

ABSTRACT

Title of Thesis: ACCOUNTABILITY AND PUBLICLY ELECTED PROSECUTORS TO EXPLAIN COUNTY-LEVEL VARIATION IN DEATH PENALTY USAGE

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Research on national trends in death penalty usage shows regional, inter-state, and intra-state variation since the 1972 ruling striking down state death penalty statutes seen as being applied in an arbitrary, unconstitutional way. Despite the intention of ensuring new statutes produce fair and somewhat consistent use of the death penalty, the reality since the ruling shows otherwise. The arbitrary nature of death penalty usage is of pressing concern and exists at every level, with only a few counties accounting for most death sentences imposed, even within a state leading in national death penalty usage. While we know that variation in death penalty usage exists, as of current, we lack information and an understanding of what drives differences in death penalty usage across jurisdictions. Since publicly elected prosecutors are in charge of capital case charging, yet little information is made publicly available, it remains unclear what, if any, role prosecutors play in varying case rates. With growing concern over recent prosecutor elections being widely uncontested as well as the already ineffective means of holding prosecutors accountable, this project assesses whether capital case charging may be attributable

to public prosecutors and democratic accountability. In this thesis I review literature regarding prosecutorial power, elections, capital decision-making, and geographic variation in death penalty usage, all of which work to inform my proposal. Next, I will focus on the state leading in death penalty usage, Texas, to propose a study of county-level data to determine the impact of decreased accountability on varying capital case rates. Potential results of my proposed study include possible implications for public prosecutors with support for increased review of prosecutorial decision-making. Regardless of the proposed study's outcome, this research contributes to the growing body of research investigating intra-state variation, as well as shedding light on some of the actions prosecutors make behind closed doors.

ACCOUNTABILITY AND PUBLICLY ELECTED PROSECUTORS TO EXPLAIN
COUNTY-LEVEL VARIATION IN DEATH PENALTY USAGE

by

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Chapter 1: Introduction

For decades of American history, scholars, political representatives, criminologists, and the public have debated about the usage of the death penalty as criminal punishment, because the application of the death penalty across the U.S. seemed random. In a 1972 Supreme Court ruling, regarding the seemingly irregular and arbitrary death penalty usage across the United States, the court found that while the death penalty itself is not unconstitutional, the language of state statutes results in its constitutional use. The intention of the Supreme Court's ruling was to ensure the fair and consistent use of the death penalty (*Furman v. Georgia*, 408 U.S. 238, 1972). However, since the ruling, arbitrary use of the death penalty continues to exist, which is evident in the regional, inter-state, and intra-state variation in death penalty usage (Death Penalty Information Center, 2023). American prosecutors are arguably the most powerful American criminal justice officials, largely because of the amount of discretion they are afforded in their decision-making as well as a lack of oversight (Davis, 2008). With their discretionary power, like that of other government officials, there exists the potential for misuse or even abuse of power. While there are some disciplinary measures in place, the main check on prosecutorial power, within the 45 states that elect prosecutors locally, is through public elections. Public elections keep prosecutors aligned and representative of public interest by requiring candidates to run for election. Public elections are intended to provide some democratic accountability in a system where prosecutors often are treated leniently in terms of

other disciplinary measures (Davis, 2008). As the main check on prosecutorial power, public elections serve as a necessary form of democratic accountability.

Despite the check public elections provide in theory, a national study of county prosecutor elections revealed that a large percentage of prosecutor elections are uncontested, leaving researchers to wonder whether the current state of the electoral system is an effective source of prosecutor accountability (The Prosecutors and Politics Project National Study of Prosecutor Elections, 2020). Uncontested elections allow prosecutors to shield public accountability, thus undermining its ability to serve as a form of democratic accountability. Due to already existent ineffective punishment measures, the prevalence of uncontested elections presents a risk of allowing for unchecked prosecutorial power and the arbitrary and unconstitutional application of the death penalty based on extralegal factors or bias. My thesis proposes the use of county-level data from Texas, the leading state in death penalty usage, to explore the relationship between public prosecutors, democratic accountability, and the application of the death penalty. I am looking to see if intra-state variation can be explained by looking at individual prosecutors and their level of accountability to the public. For this study, I have chosen to focus on Texas as this one state alone accounts for more of the total death sentences nationally than any other state, with only a few counties leading within the state.

Chapter 2: Literature Review

Death Penalty Usage Across Spaces:

History of Capital Sentencing in the United States:

In 1972, the U.S. Supreme Court was tasked with answering a question of growing concern at the time - the seemingly irregular and arbitrary nature of death penalty usage across the United States. The case of *Furman v. Georgia* in 1972 presented the court with the issue of whether current state-specific capital punishment statutes result in random, irregular, uneven, and thus unconstitutional use of the death penalty (*Furman v. Georgia*, 408 U.S. 238, 1972). The court ruled that while the death penalty itself is not unconstitutional or arbitrary, the language of current death penalty statutes within each state have led to the arbitrary and thus unconstitutional use of it. One major implication of the court's ruling is that it "effectively voided 40 death penalty statutes...suspending the death penalty because existing statutes were no longer valid" (Death Penalty Information Center, 2023). Following the court ruling, state legislatures in states characterized as being largely in favor of the death penalty worked almost immediately to ensure statutes granted their state more rational and consistent death penalty usage in accordance with the ruling (Smith, 2012). Through the court's decision they had "essentially opened the door to states to rewrite their death penalty statutes to eliminate the problems cited in *Furman*" (Death Penalty Information Center, 2023).

Following the surge of state-level legislation being passed, a subsequent landmark case was brought in 1976, *Gregg v. Georgia*, to judge whether the newly proposed state-level statutes were in accordance with the *Furman* ruling. After

reviewing proposed statutes, the Supreme Court approved the proposed legislation and reinstated the death penalty (*Gregg v. Georgia*, 428 U.S. 153, 1976). Their reasoning being “the legislative fixes that the states enacted since Furman would result in greater consistency in the administration of the death penalty” (Smith, 2012, p. 249). Despite the Supreme Court’s intentions of ensuring the fair and consistent use of the death penalty, the reality is that concerning variation in the application of the death penalty remains.

Geographic Variation:

Since the 1976 ruling, arbitrary use of the death penalty persists as seen in the regional, inter-state, and intra-state variation in death penalty usage. Regionally, the South accounts for 80% of all executions across the United States (Death Penalty Information Center, 2023). Moreover, when looking at inter-state variation, just a few states seem to account for the majority of death penalty usage even within those leading regions. Texas, for example, has carried out the highest number of executions since 1976. What is even more troubling is that as research has expanded to understand why certain states use the death penalty more than the rest of the states combined, they found that within leading states of leading regions, only a few counties seem to be responsible for the heavy usage of the death penalty (Death Penalty Information Center, 2023). Thus, a few counties/jurisdictions seem to account for the inter-state and regional variation in death penalty usage following 1976. In a 2022 End of Year Report the DPIC notes that:

As the United States marked 50 years of the modern death penalty system, the arbitrariness and unreliability that led the Furman court to strike down capital punishment persist. As the systemic flaws of the death penalty have become clearer and more pronounced, it is being regularly employed by just a handful of outlier

jurisdictions that pursue death sentences and executions with little regard for human rights concerns, transparency, fairness, or even their own ability to successfully carry it out (Death Penalty Information Center, 2022).

Since then, drastic differences in death penalty usage across spaces quickly led researchers to seek to explain the seemingly disparate and uneven distribution of use.

There are a few notable phenomena that researchers in this area have worked to explain, one of them being the regional variation in death penalty usage, more specifically trying to uncover why the south makes up the majority of death penalty usage nationally compared to other regions. Research on regional variation has typically turned to the unique political culture and violent history of lynching in the South to account for variation. Researchers have argued that since “traditionalistic subculture is found almost solely in the South, this would seem to support the argument that political culture influences state implementation of capital punishment” (Fisher and Pratt, 2006, p.52). This study along with others supports the finding that “political culture is an important determinant of the adoption of death penalty statutes and of the frequency of executions” (Fisher and Pratt, 2006, p.52). Through research into regional variation, researchers soon found that even within regions death penalty usage is not distributed evenly. Meaning, two states within a single region seem to differ drastically in their usage of the death penalty. The existence of inter-state variation posed questions of why usage differs so drastically between states.

Thus, a second notable phenomenon research has worked to investigate is inter-state variation or the considerable difference in death penalty usage between states. Research investigating inter-state variation has accounted for variables such as race of defendant and/or victim, state sentencing laws, history of geographic location,

and majority political party affiliation in an attempt to explain variation between states. Through further research, however, researchers struggled to form substantive claims in comparing separate states, as they discovered that death penalty usage varies greatly even within a single state (Smith, 2022). Researchers found that within individual states, only a few counties account for the majority of that state's death penalty usage. This means that a couple of counties in Texas, for example, account for most death sentences sought both across the state as well as regionally.

Thus, a third issue researchers have recently had to deal with is intra-state variation, to uncover what is driving differences in penalty usage between counties within a single state. Unfortunately, since research investigating regional and inter-state variation only recently led to the discovery of county-level variation, research has just started to focus on county-level variables to explain variation.

One variable that has yet to be studied as a potential driver of intra-state variation, for example, is the actual county level decision maker themselves. More specifically, research has yet to investigate publicly elected prosecutors and their role in capital case charging as possible causes of intra-state variation. Thinking about how counties can differ in use so drastically, and the ability of a single county to spark considerable variation, research should look at differences between the decision-makers themselves.

Variation in Death Penalty Usage and The Prosecutorial Role:

Publicly Elected Prosecutors:

American prosecutors are commonly referred to as the most powerful players in the American criminal justice system due to the unprecedented amount of

discretion they exert in their decision-making as well as the lack of oversight of their decisions. A prosecutor's interaction with a case begins after arrest, at the pre-trial stage. When a case goes from the police to the district attorney, the district attorney has "nearly unilateral authority to decide who to charge with a crime, what offense or offenses to charge them with and whether or not to offer or accept a plea bargain" (Krumholz, 2020, p. 2). Researchers have noted that these pre-trial decisions alone carry tremendous implications for subsequent case processing and warn that these "everyday decisions control the direction and outcome of criminal cases and have greater impact and more serious consequences than those of any other criminal justice official" (Davis 2008, pp. 25-26). In addition, it is important to note that these decisions often occur completely behind closed doors at the individual district attorney's office.

It is for the total control of case processing and privacy wielded in these pre-trial decisions, that prosecutors are described as the gatekeepers of the criminal justice system (DeMay, 1999). One specific power prosecutors wield during the pre-trial stage, within states allowing the death penalty, is discretion in deciding whether or not to seek the death penalty. Research notes that "a district attorney's decision whether to seek the death penalty is the most critical decision in the criminal justice system" (DeMay, 1999, p. 767). With what we know about prosecutors charging decisions being highly determinant of sentencing outcomes, it is important to note what allows prosecutors to have so much power. First, the prosecutorial role, as well as the role of almost every criminal justice official, requires the exercise of discretion. Without discretion, Davis (2008) argues, "there would be many more unjust decisions

at every stage of the criminal justice process” (p.26). This is largely because, without discretion, criminal justice officials would not be able to take any individual facts or circumstances into consideration.

With that being said, prosecutors are part of a larger system of checks and balances, but like other discretionary and hidden decisions in the criminal justice system, we acknowledge there is the potential for misuse or abuse of power. While efforts to punish or reprimand prosecutors who engage in misconduct are in place, due to the private nature of prosecutorial decision-making they have proven unsuccessful in practice as an effective check on their power (Davis, 2008). Thus, most researchers agree that the main check on prosecutorial power comes in the form of public elections. Overall, “[t]he only real check on that power is democracy—the ability of voters to hold their local prosecutors accountable for their decisions” (Hessick, Carissa Byrne and Treul, Sarah, and Love, 2022, p. 10).

Democratic Accountability:

Currently, 45 states elect their prosecutors at the local level, and those prosecutors have jurisdiction over felony charges within their bounds. Public elections are a form of local control and in theory “elections can control the prosecutors' actions, keeping them consistent with public values without resorting to detailed and prospective legal rules” (Wright, 2009, p. 589). District attorneys are elected at the county level to maintain relative proximity between voters and elected prosecutors, as democratic accountability is said to be strongest in the community (Wright, 2009). Thus, a single prosecutor is given tremendous discretion due to our reliance on the function of community elections as a restraint on their authority.

While county public elections are said to ensure district attorneys act in the public's interest, the pattern of uncontested elections has led researchers to wonder whether the electoral system is an effective source of accountability (Davis 2008). Uncontested county elections are defined as occurring when only one name is listed on the ballot, and the result is thus known before public voting. Shockingly, research on county elections found that has shown that “[t]he vast majority of prosecutor elections are uncontested and even when they face a challenger, most incumbent prosecutors win their elections” (Hessick, Byrne, Treul, Sarah, and Love, 2022, p. 10). The prevalence of uncontested elections is highly concerning and problematic because, without meaningful checks on prosecutorial power, we risk facilitating misconduct inherent in the prosecutorial role. Without more than one candidate on the ballot, voters are left without a choice in representation and voice in government. The pattern of uncontested elections becomes even more concerning when considering the emphasis placed on public elections as the main check to ensure the fair use of prosecutorial discretion.

Accountability differences and its potential role:

With decreased democratic accountability of district attorneys via, already ineffective punishment measures, and now uncontested elections, there lies the potential for the interference of bias, discrimination, and wrongful convictions. For example, research has shown that “through the exercise of prosecutorial discretion, prosecutors make decisions that ...contribute to the discriminatory treatment of African Americans as both criminal defendants and victims of crime” (Davis, 1998, p.18). Prosecutorial misconduct is not uncommon and without properly functioning

guidelines and accountability measures Davis (2008) warns, “[e]ven well-meaning prosecutors routinely engage in practices that produce unfair results, practices that are hidden from the public, and even when revealed, are somehow accepted as legitimate”.

In addition, a Death Penalty Information Center (n.d.) analysis of death row exonerations show that “most wrongful capital convictions and death sentences are not merely accidental or the result of unintentional errors. Instead, they are overwhelmingly the product of police or prosecutorial misconduct or the presentation of knowingly false testimony”. Thus, the role of elections as a functioning form of accountability is important in combatting the risk of misconduct inherent in the prosecutorial role.

With the current state of prosecutorial accountability, we can assume it would likewise allow for the potential of prosecutorial misconduct in pursuit of the death penalty. Thus, it is imperative, when seeking capital punishment, to ensure that a district attorney’s decision is not based on factors relating to unjust personal beliefs and convictions resulting in its arbitrary and thus unconstitutional use. Research shows that “policies of district attorneys toward the death penalty have a great impact upon its utilization from county to county” (DeMay, 1999, p.772). These findings are especially imperative when considering uncontested elections, as voters do not have a choice in their representation, and district attorneys can make life-or-death decisions in secrecy without facing necessary accountability.

Current Research:

With the need for county-level research to account for variation in death penalty usage and following the publication of data on the current state of uncontested elections, and given prior literature, this research aims to identify whether differences in prosecutors and democratic accountability may explain the variation. In addition, previous efforts urge for research to expand into investigating the strength of accountability measures, as state prosecutors are the sole decision-makers regarding death penalty seeking. With counties differing heavily in death penalty usage even within a single state, I focus on differential levels of democratic accountability based on county-level elections, assuming that these mechanisms of election type and unchecked discretion at the prosecutorial level may explain stark differences in death penalty usage. Thus, I plan to focus on one state, the state of Texas, to see if the differences across counties are associated with the nature of the state prosecutors' election, specifically whether voters had a choice in their representation.

Texas:

I have chosen to focus on Texas because they account for more of the total death sentences nationally than any other state. As previously mentioned, Texas is the leader in executions imposed since 1976, with usage concentrated within only a few jurisdictions. In addition, due to the violent history of racism and lynching in the South, it is especially important to ensure state prosecutors in Texas, a southern state, are justly using their discretion in pursuit of the death penalty.

Proposed Research:

For this study, I am proposing research to assess if differences in prosecutorial accountability, measured by ballot type/options, help to explain variation in death penalty usage.

Research Question:

This study seeks to answer the question: are intra-state differences in prosecutorial democratic accountability, via public elections, associated with differences in a county's death penalty-seeking decisions.

Hypothesis:

I hypothesize that decreased democratic accountability of county prosecutors in Texas is associated with an increase in capital case charging.

Chapter 3: Data Measures and Analytic Strategy

This thesis proposes a county-level study to measure whether democratic accountability can explain some of the intra-state variation seen in death penalty usage. This thesis proposes the use of publicly available secondary data from The Appeal, UNC National Study of Prosecutor Elections, Texas Judicial Branch, Texas Association of Counties Criminal Case Search, Texas Department of Transportation, the U.S. Census Bureau, and the Texas Secretary of State Election Results Archive. In choosing data for my study, I found it important to include the timeline of prosecutor elections, as Texas prosecutor elections are either on the midterm or presidential cycle, so I want to ensure accuracy in assessing individual county data for their specific election year. In addition, in an attempt to measure change across a prosecutor's entire term, I will be using data starting from the elections held in the years 2014 and 2016 and continue collecting until 2018 and 2020 respectively.

For County Ballot Type, i.e. incumbent contested/incumbent non-contested/open seat contested/open seat non-contested/ appointed, I will be using data from the National Study of Prosecutor Elections 2020. I have chosen to use data from the National Study of Prosecutor Elections 2020 as it is one of the first sources of its kind to account for all county elections nationally. In their study, they include data on prosecutorial elections from 2014 and 2016 and include the name, party, and incumbency status of all candidates, which allows you to see if the election was contested.

For data on capital offenses tried, counted by county, I will be pulling information from the Texas Judicial Branch Jury Charges & Sentences in Capital Sentences. For the county murder rate, I will be using data from the Texas Association of Counties Criminal Case Search. I chose to use data from the Texas Association of Counties Criminal Case Search because it provides county-level data from year to year, and I can search for homicide specifically as those cases are susceptible to capital charges being brought.

For data on county population size, I will be using the U.S. Census Bureau Texas Quick Facts. For data on County Death Sentence Count, I will be using the Texas Judicial Branch Jury Charges & Sentences in Capital Sentences. For data on each county's population size, above voting age, I will use the One Stop Demographic Analysis Tool from the Texas Department of Transportation. For data on a county's percentage minority population, I will use the One Stop Demographic Analysis Tool from the Texas Department of Transportation.

For data on prosecutors' political party affiliation will use data from the Texas Secretary of State Election Results Archive on the 2014 and 2016 general elections by county. For data on a county's majority political party affiliation, I will use data from Politico Texas Election Results on each county's election results from the 2012 and 2016 presidential elections to get a sense of their political affiliation.

Measures:

Dependent Variable:

The dependent variable in this analysis is Capital Charge Count. I propose the use of a county's capital charge count across the prosecutor's 4-year term as an

operationalized measure of prosecutorial death penalty usage and seeking decisions. To more accurately assess the impact of prosecutors alone, it is important to use the charge count rather than the sentence count, because charging is entirely the prosecutor's decision.

Independent Variable:

The independent variable is Ballot Type, which I use as my measure of democratic accountability. For this study ballot type is characterized by the specific ballot options provided in the county prosecutorial election. For this categorical variable, a county's Ballot Type will be characterized as either incumbent contested, incumbent non-contested, open seat contested, or open seat non-contested. For elections marked by non-contested ballot types, this research suggests elected prosecutors may feel a decreased sense of accountability as the public was not given a choice in their representation and thus the prosecutor may be more likely to make decisions based on their personal beliefs and ideologies.

Control Variables:

One variable I will control for is the county Murder Count across the prosecutor's 4-year term. In measuring the frequency of capital charges brought, it is important to measure it against the county's murder rate for that specific year to see if it might act as a potential source of more capital murder cases being brought.

The second variable I will control for is Capital Sentence Count across the 4-year term. To account for the frequency of death penalty seeking it is essential to include both the number of times capital charges were sought in addition to accounting for those eventually resulting in a death sentence. Since capital case flow

in Texas requires jury deliberation for the sentencing phase, and since information on prosecutorial decision-making is rarely made public, in making up for the lack of data from prosecutorial offices, I can catch the case at a later stage of the process to determine the frequency of death sentences imposed.

I will also be controlling for Election Cycle, to account for whether the county holds its elections on the midterm or presidential cycle. It is important to include the timing of prosecutor elections to ensure accuracy in assessing individual county data for their specific election year. To control for these differences in election cycle timelines, I will be using data from both 2014 and 2016, depending on when the county had its elections.

In addition, I will control for the County Percentage Minority Population. This is important to take into account when looking at a prosecutor's representation of the public interest, as 1 in every 5 black men in Texas is disenfranchised and unable to vote (The Sentencing Project, 2023). Thus, despite living within the prosecutors' boundaries, many do not have a choice in their representation.

Finally, I will account for both Prosecutor Partisan Affiliation as well as the Populations Majority Party Affiliation. It is important to control for the influence of each respective political ideology as each has an attached view of death penalty usage.

Analytic Strategy:

This thesis proposes research involving a three-stage analysis. First, to understand the distribution of my variables on their own, I would conduct a univariate analysis of my variable's capital charge count and ballot type individually. For

example, for capital charge count, since it is an interval/continuous variable, I would look at the average charge count across the 4-year term to determine whether the distribution is skewed or normal. Moving to the second step, to answer my main research question, I would conduct a bivariate analysis to look at the association between my two variables using a t-test. Finally, for the third step, to strengthen the results of the bivariate analysis, I would conduct a regression analysis to control for other potentially mitigating variables.

Univariate Analysis:

To start, this study would analyze the distribution of each of the variables individually. For the univariate analysis of my dependent variable Capital Charge Count, since it is an interval/continuous variable, I would average the charge count across the 4-year term for my measure of central tendency. For the univariate analysis of my independent variable Ballot Type, since it is a nominal variable, I would use the mode as my measure of central tendency.

Bivariate Analysis:

I would then conduct a bivariate analysis to measure the association between my variables and thus answer my original research question. To measure the association between my independent variable (Ballot Type) and dependent variable (Capital Charge Count), I would run a t-test. I chose the t-test for my bivariate analysis because it can measure the association between a nominal variable, in this case, my independent variable, and a continuous variable, which is my dependent variable. Furthermore, the t-test would allow me to compare the means between my two separate variables.

Regression Analysis:

Finally, to further inform understanding of the relationship between my variables beyond the bivariate analysis I would run a regression analysis. The reason for the regression analysis is that it is better suited to answer my research question as it would allow me to control for the potential influence of variables outside this research model. For example, the bivariate analysis can not take into account the potential influence of prosecutor party affiliation and other county-level differences. Thus, the regression analysis would strengthen the association between my variables by accounting and controlling for variables that might influence the association found between them.

Chapter 4: Discussion

If the proposed study is carried out, regardless of the findings, there would likely be many implications theoretically, professionally, in practice, and socially. However, I must note this research is limited in that I am unable to make definite conclusions without conducting the proposed study, thus the claims and predictions made are based largely on theoretical works. Regardless, this study adds necessary research that addresses both weaknesses in monitoring prosecutorial power as well as shining light on the prosecutorial role in death penalty variation. Overall, this study hopes to promote further research into uncontested elections, decreased democratic accountability, and arbitrary death penalty usage.

Implications:

To start, regardless of the potential results of the study, there are implications from the publication of data on prosecutors alone. Stemming from the lack of publicly available information on prosecutorial actions and decisions, Gold (2001) states that “voters lack the information necessary to meaningfully evaluate their prosecutors' decisions” (p. 71). This is a result of both the hidden nature of prosecutorial decision-making, as well as Supreme Court protections allowing individual district attorney offices to decide whether to make departmental information available to the public. And while media and news reports should provide meaningful information on prosecutorial candidates, research has shown that “historically, the media coverage of prosecutor elections has tended to focus on topics other than office policies about how to wield prosecutorial discretion”. These patterns of hidden information have

contributed to what is called the “Prosecutorial Blackbox” (ACLU, 2017). Thus, this study regardless of its findings, would provide an empirical evaluation of prosecutorial practices that gives us a better understanding of how prosecutors may play a role in variation in death penalty usage.

For this study, I have identified two potential research outcomes, with each outcome having its own set of implications. The first potential research outcome is if the proposed study’s results were to show that decreased democratic accountability is shown not to be associated with increased capital charges. In this case, we can assume prosecutors are being held accountable for their decision to seek capital punishment and that decreased democratic accountability is shown not to be associated with increased capital charges. Regarding the theoretical underpinnings of the study, these findings show public elections seem to be serving as a functional check on prosecutorial power despite the uncontested nature of their election. With that, however, comes another implication for future research in this area. More specifically, the need for research accounting for other factors that may be driving intra-state variation in death penalty usage.

My second potential research outcome is: decreased democratic accountability is shown to be associated with increased capital charges, and we can assume prosecutors are contributing to intra-state variation and arbitrary death penalty usage, by making decisions based on personal convictions. If democratic accountability is associated with increased capital charges, there would be a variety of theoretical implications. In Sklansky’s article *The Problems with Prosecutors* (2018) he notes

that most research on prosecutors looks for what is wrong with prosecutors and how to fix that. In his article, Sklansky argues there are seven problems with prosecutors, including, but not limited to, their discretion, frequent engagement in illegality, punitive ideologies that shape their practices, and unaccountability. Each of these seven problems is potentially implicated by findings of decreased accountability being associated with increased capital charging. By identifying a decreased sense of accountability as an engagement in the utmost wrongdoing, we can assess broader areas that allow for these practices to thrive. Ensuring the proper functioning of elections and holding prosecutors accountable for the use of their discretion, especially when making decisions based on personal beliefs, would eventually weed these prosecutorial candidates out of the race for office. Over time, perhaps policies and legislation could address the standards of accountability for elected officials, especially when they regularly make life-or-death decisions behind closed doors.

Moreover, if decreased democratic accountability is shown to be associated with increased capital charges, it would spark a conversation of whether there are any functioning checks on prosecutorial power. As previously mentioned, state prosecutors are typically said to be held accountable through judicial sanctions, referral to state conduct committees, and public elections. While judicial sanctions and referral to conduct committees should work in theory, they have both been shown to go easy on accused prosecutors and have proven to be ineffective accountability measures. Thus, most agree that rather than methods of oversight and review being the main check on prosecutorial power, it rests on a prosecutor's democratic accountability via public elections (Wright, 2009). If the findings of this study show

the existence of decreased accountability through public elections, researchers will be left to question whether anything has been holding prosecutors accountable at all.

With these findings showing the current methods of holding prosecutors accountable are ineffective, we leave prosecutors with an unwarranted amount of unchecked power. In turn, we are allowing for misconduct and discretionary decisions based on personal beliefs rather than based on fair criminal justice practices.

In addition to the result-specific implications, there are also possible implications regardless of the outcome. To start, one implication, for future research could be investigating the effect of decreased democratic accountability historically by conducting a similar study for years in which the death penalty seemed to be used very heavily and retrospectively determining whether one or two prosecutors may have driven that variance.

The findings of this proposed study could also have an array of implications for working prosecutors and other related legal practitioners. Within individual district attorney offices, perhaps results would support increased supervision or review of prosecutorial decisions in the future. It may even lead to questions about establishing a system of internal review of prosecutorial decisions. Moreover, these results may strengthen other checks on prosecutorial power including judicial committees now being less trusting and forgiving in cases of prosecutorial misconduct. In addition, these findings would put much more work and pressure on prosecutors, making running in the election different than what it was. Since these results would likely raise the public threshold of requirements needed in a prosecutor,

more pressure is placed on candidates to open up to the public, and if elected, continue to make decisions representative of their electorate.

With increased attention on prosecutors adhering to their role, there could be increased voter turnout, public investment in the election process, and more people running for the position. With a more effective check on prosecutors, the opportunity for misconduct lessens, cases will be more likely to be treated fairly, and people processed by the justice system may be less likely to experience overwhelmingly negative interactions with criminal justice agents. Also contributing to that is treating cases more fairly. The step towards less arbitrary death penalty usage that does not allow for potential prosecutors with individual biases to target minority offenders with capital charges. This is especially crucial considering the history of wrongful death sentences and exonerations due to prosecutorial misconduct. A DPIC (n.d.) analysis of death row exonerations shows that “most wrongful capital convictions and death sentences are not merely accidental or the result of unintentional errors. Instead, they are overwhelmingly the product of police or prosecutorial misconduct or the presentation of knowingly false testimony”.

Conclusion:

With death penalty usage varying across regions, states, and counties, researchers have looked to explain what drives these differences. While research on regional and inter-state variation has made progress, the need for explanations of intra-state variation remains. With the tremendous power afforded to publicly elected prosecutors, there is the potential for misuse of power including the arbitrary use of the death penalty. This study contributed to research in account of the lack of publicly

available information focusing on prosecutors as well as to better understand their role in capital case charging. In addition, this study presented the possibility of decreased democratic ability as a cause of intra-state variation by accounting for the potential impact a lack of accountability has on a prosecutor's view and use of the death penalty. By both focusing on county differences in democratic accountability to measure its potential association, the proposed study works to answer the question of whether decreased democratic accountability is associated with differences in capital case charging. Overall, this study hopes to promote further research into uncontested elections, decreased democratic accountability, and arbitrary death penalty usage. If we continue to prioritize protecting the discretion of prosecutors over anything else, we should at least recognize our failure as a democracy to protect the voice of the people. The present-day reality is that arbitrary death penalty usage continues to exist and behind each case exists a discretionary decision failing to be accounted for.

Appendix:

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