

POLICY ESSAY

IMPACTS OF EXECUTIONS ON HOMICIDES

The Death Penalty in Texas

On Failing to Acknowledge Irrelevance

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Kenneth Land, Raymond H. C. Teske, Jr., and Hui Zheng's (2012, this issue) article is an interesting addition to the scholarly research that has examined the possible deterrent effects of the death penalty. Although most of the nation's top criminologists believe that the published research has shown that the death penalty is not and has never been a superior deterrent to criminal homicide than alternative sentences of long confinement (Radelet and Lacock, 2009), the scholarly debate is certain to continue. However, scholarly debates over the death penalty are different from public policy debates that may use our research to justify, at least in part, the execution of convicted offenders. Especially when the research may be used to justify the taking of a human life, it would seem prudent for researchers to be extraordinarily clear and careful when outlining the ways in which their research may (or may not) support life-or-death public policies. In this essay, I argue that Land et al.'s findings are not relevant to contemporary death penalty debates.

What Are the Policy Implications?

Land et al.'s (2012) article is being published in *Criminology & Public Policy*, which is an outlet intended for dissemination of criminological scholarship that has relevance for state and federal legislators. As described by its editors, this journal's "central objective is to publish articles that strengthen the role of research in the development of criminal justice policy and practice" (Blomberg and Mestre, 2012: 16).

What do Land et al. (2012) view as the policy implications of their work? In the "Policy Implications" section of the article, Land et al. summarize their findings, speculate about whether the same patterns could be found in other states, and end by stating that their

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findings do not speak to the “ethical” or “cost–benefit” issues in death penalty debates. Nowhere do Land et al. suggest what legislators or policy advocates should or should not do with this work. In fact, Land et al. do not attempt to outline any public policy implications of their research.

Given their silence, there is a very real probability that others will jump to fill the lacuna and use the article by Land et al. (2012) as a justification for the continued or increased use of the death penalty. When papers in any scholarly journal, much less those published in a journal devoted to public policy, are silent or circumspect about the policy implications of the research, then the research can be misunderstood easily or otherwise used improperly. And if readers do misstate the policy implications of our research, then shouldn't we jump at the opportunity to correct the record?

An instructive example can be observed from the previous work by Land, Teske, and Zheng (2009). This study has already been used by pro–death penalty advocates to justify frequent use of the gurney. When the study was released, it received extensive press coverage. In that coverage, Kent Scheidegger, one of this country's most vocal supporters of the death penalty, was quoted as saying the work “would be sufficient by itself to justify the death penalty” (Graczyk, 2010: B1). In his blog, Scheidegger (2009) found further use for the work. He wrote a few paragraphs summarizing the study, arguing that it proved that “10 executions in a year would save 5 to 25 lives” (2009, para. 9). Scheidegger likes to see these kind of results. “That would be sufficient by itself to justify the death penalty,” he wrote, “but short-term deterrence is not the only reason. There are (sic) long-term deterrence, retribution, and incapacitation as well” (2009, para. 10). In short, if Kent Scheidegger had his way, then more people would be put to death, in part, because of Land et al.'s (2012) research.

Readers deserve a clear statement of what these authors view as the policy implications of their work, and Land et al. (2012) fail to provide it. At the very least, the statement on policy implications should remind readers that the authors consider their work to be “exploratory” and that the objectives they outlined for their research have nothing to do with public policy.¹

Land et al. (2012) report that deterrent effects of executions are short term, affect mainly non-felony homicides, and are limited to Texas.² Friends of the executioner will be quick to argue that this research means that other states need to increase their per-capita execution rates so they can approach what Texas does. The bottom line is as follows:

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1. “Rather, the objectives are to develop a research question, probe the data for patterns that address the question, and then discuss whether these patterns are consistent with prior studies of deterrence” (Land et al., 2012).
 2. The geographic limitation of this study to Texas is prudent, given that only Texas data were analyzed. However, it is curious that the authors suggest that the findings may be limited to Texas because Texas has a high number of executions. In fact, per 100,000 population, Oklahoma has a far higher execution rate than Texas (Death Penalty Information Center, 2012a).

Responsible researchers should be able to anticipate how their research might be used and be very cautious about anticipating ways in which it might be misused.

Land et al. (2012) tend to force-fit this study into a larger jigsaw puzzle to make this article seem consistent with other research, even when this piece does not exactly fit. For example, Land et al. argue that their results are consistent with a study of executions in England published by David Phillips (1980). As Land et al. state correctly, Phillips claimed to have found a short-term drop in the number of homicides in England in the weeks after a highly publicized execution. But they fail to mention that this study was thoroughly discredited by William Bowers (1988), who uncovered several errors in the numbers of weeks studied and in the weekly homicide counts that Phillips used in his work. Once those errors were corrected, Bowers found a statistically significant increase, not a decrease, in homicides in the weeks after highly publicized executions.

It is possible that Land et al. (2012) were simply unaware of the research by Bowers (1988), published in an edited monograph, not a journal, some 25 years ago. Fair enough, at least fair enough for research that is not used to buttress life-and-death social policies. But the point is that this research *will* be used to justify social policies—more executions—even though Land et al. pass on the opportunity to state precisely what are and what are not the policy implications of their work. We can anticipate that others will (improperly?) fill the void left by Land et al.'s failure to state the policy implications precisely (as they view them) and use the study to draw life-and-death policy implications. As such, if the study cites another study as an argument for reliability, then the authors need to make mighty sure that the cited work has not been discredited.³

How Does Deterrence Work?

The debate about the deterrent effects of the death penalty is not about the death penalty *per se* but about whether there is any *marginal* deterrent effect of executions over and above the next less serious sanction: long imprisonment. Land et al. (2012) fail to note the significant change in Texas law in September 2005, when Texas enacted a “life without parole” (LWOP) sanction for those eligible for, but spared, the death penalty.⁴ In 14 of the 16 years that Land et al. studied, LWOP was not available. It is entirely possible, therefore, that the slight reductions in homicides observed by Land et al. after executions during the

3. Land et al. (2012) also cite with favor the deterrence research conducted by Zimmerman (2004). They fail to mention that Zimmerman's (2006) later work found that the deterrent effect of the death penalty was limited to executions via the electric chair, a method of execution that has been used only eight times in the past decade (Death Penalty Information Center, 2012b). In contrast, the authors fail to note that other researchers have also found deterrent effects of executions to be stronger on non-felony homicides than on felony homicides (Shepherd, 2004), which is curious because Land et al. (2009) cited the paper by Shepherd (2004).

4. This Bill was signed June 17, 2005, with an effective date of September 1, 2005. At the time, Texas and New Mexico were the only two death penalty states that did not also authorize LWOP (Associated Press, 2005). New Mexico has since abolished the power for the state to impose new death sentences.

time period of their study would no longer be found. Today, if the death penalty in Texas were a superior deterrent, then we would need to identify a group of potential killers who would commit the homicide knowing they might be sentenced to LWOP but would refrain if they knew they risked execution.

Potential murderers in Texas who are thinking about possible sanctions also have another handy option today that was not available during the study period. Its western neighbor, New Mexico, abolished the death penalty in 2009. We expect that some of the would-be Texas murderers who think about sanctions would recognize this new law and take their friend or loved one to New Mexico to kill them, thus risking “only” LWOP. Obviously, this idea is absurd. Murderers tend not to think ahead, especially those who kill friends or loved ones during crimes of passion.

And that suggests another problem with this research. The findings lack face validity: Non-felony homicides are deterred, but not felony homicides. If one believes these findings, then the types of murders that result in execution (those that are especially premeditated or “cold and calculated,” those with accompanying felonies, and those done with a motive of pecuniary gain) are not deterred, but those done in moments of passion (barroom brawls and murder during a heated domestic argument) are deterred. The latter are much less likely even to result in a conviction for first-degree murder. Much more work is necessary in uncovering the ways in which deterrence is supposed to work before Land et al.’s (2012) article has public policy implications.

I have no problem accepting Land et al.’s (2012) contention that “[a]nnouncement via television” is rare. However, the claim that, “In general, 140,000 inmates know of the execution” seems to me to be preposterous.⁵ In my own experience, prisoners know less about current events than members of the general public, not more. Furthermore, the few who are released each month and who do not kill within a few months of release because they have been deterred by news of an execution would have a miniscule effect on overall homicide rates.

Conclusion

In short, Land et al. (2012) are to be commended for undertaking an interesting “exploratory” piece. Unfortunately, their discussion of policy implications is inadequate. Even at best, small studies such as this, standing on their own, cannot have an impact on important life-or-death social policies, although it might fit in with many others as part of a body of scholarship that might be of interest to policy makers. In death penalty scholarship, the literature on deterrence overwhelmingly shows no deterrent effects (Radelet and Lacock, 2009), but that does not mean that new studies such as this cannot affect the conventional wisdom. Nonetheless, standing alone, this work has no direct public policy implications, and the authors should be up front in acknowledging it. They fail to anticipate the very

5. On January 1, 2010, Texas prisons housed 171,249 inmates (Pew Center on the States, 2010: 7).

real possibility that their work may be misused by others to argue for policy implications that the authors, and certainly the data (not to mention the vast majority of criminological studies on deterrence that have been published over the past century), might or do not support. As I see it, Land et al.'s article has far too many holes in it to be used to justify policy, especially policies that involve life-and-death issues.

References

- Associated Press. 2005. Texas juries may get new sentencing option. *Los Angeles Times*. May 25. Retrieved March 2012 from articles.latimes.com/2005/may/25/nation/na-parole25.
- Blomberg, Thomas G. and Julie Mestre. 2012. *Criminology & Public Policy's* publication focus and review process. *The Criminologist*, 37: 16.
- Bowers, William J. 1988. The effect of executions is brutalization, not deterrence. In (Kenneth C. Haas and James A. Inciardi, eds.), *Challenging Capital Punishment: Legal and Social Science Approaches*. Newbury Park, CA: Sage.
- Death Penalty Information Center. 2012a. State execution rates. Retrieved March 2012 from deathpenaltyinfo.org/state-execution-rates.
- Death Penalty Information Center. 2012b. Searchable execution database. Retrieved March 2012 from deathpenaltyinfo.org/views-executions.
- Graczyk, Michael. 2010. Texas study: Death penalty deters killers; SHSU, Duke researchers say murders in state drop after execution. *Houston Chronicle*. January 7.
- Land, Kenneth C., Raymond H. C. Teske, Jr., and Hui Zheng. 2009. The short-term effects of executions on homicides: Deterrence, displacement, or both? *Criminology*, 47: 1009–1043.
- Land, Kenneth C., Raymond H. C. Teske, Jr., and Hui Zheng. 2012. The differential short-term impacts of executions on felony and non-felony homicides. *Criminology & Public Policy*. 11: 541–563.
- Pew Center on the States. 2010. Prison count, 2010. Retrieved March 2012 from pewcenteronthestates.org/uploadedFiles/Prison_Count_2010.pdf.
- Phillips, David P. 1980. The deterrent effect of capital punishment: New evidence on an old controversy. *American Journal of Sociology*, 86: 138–148.
- Radelet, Michael L. and Traci L. Lacock. 2009. Do executions lower homicide rates? The views of leading criminologists. *Journal of Criminal Law and Criminology*, 99: 489–508.
- Scheidegger, Kent. 2009. The long and short of death penalty deterrence. Retrieved March 2012 from crimeandconsequences.com/crimblog/2009/11/the-long-and-short-of-death-pe.html.
- Shepherd, Joanna M. 2004. Murders of passion, execution delays and the deterrence of capital punishment. *Journal of Legal Studies*, 33: 283–321.
- Zimmerman, Paul R. 2004. State executions, deterrence and the incidence of murder. *Journal of Applied Economics*, 7: 163–193.

Zimmerman, Paul R. 2006. Estimates of the deterrent effect of alternative execution methods in the United States: 1978–2000. *American Journal of Economics and Sociology*, 65: 909–941.

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