p-values less than 0.05.

Region of sentencing with a p-value of .036 was statistically significant. This is anticipated because southern states are much more likely to sentence an offender to death. Likewise, southern state's typically have harsher policies in place regarding capital sentencing outcomes. Examples of this severity are the lack of necessity of a unanimous vote to sentence an offender to death. The implications of these precedents validate my initial hypothesis that offenders sentenced in the South are more likely to have their sentencing outcome see positive change.

For years since sentencing, the p-value is less than .001 and is statistically significant. There are three prominent reasons I anticipated this significance. First, as evidence and forensic testing improve through the modernization of investigation practices, new discoveries can be made regarding convictions. Second, circumstances to inflict capital punishment have become more rigid, decreasing the number of sentences reversed. One example of this is the elimination of judge override. Lastly, as race relations continue to improve within the United States, work is done by organizations like the EJI to provide representation and advocacy to death row inmates who may have been unjustly sentenced to death.

The political affiliation of sentencing state's has a p-value of .021 and is statistically significant. This was anticipated because Republican states are much more likely to sentence an offender to death than Democratic states. Likewise, because southern states tend to lean Republican and northern Democratic, these two variables are similar in substantive significance.

Four of my variables are not statistically significant. Number of offender's sentences has a p-value of .059. This is surprising. However, there is an explanation for this lack of statistical significance. Because of difficulties formatting the multisentence identifier into the OLS model, it is possible that the model inaccurately interpreted the data set. In future research, I will reassess my method for consolidating the entries for multisentence identifiers and potentially yield better results.

Average annual income per capita is also statistically insignificant, with a p-value of .666. While literature shows that income plays a vital role in capital sentencing, my study did not find a statistically significant correlation. There are two explanations for this. First, this is the only variable that is not truly on the individual level. Because I do not have access to the defendant's personal financial information, I generalize based on their state's average income. If individual financial data is utilized, better results may be yielded. In future research, I will investigate financial status through the lens of representation. Assessing whether the defendant utilized a public defender or hired an attorney is one potential method to consider a defendant's financial status. The second explanation is that financial status plays a more significant role in the initial sentencing.

The race of the offender is also statistically insignificant, with a p-value of .134. Although surprising, there is a reasonable explanation for this lack of statistical significance. First, race plays a more prominent role in the initial sentencing process, as minority defendants are sentenced to death at a disproportionate rate. Secondly, much literature shows that race is more impactful in regard to the race of the victim. In future research, I will analyze the relationship between the race of the offender and the race of the victim.

The final independent variable, gender, has a p-value of .990 and is statistically insignificant. This is very surprising because statistics are clear that men are sentenced to death more than women. One explanation for this is the lack of differentiation in the variable impacts the accuracy of the OLS regression utilized. In future research, I will consider other potential analysis methods that may be better suited to handle the type of data in question.

I now want to return to my two initial questions: should capital punishment exist in the United States justice system, and what factors affect capital sentencing outcomes? Bryan Stevenson, founder of the Equal Justice Initiative, posits a powerful question. Shifting the conversation of capital punishment away from the crimes committed by the offender and onto the actions the state is taking, “the question we need to ask about the death penalty in America is not whether someone deserves to die for a crime. The question is whether we deserve to kill.”⁵⁹ This question is striking. Generally, the defense for capital punishment focuses on the horrific acts an offender commits; however, this line of questioning changes the conversation.

Returning to the history of punishment beginning in the gospel with the crucifixion, Jesus, in an act of kenosis, renounced himself of his divine attributes, was made flesh, and sacrificed himself on the cross to save humanity from its sins. This sacrifice is the basis of the Christian faith. But what were the true implications of this sacrifice?

“The king will reply, ‘truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me’ (Matthew 25:40).

⁵⁹ Bryan Stevenson, n.d. “Anthony Ray Hinton,” Equal Justice Initiative, <https://eji.org/cases/anthony-ray-hinton/>.

This Is powerful imagery. The concept of serving the least of these is one that should inform moral and philosophical beliefs. To fully understand these implications, one must define who the least of these are. Within the context of Matthew, Jesus is specifically referencing how one receives a messenger of the gospel.⁶⁰ However, the understanding that this category also references the poor, widows, and orphans are consistent with the teachings of Jesus in the gospel and the Christian tradition.⁶¹

Further this idea of serving those in need is not exclusive to believers. In fact, both believers and unbelievers, righteous and unrighteous, know how to care for "the least of these" referenced in Matthew.⁶² One area of differentiation though is that believers lack an excuse to ignore those in need as Jesus came and made it possible to take the time to care for the sick, help the hungry, and support those in need.⁶³ In these verses Jesus is taking an interest in the lives and wellbeing of "the least of these." I posit that this category of people, including the poor, widows, and orphans, also includes death row inmates. People so removed from society in retribution for their actions that they are deemed worthy of death. This description consequently feels familiar. Like death row inmates, humanity, on the whole, has sinned and, because of its actions, is deserving of death.

For all have sinned and fall short of the glory of God; being justified freely by his grace through the redemption that is in Christ Jesus (Romans 3:23-24).

This redemption is not earned but freely given. The gift of freedom from sin and death is offered to humanity through the kenotic love of Christ. This concept is beautifully explained by Paul.

⁶⁰ Craig S. Keener, *A Commentary on the Gospel of Matthew* (Grand Rapids: Eerdmans, 2005), 361.

⁶¹ Keener, *Matthew*, 361.

⁶² Stanley Hauerwas, *Matthew* (Grand Rapids: Brazos Press, 2006), 211.

⁶³ Ibid.

Have this in mind among yourselves, which is yours in Christ Jesus, who, though he was in the form of God, did not count equality with God a thing to be grasped, but emptied himself, by taking the form of a servant, being born in the likeness of men. And being found in human form, he humbled himself to death, even death on a cross (Philippians 2:5-8).

This is an incredible revelation. The ideas presented in Matthew and Pauline literature demonstrate that Jesus' embodiment of the least of these is not simply metaphorical. Instead, through the incarnation and crucifixion, Jesus, renounced his divine nature, became human in every way, took on the sins of many, and became one of the least of these as he served out his death sentence on the cross.

This example of humility is not an isolated event. Instead, self-emptying is a central aspect of the Godhead. This covenantal act of kenotic faith and love is what makes human participation in the Father possible through the Son.⁶⁴ Because of Jesus' willingness to take on the sins of humanity, all debts have been paid. While not every death row inmate has accepted Christ, who is the state to take away their chance at redemption by executing them for a crime that has already been paid for on the cross?

Yet, when discussing a biblical appeal against capital punishment, it is vital to also address biblical passages that seem to support the utilization of death as a punishment for one's crimes. One of the most well-known of these examples is demonstrated through the law of Lex Talionis.⁶⁵ However, as discussed in chapter two, it is important to emphasize that the spirit of Lex Talionis is not one of vengeance but instead of limitation.⁶⁶ The purpose of this law is not to extend the bounds of punishment but instead decrease them.

⁶⁴ Michael J. Gorman, *Inhabiting the Cruciform God: Kenosis, Justification, and Theosis in Paul's Narrative Soteriology*, (Grand Rapids, Eerdmans, 2009) 63.

⁶⁵ Granucci, 860.

⁶⁶ Ibid.

Likewise, there are New Testament passages that seem to support the utilization of capital punishment. This includes Romans 13.

For rulers hold no terror for those who do right but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right, and you will be commended. For the one in authority is God's servant for your good. But if you do wrong, be afraid, for rulers do not bear the sword for no reason. They are God's servants, agents of wrath to bring punishment on the wrongdoer. Therefore, it is necessary to submit to the authorities, not only because of possible punishment but also as a matter of conscience. (Romans 13: 3-5).

Attorney Dale S. Recinella makes an important distinction regarding the biblical use of death for punishment. He emphasizes that while there is no doubt that the death penalty is utilized in the bible, it is vital to distinguish that the biblical death penalty has nothing in common with the U.S. capital punishment system aside from the act of putting an individual to death.⁶⁷ In his extensive research of this issue he identified 44 legal requirements that were found in the Hebrew Scriptures for the death penalty, further he explains that this scripture emphasizes that an innocent person should never be put to death.⁶⁸ Further when comparing the U.S. death penalty to the 44 biblical requirements it achieves none of them.⁶⁹

Consequently, when compared to the biblical concern against the execution of the innocent the U.S. punishment system fails again.⁷⁰ "And how are we doing on God's overriding concern against the execution of the innocent? Our two most pro-death penalty U.S. Supreme Court Justices, Clarence Thomas and [recently deceased] Antonin Scalia, have both acknowledged in written opinions that the only way to guarantee that an innocent

⁶⁷ Dale S. Recinella. "Battling the Erroneous Use of Scripture to Support U.S. Executions" Speech, St. Anslem College, New Hampshire, May 3, 2012.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

person will not be executed is to get rid of the death penalty.”⁷¹ The main argument emphasized by Recinella is that while the bible might permit the use of death in specific scenarios it by no means requires it. Further, in the case of the U.S. justice system, Recinella asserts the use of the death penalty is against the word of God.

Returning to Romans 13 Recinella identifies two critical words, “sword” and “execute.”⁷² While these two words in the context of Romans 13 seem to mandate the use of death, Recinella makes a critical distinction. “RHOMPHAIA means a saber, a long and broad cutlass...This is the instrument used for decapitation, capital punishment by sword. As a Roman citizen, Paul had the right to be executed by broadsword and not by crucifixion.”⁷³ However, he asserts that RHOMPHAIA is not the Greek word utilized in Romans 13.⁷⁴ Instead, Paul uses the Greek word MACHAIRA, meaning a short dagger worn on the belt and a common metaphor for the courts authority to inflict general punishment.⁷⁵ With an understanding of this important distinction Romans 13 transforms from an apparent mandating of capital punishment to instead support of the power of judicial authority in opposition of crimes.⁷⁶

Beyond a biblical appeal against capital punishment, I return to the founding documents of the justice system and the concept of a war on excess. In modern U.S. America, capital sentencing is not necessary. The prison system is fully capable of handling offenders, even ones who have committed heinous crimes, and currently is doing so. Beyond the ability to imprison defendants, it is more financially beneficial to have inmates

⁷¹ Recinella, 2012.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

serve life without parole than be sentenced to death.⁷⁷ This is due to the length of trials and appeals required when a defendant's life is on the line. These biblical, philosophical, and even taxpayer implications, though, are separate from the clear discrepancies and injustices seen in the capital punishment system, some of which are explained through my variables. Ultimately, the literature is clear: the death penalty in the U.S. is a flawed and expensive policy that falls victim to bias and error and targets the most vulnerable members of society.

My recommendation for future research is to dive deeper into the impact of socioeconomic status specific to the individual defendant through type of representation used. In regard to the variable of race, I will look into the relationship between the race of the offender and the race of the victim.

At the end of Arkansas Governor Winthrop Rockefeller's term, he commuted all death sentences in the state.⁷⁸ His position was clear – that he is opposed to capital punishment and denies the belief that an earthly mortal has the authority to determine when a person should live or die. He defends his stance with Christian teachings and beliefs and refuses to carry out a practice he deems "fallible and failing."⁷⁹ After this astonishing act, Arkansas did not execute another offender for the next twenty years.⁸⁰

In 2023, fifty-five countries still inflict the death penalty, and of developed Western countries, the U.S. is the only one still carrying out this practice.⁸¹ It is worth consideration

⁷⁷ Death Penalty Information Center, "Costs," <https://deathpenaltyinfo.org/policy-issues/costs>.

⁷⁸ Andrea Ringer, 2014, "Rockefeller and Death Row," Arkansas Times, February 27, 2014., <https://arktimes.com/news/arkansas-reporter/2014/02/27/rockefeller-and-death-row>.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Kevin I. Minor, "The American Death Penalty Decline*," EKU Online, February 1, 2023, <https://ekuonline.eku.edu/blog/justice-policy-leadership/the-american-death-penalty-decline/>.

to ask why this method of punishment is still being carried out in the United States. What purpose does it serve, and what merits come from putting an offender to death? Each person must wrestle with their individual ethics and policy beliefs. My goal through this work is to encourage a shift in discussion regarding capital punishment and ask whether the purpose served by the death penalty outweighs the devastating impact it has on society and the least of these.

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