The Discovery of Innocence

Frank R. Baumgartner
Distinguished Professor of Political Science
Penn State University

Public Policy Institute of California
October 27, 2006

A Government Program Run by Bureaucrats, Prone to Cost-Overruns, Inefficiencies, and Mistakes

-Peter Loge on the Death Penalty

The Discovery of Innocence

Americans and the Death Penalty, 1960–2005

- Book project, nearly complete
- Frank R. Baumgartner
- Suzie De Boef, Associate Professor
- Amber E. Boydstun, Graduate Student

- Due to Cambridge University Press, December 2006 for review

Chapter Outline

1, Introduction

2, History and Background

3, A Chronology of the "Innocence Movement"

4, The Changing Tone of Media Coverage

5, The Evolution of Public Discourse

6, Changing Public Opinion

7, Changing Public Policy

8, Conclusion

Today's Talk

Some background

- death penalty in general
- the "innocence movement"

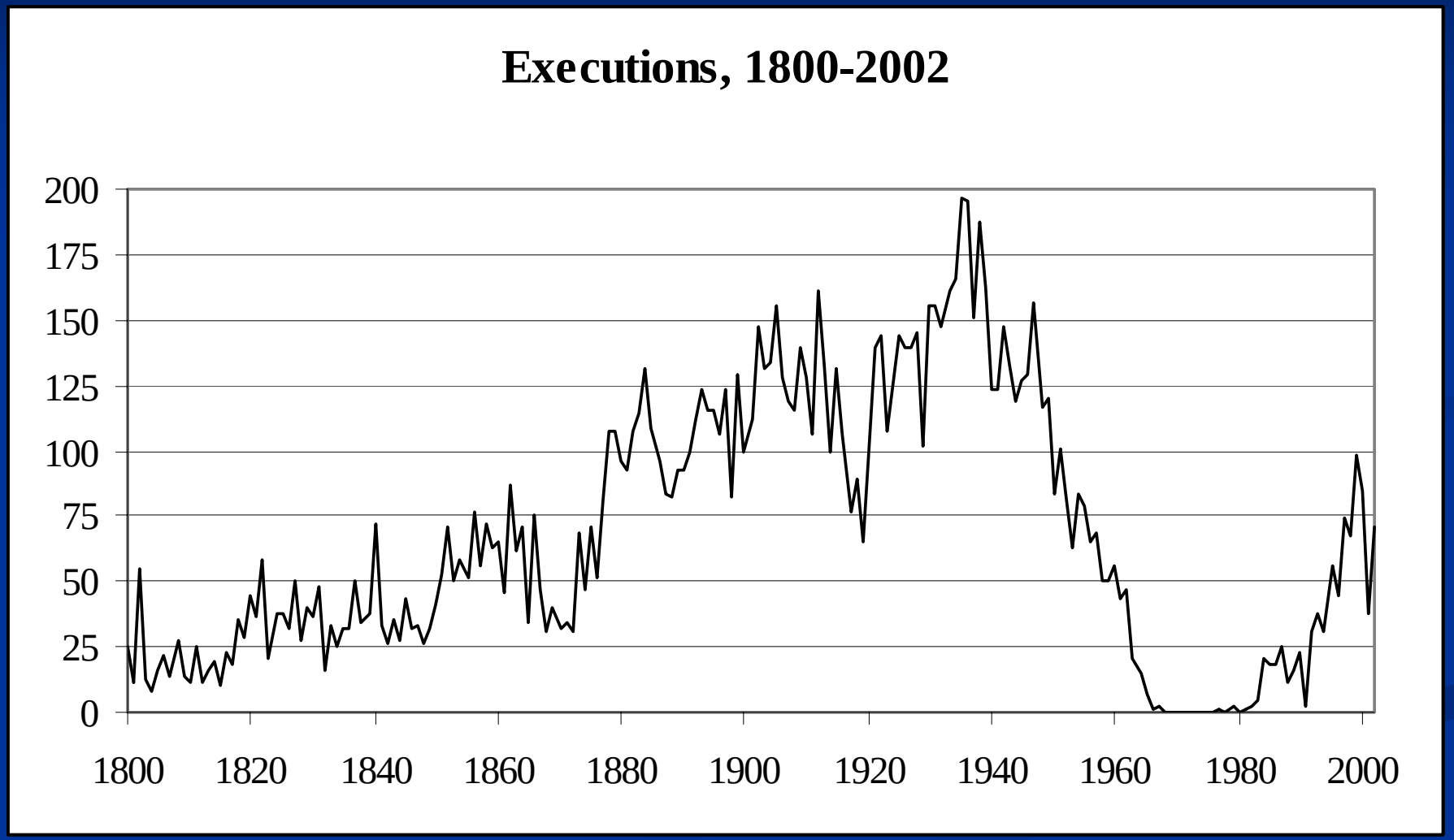
Media coding, documenting the shifting nature of public discourse on this issue

Statistical models

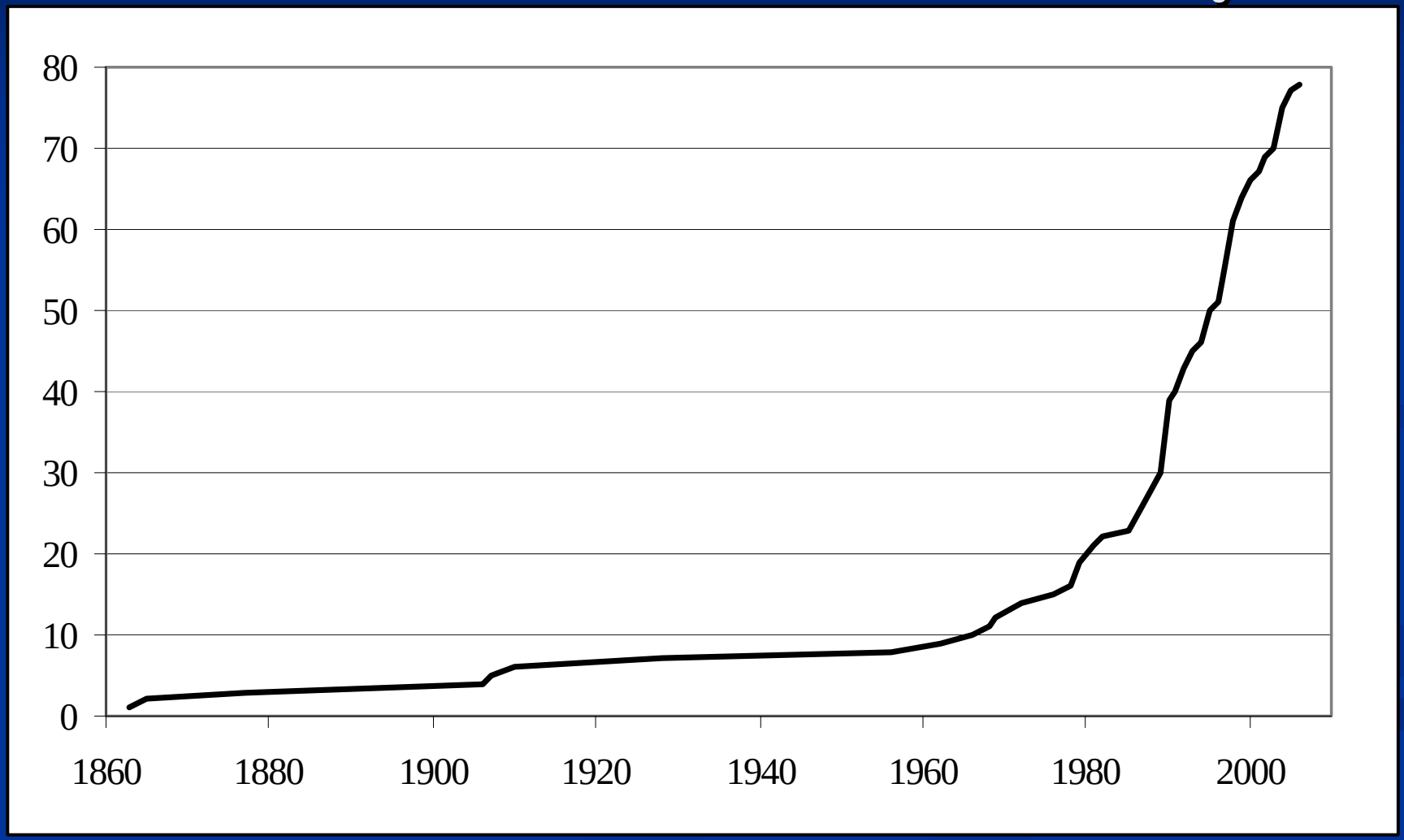
1. Predicting aggregate public opinion
2. Predicting annual death sentences

These show the substantive impact of framing effects

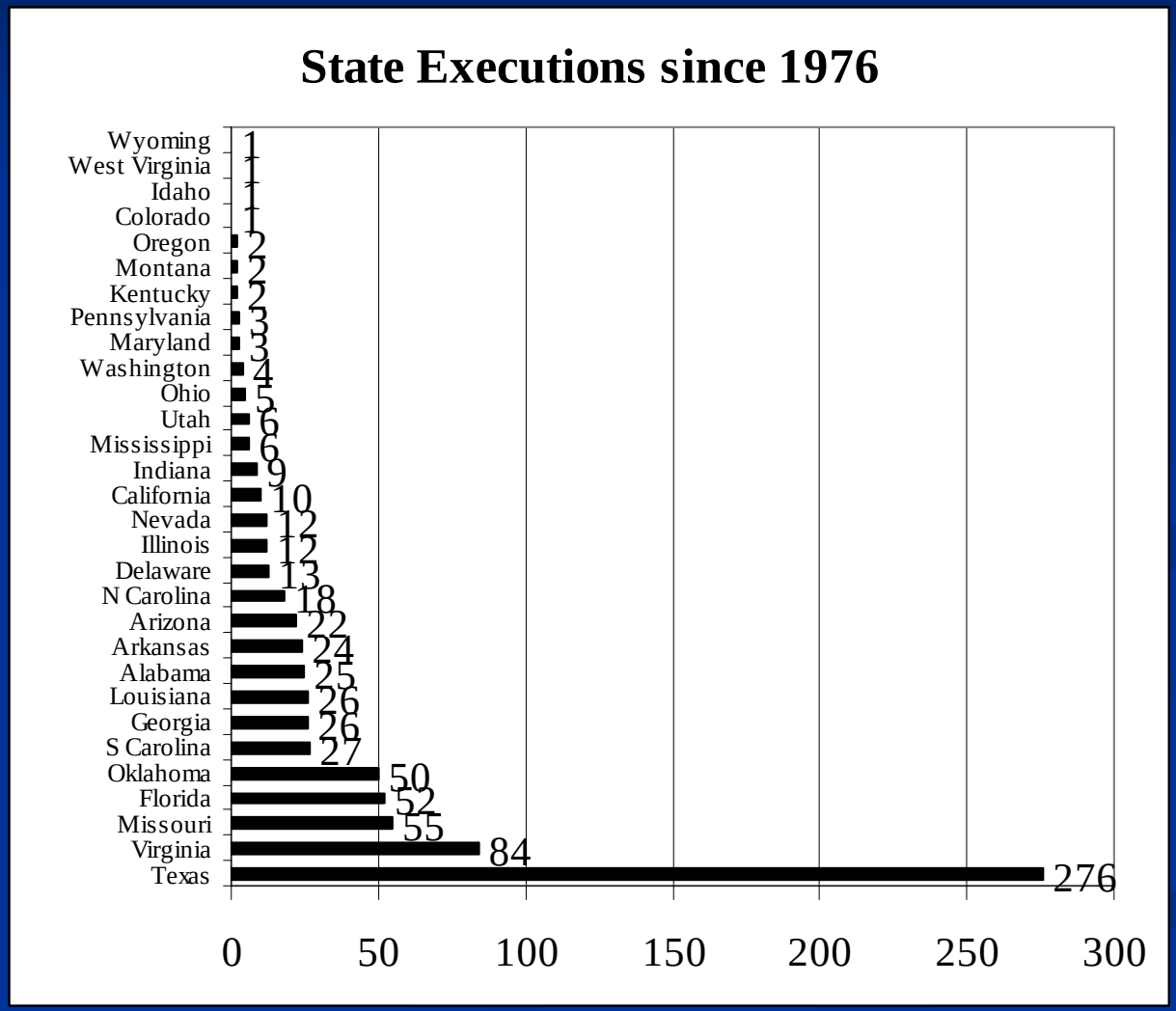
Executions in the US, 1800-2002



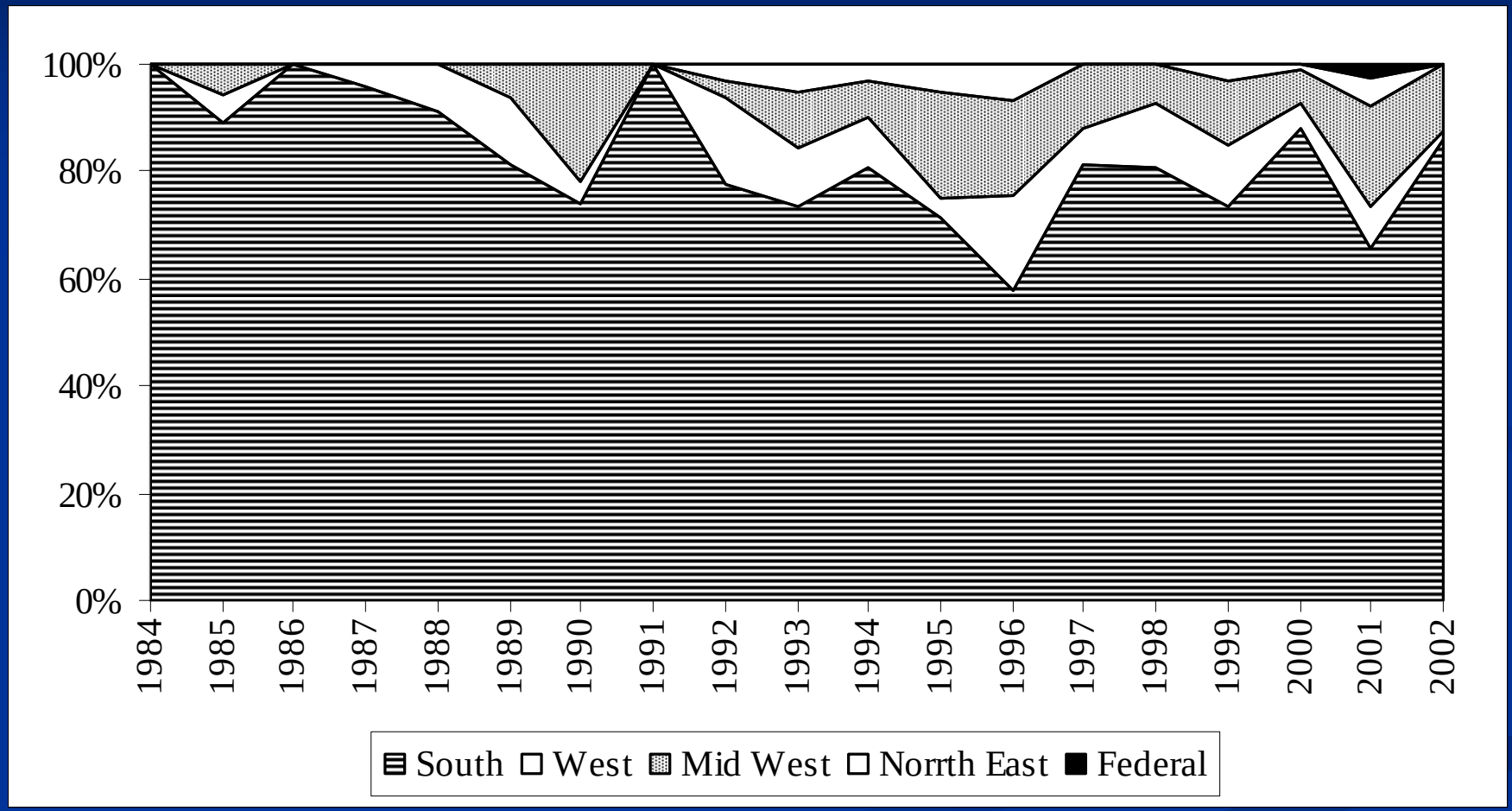
Number of Countries Having Abolished the Death Penalty



Executions by State, 1976-2004



Executions by Region, 1985-2002

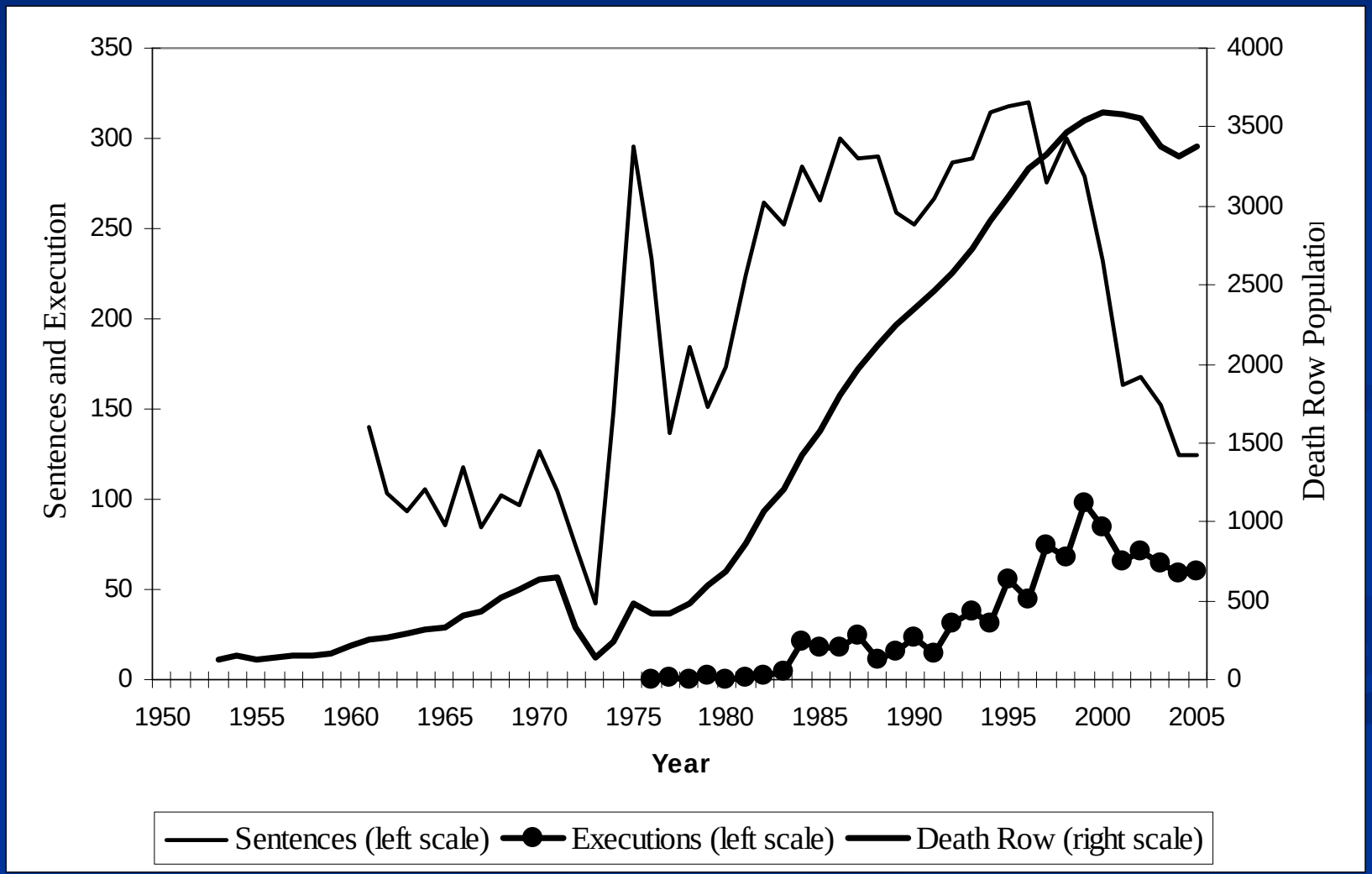


Death Row Population v. Executions (since 1976)

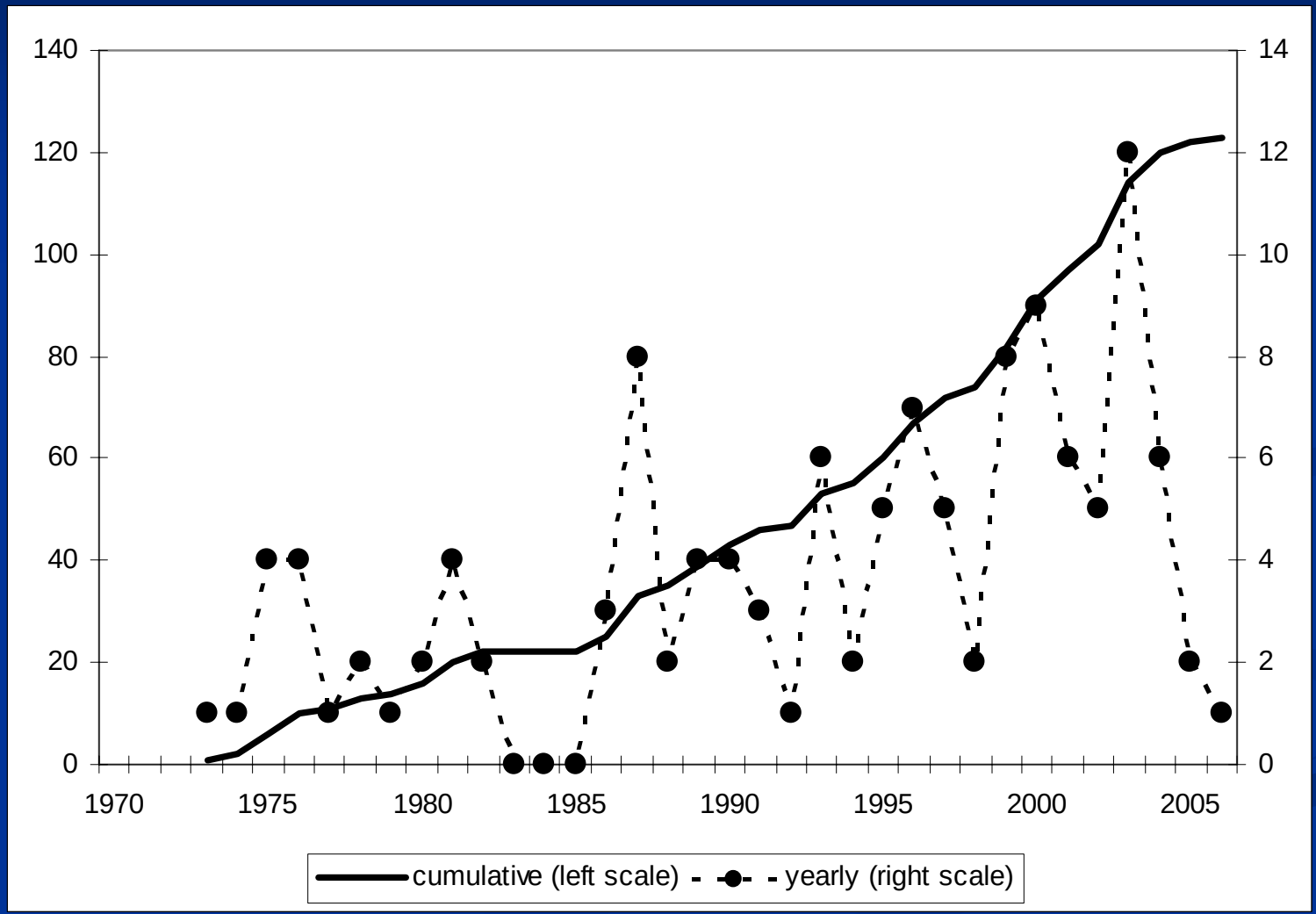
State	Death Row	Executions
Texas	454	276
Florida	381	52
Calif.	635	10
Pennsylvania	235	3

Many states, like California, have a "virtual" death penalty system. This could change as time passes however and appeals are exhausted.

Death Sentences, Executions, and the Size of Death Row, 1953-2005



Exonerations, 1973-2005



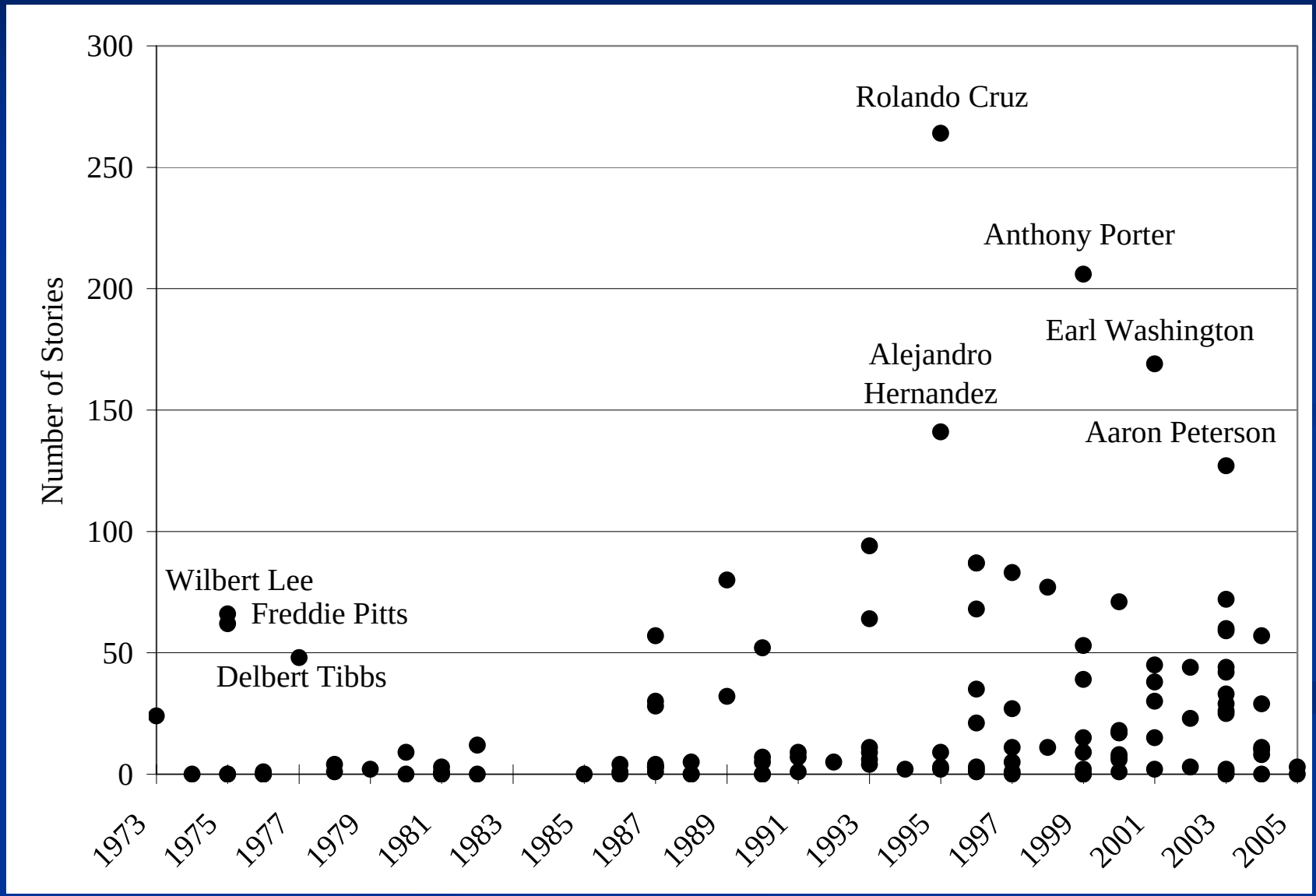
The Discovery of Innocence

- Exonerations have been consistent, a few every year since 1976.
- Innocence Project, Justice Project, work of advocates such as Barry Scheck, Larry Marshall, and Richard Dieter have illustrated serious flaws.
- These were probably always there.
- Public attention never focused on them.
- This "discovery of innocence" may put an end to the Death Penalty.
- It has already had a huge impact.

The Innocence Movement

- Journalism schools, law schools, foundations
- A most unlikely social movement …
- Beginnings in the 1980s, acceleration in the 1990s
- Continuation, perhaps surprisingly, after 9/11/01. Bush Administration, War on Terror, restrictions on civil liberties
- This movement keeps on going. How? Why?

Exonerees: From Human Interest to Confirmation of an Established Theme



A Framing Multiplier Effect

Time Period	Average Exonerations	Average Stories	Stories per Exon.
73-91	3	9	3
92-98	4	84	33
99-05	7	212	40

A Social Cascade

Somehow, the concept of innocence has entered the social discourse. People understand a new way of thinking about the death penalty.

Old issue-definition: Morality / constitutionality

New issue-definition: Innocence / system is broken / human institutions cannot be perfect

Documenting these trends and this cascade effect is our goal.

Two Views on the Death Penalty

- Morality:
  - 1) State Killing is Wrong
  - 2) Eye-for-an-eye
  - (Most Americans support #2)
  - Religious, moral nature of this debate
- Innocence
  - The system is not perfect and can make mistakes. Innocents may be killed.

New York Times Coding

- Every article since 1960
- Almost 4,000 articles
- Exhaustive list of 67 arguments
- Count attention to each argument over time
- Dynamic Factor Analysis: shows rise of new issues

Microsoft Access - [Death Penalty]

File Edit View Insert Format Records Tools Window Help

Type a question for help

MS Sans Serif 8

ID: 1944
Subject: Capital Punishment
NYT Year: 1960
NYT Page: 172
NYT Column: 1
Day / Month: 1/14/1960
First Three Words: NYS Council of
Front Page:
3 Tone: 5
4 Story Type: 1

Victim Characteristics

- 10 Officer
- 11 Child
- 12 Multiple
- 13 Family Mention
- 14 Female
- 19 Other

Defendant Characteristics

- 20 Terrorist
- 21 Minority
- 22 Mentally Handicapped
- 23 Female
- 24 Parent
- 25 Juvenile
- 27 Humanized
- 29 Other Vul Char

Nature of Crime/ Mode of Execution

- 30 Mode of execution discussed
- 31 Type of Crime
- 32 Violence of crime discussed
- 40 Legislative Initiative ☑

Dimensions of Debate

100 Efficacy
- 101 Deterrence
- 102 Incapacitation
- 103 Alts Flawed
- 109 General Pro
- 110 Not Deterrent
- 111 Alt Systems Pro
- 119 General Anti

200 Moral
- 201 Retribution
- 202 Family Vengeance
- 203 Type Crime/Extension
- 209 General Pro
- 210 Killing Ven Bad
- 211 Family Opposed
- 219 General Anti

300 Fairness/Process
- 301 Are Fair
- 302 Abbreviated Process
- 303 Flaws Overstated
- 304 No Blanket Regs
- 309 General Pro
- 310 Inadequate Rep
- 311 Arbitrary
- 312a Racist
- 312b Classist
- 312c Other Demographic
- 313a Vulnerable Popul
- 313b Mitigating
- 314 Mandatory Sent Bad
- 315 No Alt Punish
- 316 Evidence
- 317 Innocence
- 318 Broken
- 319 General Anti

400 Const/PopControl
- 401 Not Cruel
- 402 Process Upheld
- 403 Pop Support Pro
- 404 States Rights Pro
- 405 Fed Juris Pro
- 409 General Pro
- 410 Cruel Unusual
- 411 Vio Due Process
- 412 Pop Support Anti
- 413 State Rights Anti
- 414 Fed Juris Anti
- 419 General Anti

500 Cost
- 501 Worth It
- 502 Prison Exp
- 509 General Pro
- 510 Not Worth It
- 511 Prison Cheaper
- 519 General Anti

600 Mode
- 601 Mode Just
- 609 General Pro
- 610 Mode Questioned
- 619 General Anti

700 International
- 709 General Pro
- 710 Int Complaints
- 711 Extradition Probs
- 712 Foreign Natls
- 719 General Anti

900 Other Dimension
900 Description
Notes

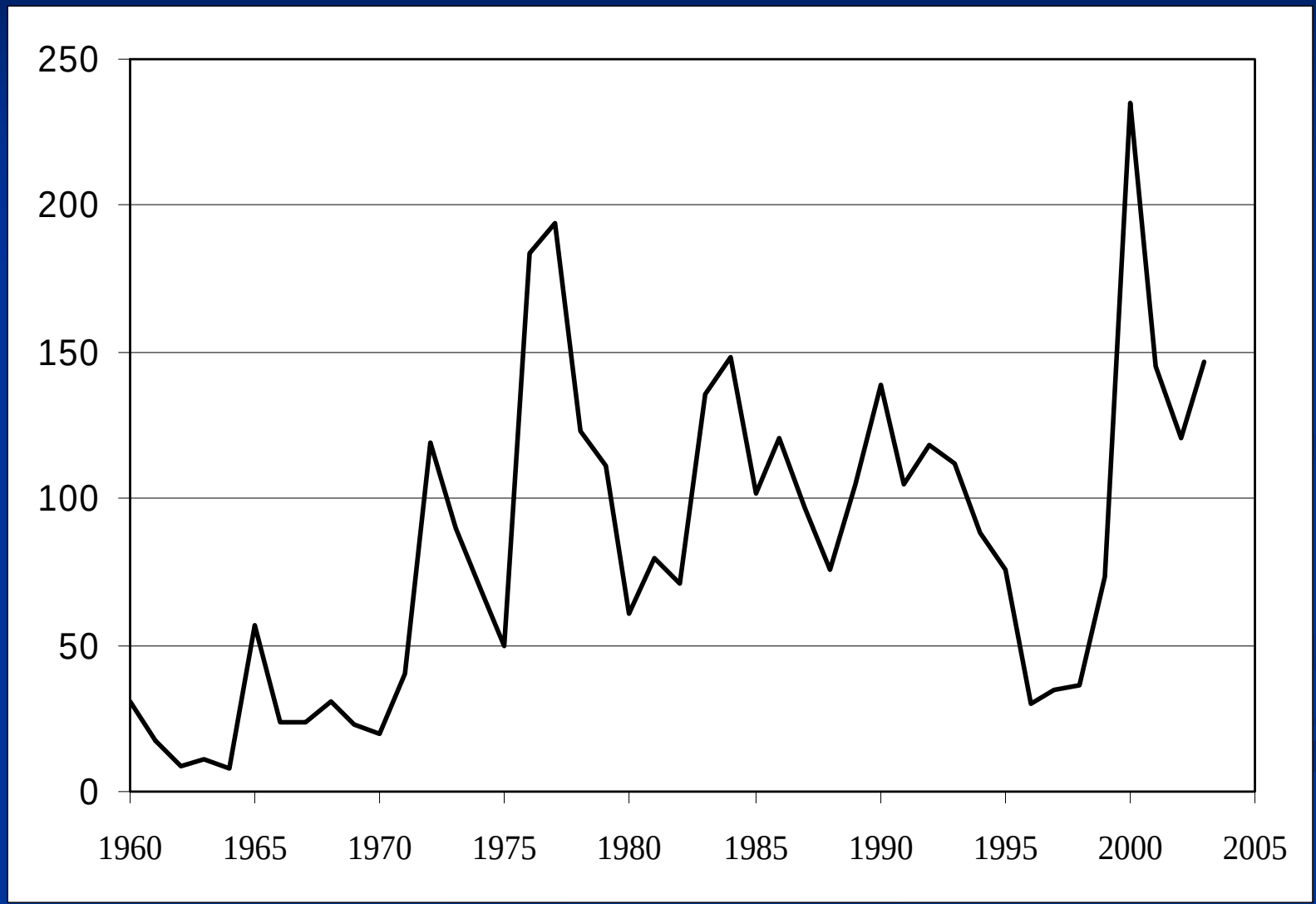
Record: 1 of 3512

Form View NUM

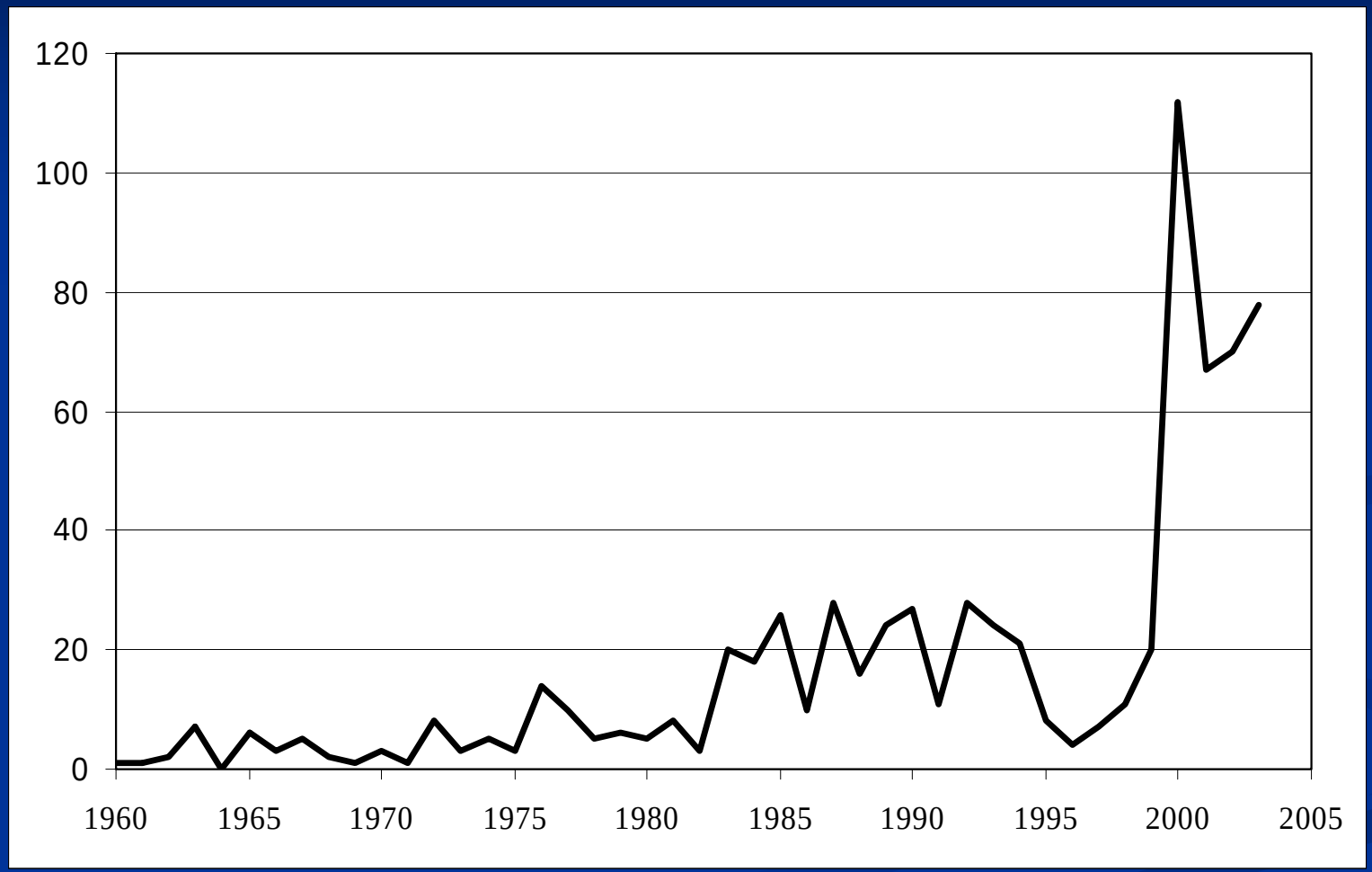
Major Dimensions of Death Penalty Debate

- **Efficacy**- Does the punishment serve a functional purpose?
- **Moral**- Should we use the death penalty at all?
- **Fairness**- Is the capital punishment process fair?
- **Constitutionality/Judiciary**- Is the penalty constitutional and how much power do the courts have?
- **Cost**- Is the death penalty cost-effective?
- **Mode of Execution-** Which modes of execution should be permitted?
- **International**- We should consider the many complaints from abroad regarding our death penalty system

Total Number of *NYT* Articles, 1960–2003

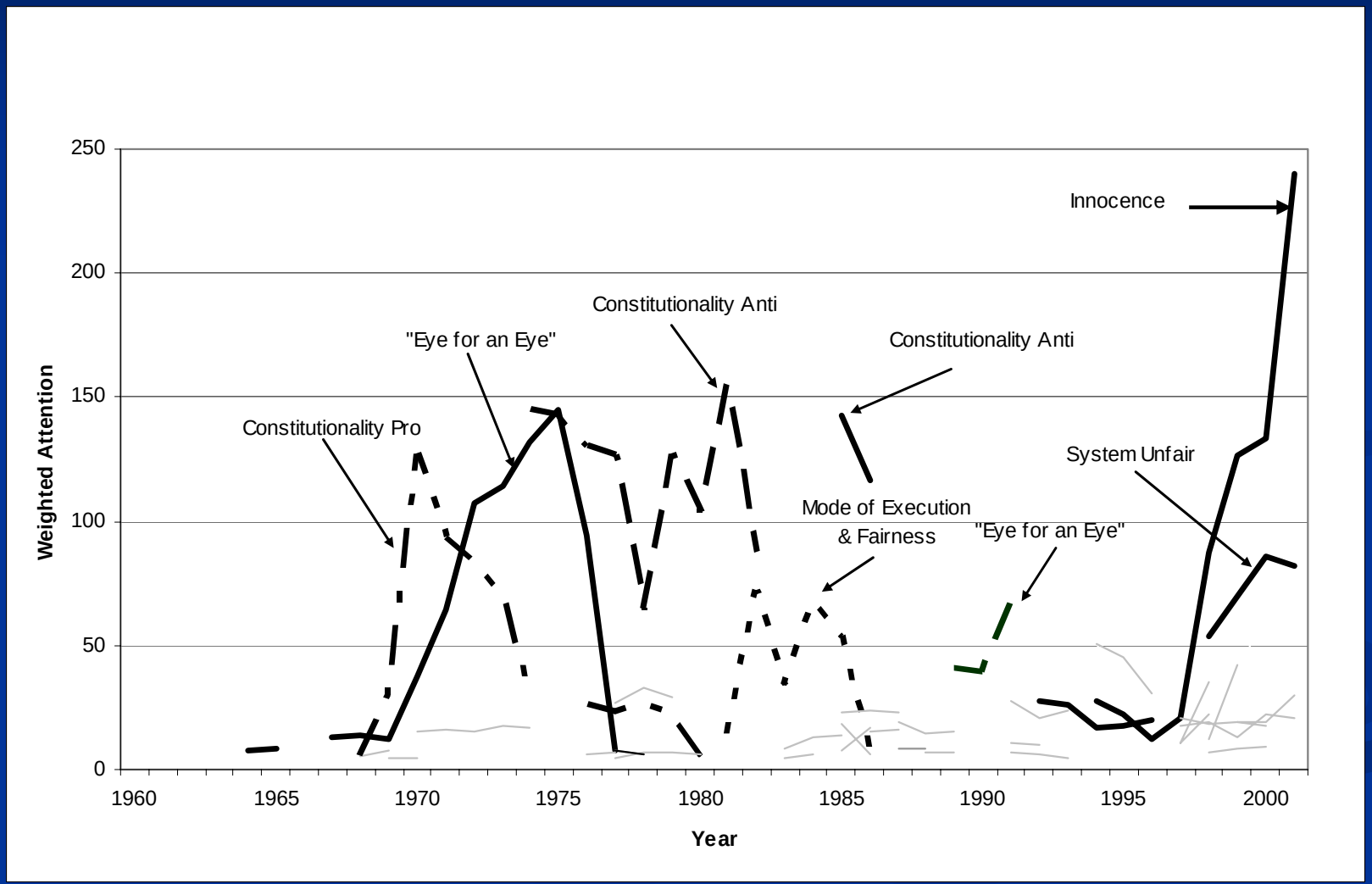


The Rise of the "Innocence" Frame

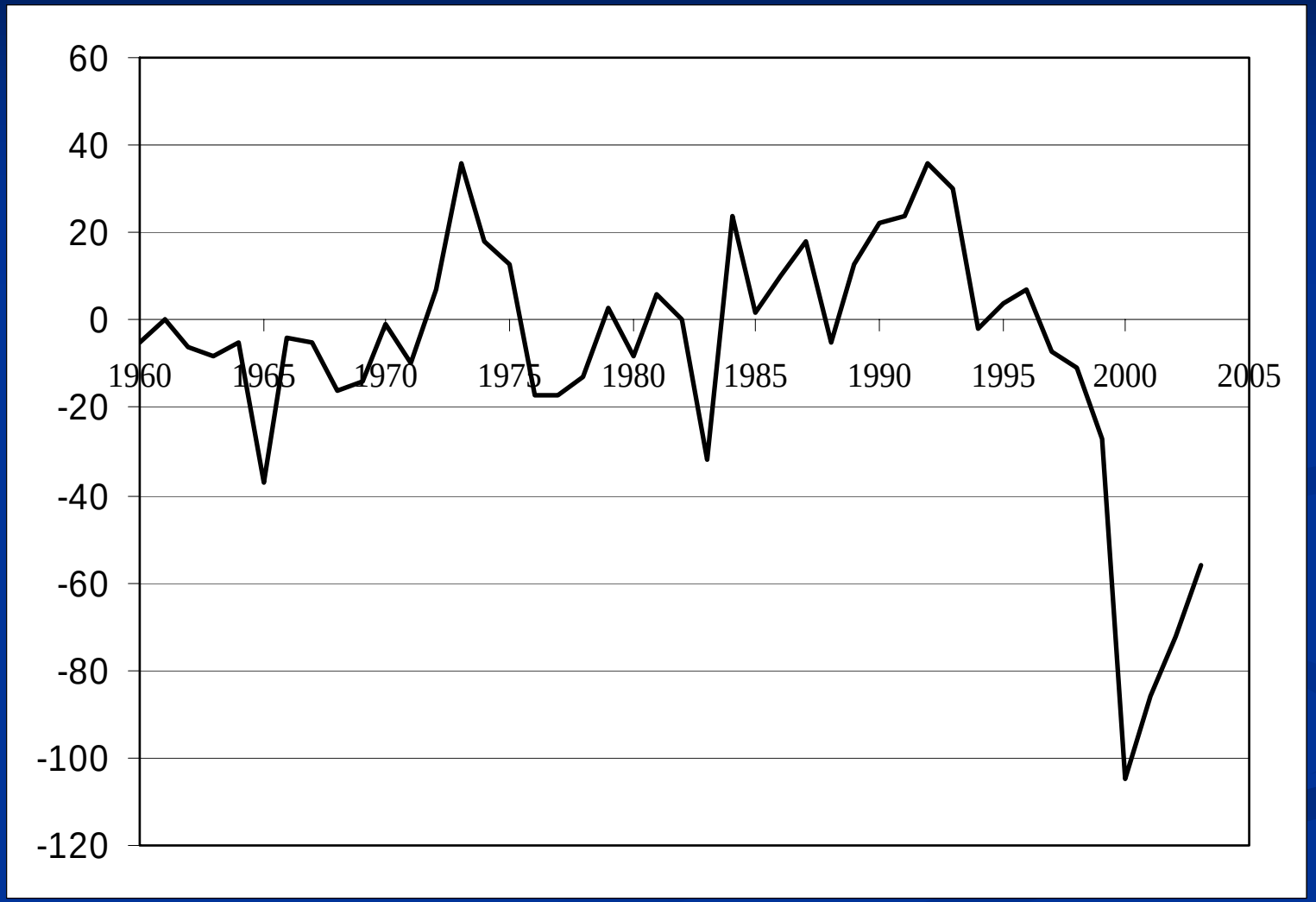


Includes: Innocence; Evidence; System-is-Broken; Mention of the Defendant

Statistically Identified Issue-Frames



The "Net Tone" of NYT Coverage, 1960–2003



Shows the number of pro- minus the number of anti-death penalty stories per year

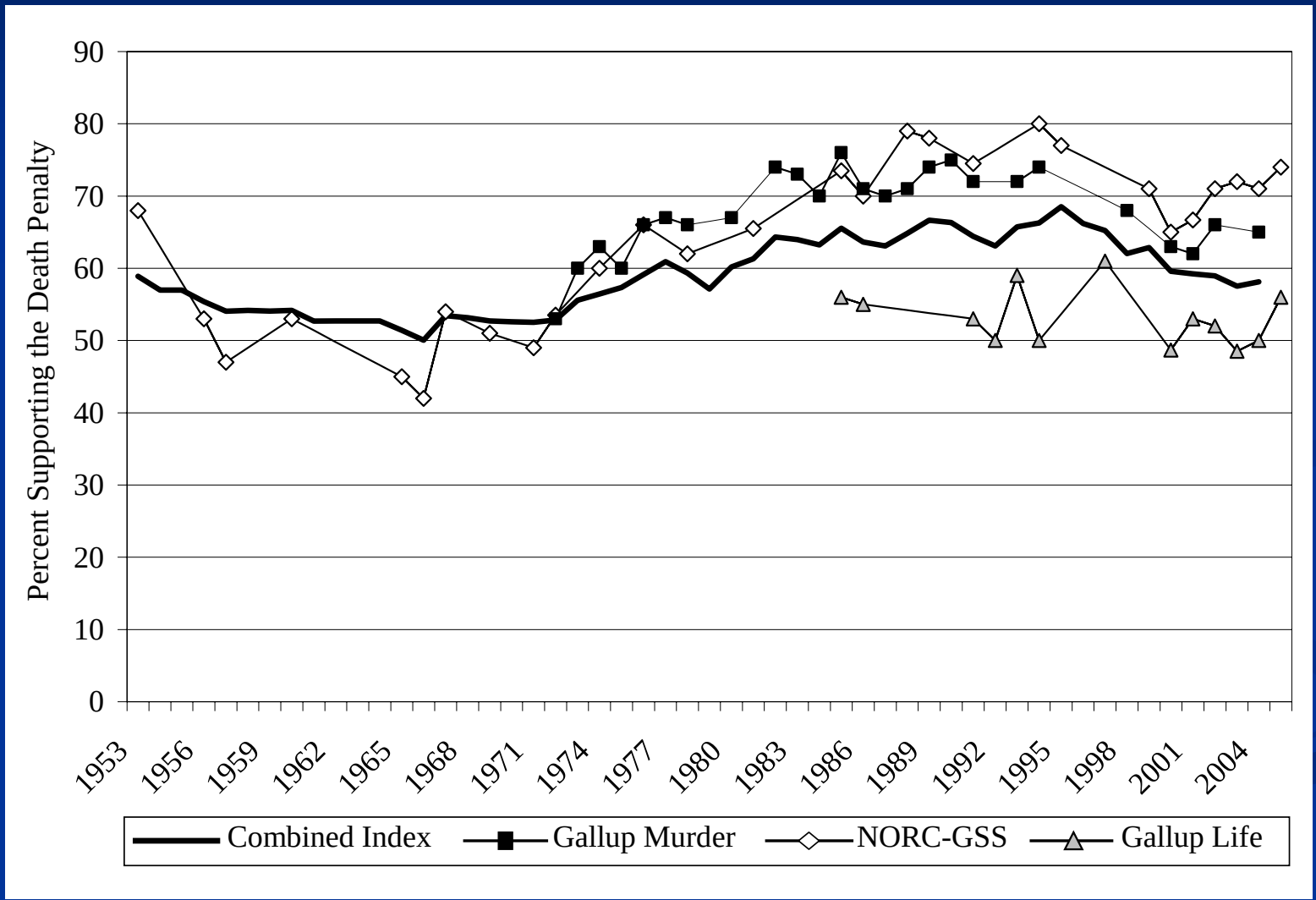
Conclusions from *NYT* analysis

- Innocence frame is the single most powerful media frame in history
- It equals the constitutionality focus of the 1960s and 1970s
- It surpasses that frame in amount of coverage
- It brings together previously existing arguments, such as the racial disparity argument, but puts it in a new context
- Most important: How people respond to it…

Public Opinion

- Consistently supportive, over most of history
- Survey questions are highly theoretical, abstract
- Slow movement in aggregate numbers, highly inertial or autoregressive series
  - (Moral nature of the question, for most people)
  - Low level of stimulus, as compared to Presidential approval or the War on Terror, for example)
- Our method: Combine all available survey data

Aggregate Public Opinion

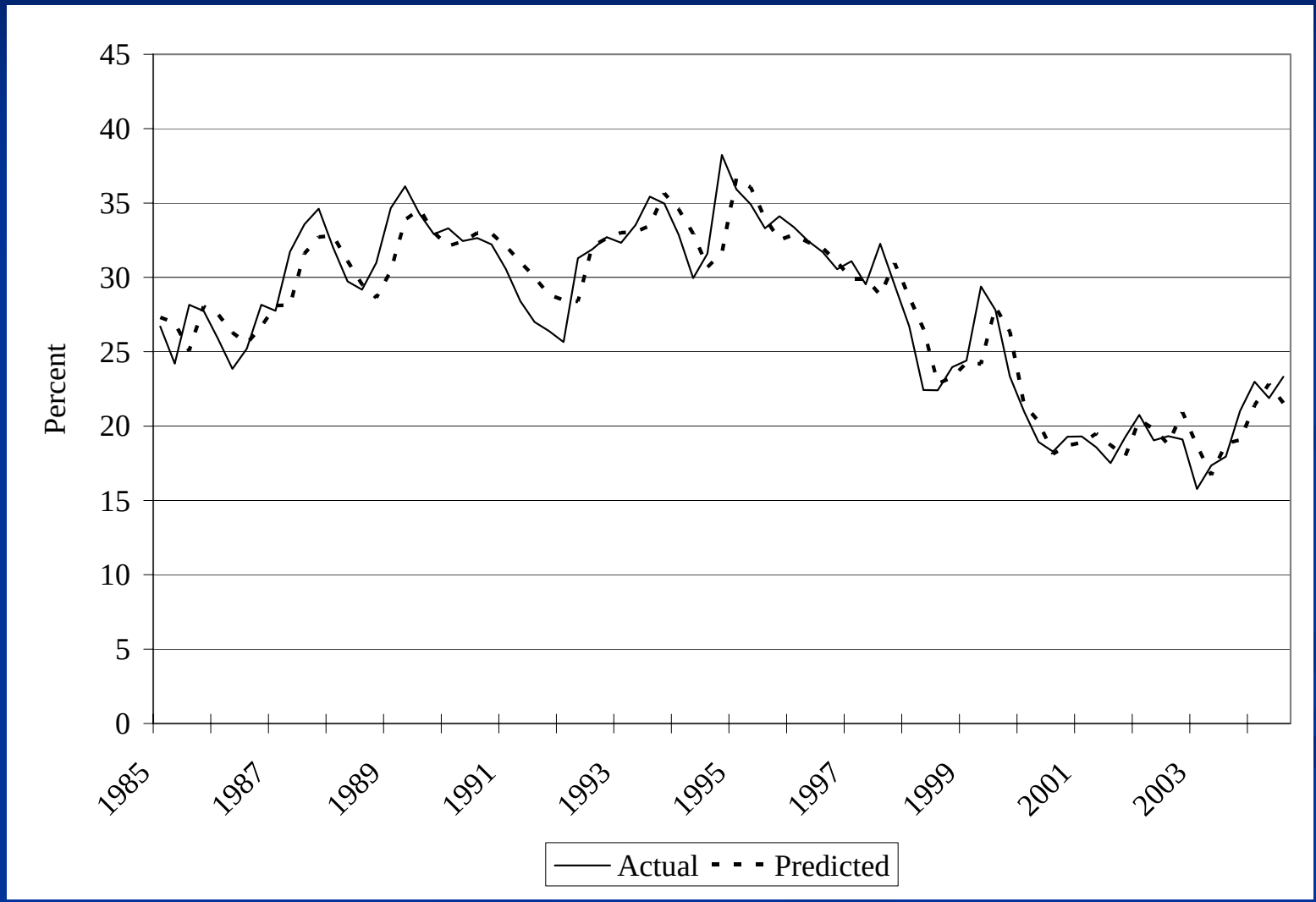


Predicting Net Support

Net Public Support for the Death Penalty =
2.033 (2.334)+
0.732 x Opinion_{t-1} (0.67) +
0.058 x Net Tone of *New York Times*$_{t-1}$ (0.032) +
1.11 x $(\text{Homicides (thousands)})_{t-1}$ (0.51) +
1.205 x $\text{major events}_{t-1}$ (0.843)

R^2 = .887 (N=79)
Note: Analysis is quarterly from 1985 q 1 to 2004 q 3.

Predicting Quarterly Opinion
("Net Opinion" = Approve – Disapprove)



Interpretation

$0.732 \times Opinion_{t-1}$ (0.67)

Public opinion is highly inertial

73% of the value carries forward to the next period.

Any stimulus will therefore take many periods to have its full effect. The entire public is never affected by stimuli that are so strong that all people simultaneously move. Rather, opinion moves slowly as information percolates.

Interpretation

0.058 x Net Tone of *New York Times*$_{t-1}$ (0.032)

Net tone in fact has shifted by over 60 points over the years.

Impact of a 50 point shift in Net Tone: 11 points

(Total impact = immediate impact + subsequent impact, 73% less in each future period…)

Interpretation

1.11 x Homicides (thousands)$_{t-1}$ (0.51)

Actual quarterly range in homicides is over 2,000

Impact of a shift by 2,000 in homicides: 8.6

Both media coverage and homicides have strong effects. Media coverage is stronger, in fact.

Interpretation

No significant effects for events

One individual event, modeled separately, had an impact: The mass commutation of all death row inmates in January 2003 by Gov. Ryan in Illinois.

Events are mostly mediated through news coverage.

Policy Impact

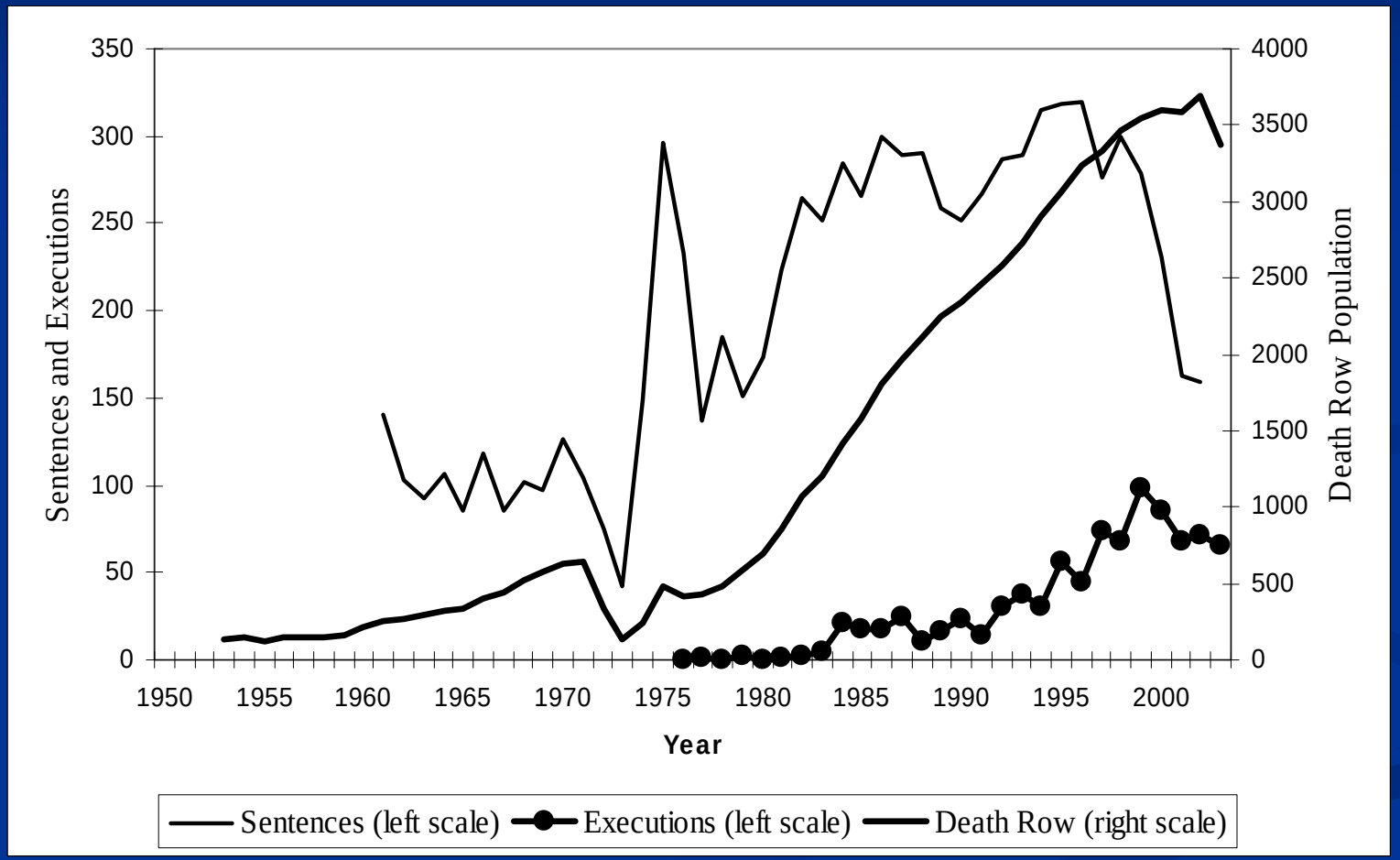
Annual Death Sentences as the most appropriate dependant variable

Juries not faced with a hypothetical question as posed in surveys

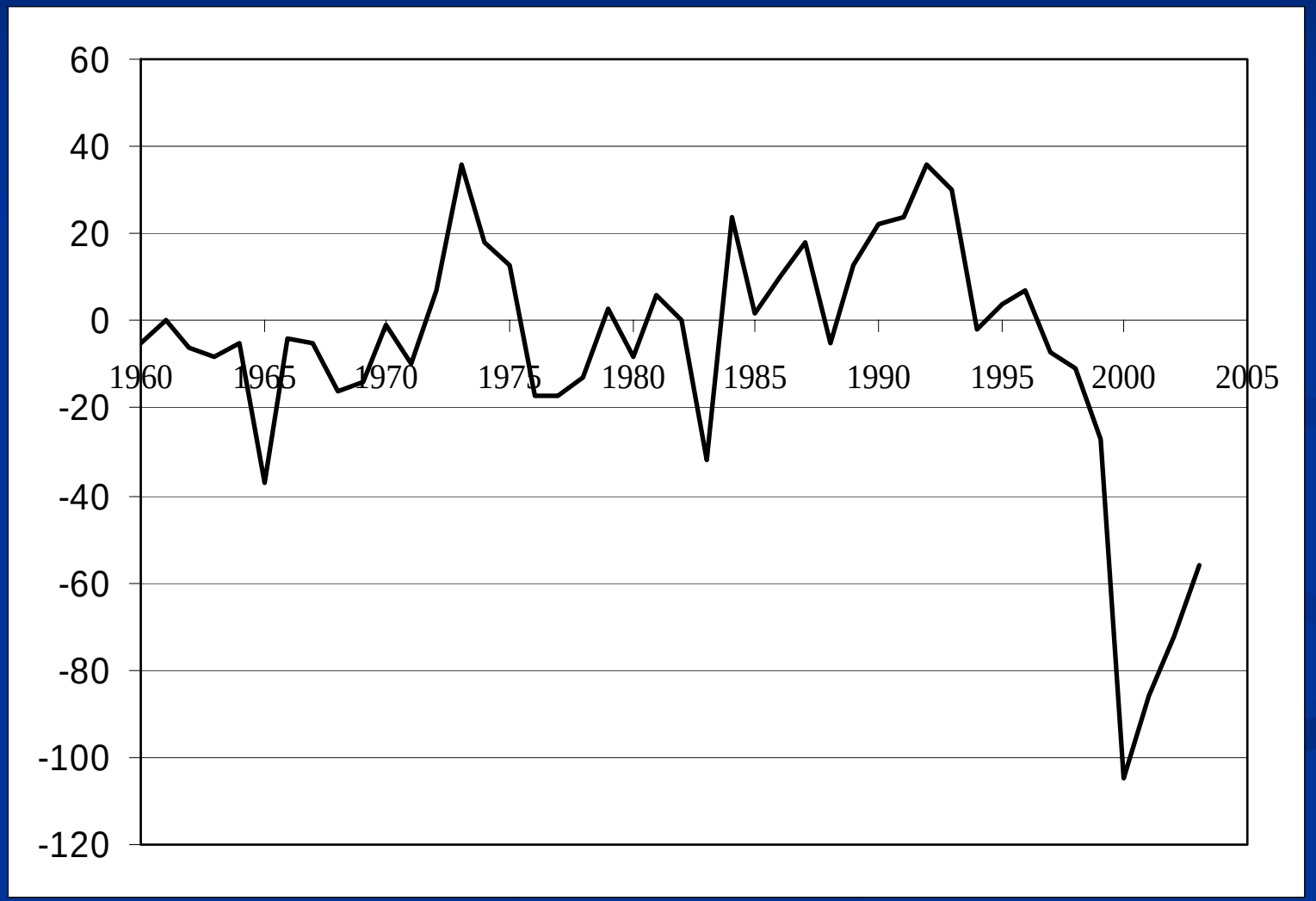
Juries presented with strong stimulus, not like aggregate public opinion

May be different, should definitely be less inertial

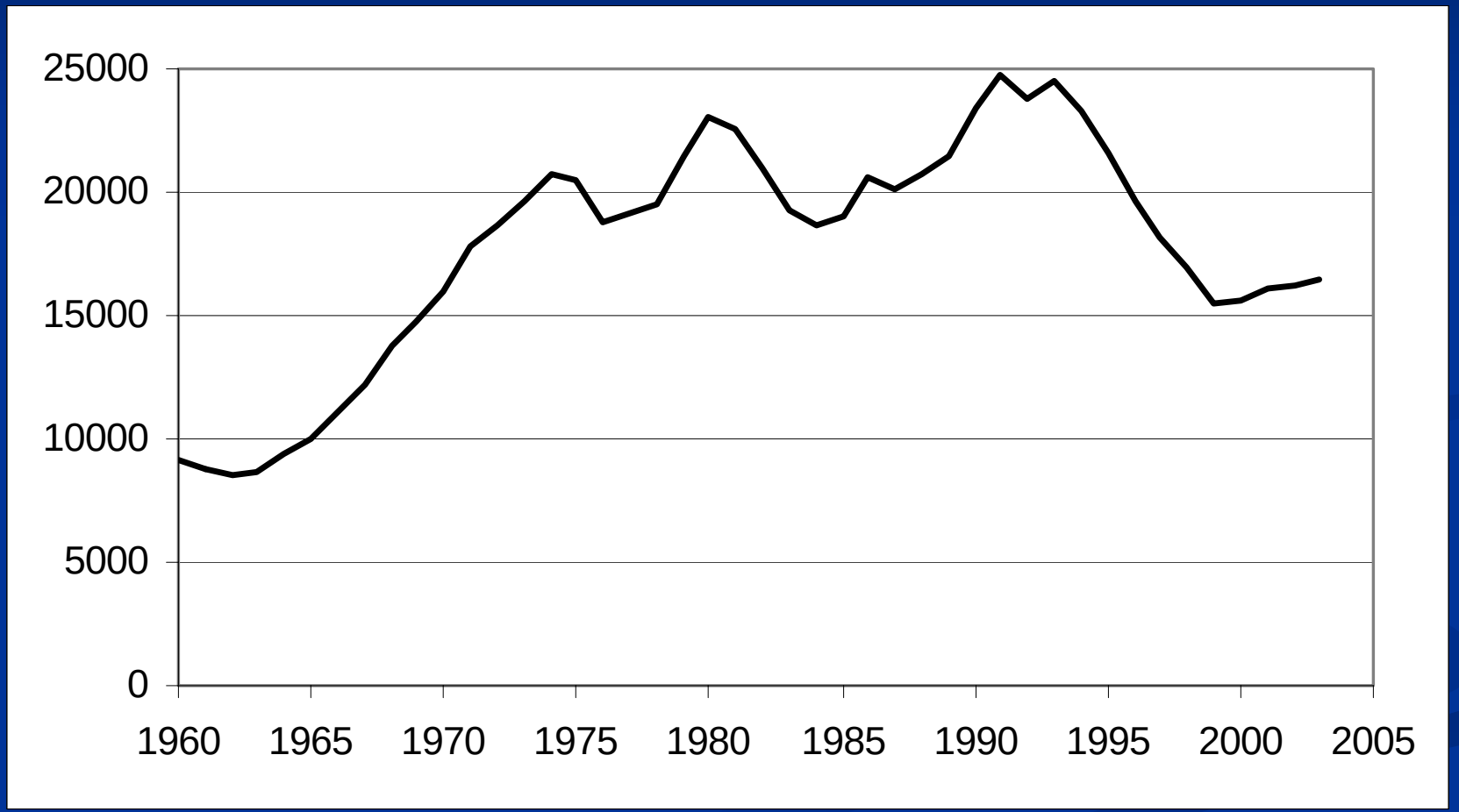
Reminder, Death Sentences, Death Row, and Executions



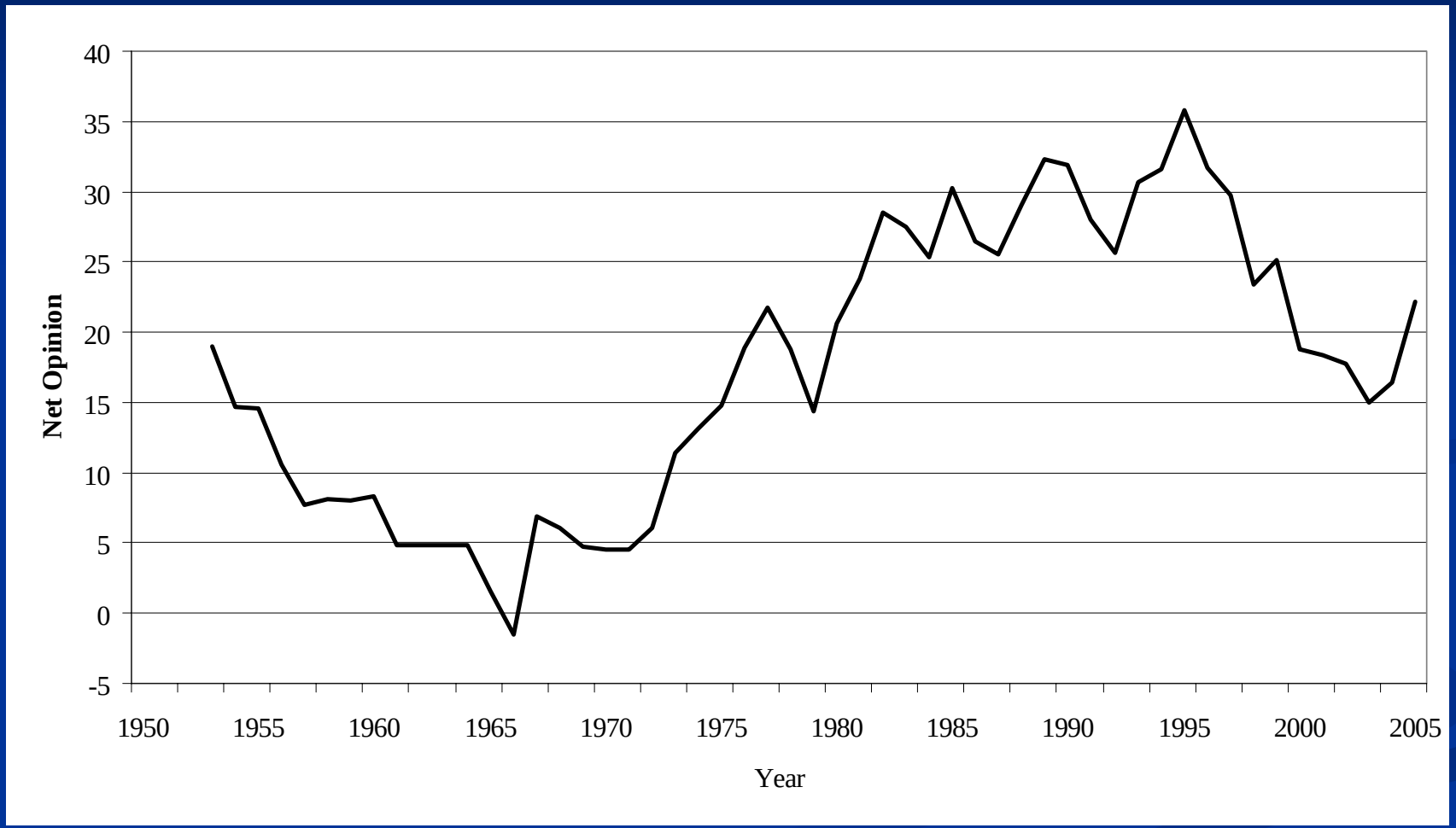
Reminder: The Net Tone of *New York Times* Coverage 1960-2003



Homicides: decline from 24,500 in 1993 to 15,500 in 2000



Net Public Opinion, 1960-2004

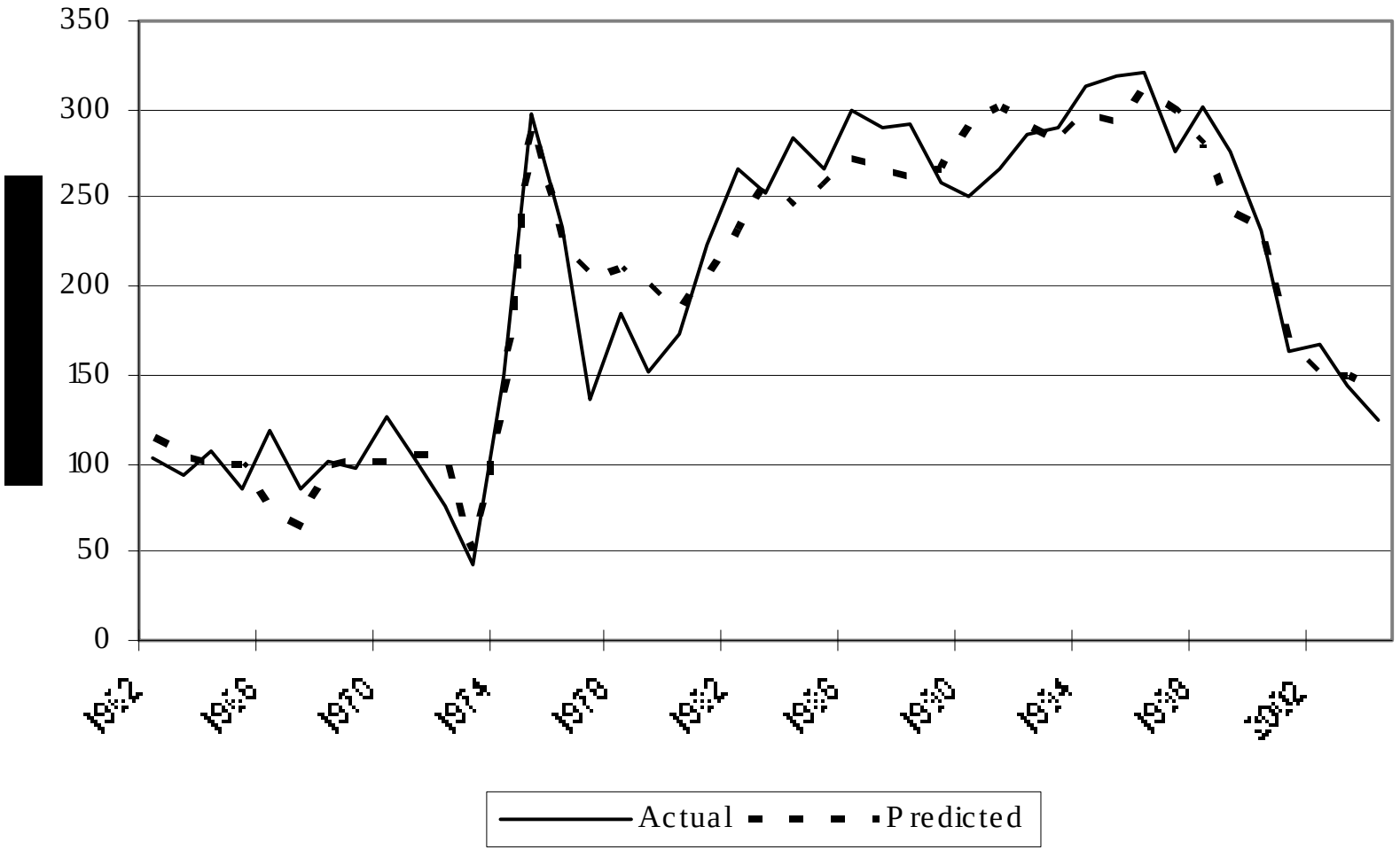


Predicting Annual Death Sentences

Annual Number of Death Sentences =
40.43 (22.25)+
0.344 x Sentences$_{t-1}$ (0.099) +
0.427 x Net Tone of *New York Times*$_{t-1}$ (0.147) +
0.7 x Homicides (thousands)$_{t-1}$ (1.5) +
4.267 x Opinion$_{t-1}$ (0.966) +
-66.83 x 1973 dummy (26.74) +
127.15 x 1975 dummy (40.43)

R^2 = .928 (N=41)
Note: Analysis is annual from 1963 to 2003.

Predicted and Actual Death Sentences



Interpretation

$0.344 \times \text{Sentences}_{t-1}$ (0.099)

The series has some inertia to it.

34% of each value carries forward.

This is significantly less than what we saw for public opinion.

Each factor also has some inertial impact into the future as well. (1 / (1-.344) = 1.52 x immediate effect)

Interpretation

0.427 x Net Tone of *New York Times*$_{t-1}$ (0.147)

A 10-point shift in news coverage: 4.3 fewer death sentences in the following time period, with a longer term, eventual impact of 6.5 fewer.

Shift of 50 points: 33 fewer death sentences

Interpretation

.7 x Homicides (thousands)$_{t-1}$ (1.5)

Move homicides by 8,000:

Decline in death sentences: 9 per year

(Effect is small, and statistically insignificant)

Interpretation

4.267 x Opinion_{t-1} (0.966)

This is a big impact:

In the long term, after inertia plays out:

15 point shift in opinion: 99 fewer death sentences

Interpretation

Inertia affects results, but much less so than for public opinion.

Homicides have no direct effect, after public opinion is included.

The tone of media coverage affects both aggregate public opinion and, separately, jury and prosecutor behavior.

Public opinion changes slowly but has a strong impact on jury behavior.

Substantive effect of shift in media tone is greater than the slowly shifting nature of public opinion.

Conclusions

- Exonerations have always been with us. Errors have always been made.
- These were previously considered to be "one-off" events. Of concern, of course, but not symptomatic of anything more general.
- The innocence movement has changed all that.

Lethal Injection Debates

- Current discussion in California is all about lethal injection.
- We have not coded 2005 media coverage (will do so for final version of book)
- Coverage of the lethal injection debate: All negative so will affect net tone
- Scenarios: 1) make DP extremely rare, and therefore constitutionally "unusual"
- 2) cause a backlash and reinstate the firing squad?
- This itself would affect public opinion. Strange constitutional quandary. Actual incidence of use of the Death penalty has gained constitutional meaning.

A Shift in Focus

- Policy changes typically do not come from changing social preferences
- Rather, all policies are multidimensional, complex, as is the death penalty
- A shift in focus from morality / constitutionality to the new innocence focus has reversed a trend going back a generation.
- It may well lead to the abolition of the death penalty.

Two Points to this Project

- Death Penalty by itself is an important issue to explain. Seeing significant policy change, as we have, on a deep moral issue, is surprising. Also note that these movements have all occurred, or continued, during a period when the broad political mood, and many social trends, have been anything but propitious.
- So the substantive puzzle itself is of interest, and we can discuss what may happen next, especially here in California where it is a major issue.

Two Points to this Project

- An example of Attention-Shifting model of Policy Change

- In *The Politics of Attention*, Bryan Jones and I developed this model and we argue that all complex public policies are subject to periods of focus of attention on a subset of relevant dimensions, and that this inevitably makes possible a destabilizing shift in focus.
- This project is therefore partly a detailed test, at the micro-level, of the broader theory we developed there.