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Studies spark new round in US death penalty debates: Do executions deter other murderers?

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NEW YORK: Anti-death penalty forces have gained momentum in the past few years, with a moratorium in Illinois, court disputes over lethal injection in more than a half-dozen states and progress toward outright abolishment in New Jersey.

The steady drumbeat of DNA exonerations — pointing out flaws in the justice system — has weighed against capital punishment. The moral opposition is loud, too, echoed in Europe and the rest of the industrialized world, where all but a few countries banned executions years ago.

What gets little notice, however, is a series of academic studies over the last half-dozen years that claim to settle a once hotly debated argument — whether the death penalty acts as a deterrent to murder. The analyses say yes. They count between three and 18 lives that would be saved by the execution of each convicted killer.

The reports have horrified death penalty opponents and several scientists, who vigorously question the data and its implications.

So far, the studies have had little impact on public policy. New Jersey's commission on the death penalty this year dismissed the body of knowledge on deterrence as "inconclusive."

But the ferocious argument in academic circles could eventually spread to a wider audience, as it has in the past.

"Science does really draw a conclusion. It did. There is no question about it," said Naci Mocan, an economics professor at the University of Colorado at Denver. "The conclusion is there is a deterrent effect."

A 2003 study he co-authored, and a 2006 study that re-examined the data, found that each execution results in five fewer homicides, and commuting a death sentence means five more homicides. "The results are robust, they don't really go away," he said. "I oppose the death penalty. But my results show that the death penalty (deters) — what am I going to do, hide them?"

Statistical studies like his are among a dozen papers since 2001 that capital punishment has deterrent effects. They all explore the same basic theory — if the cost of something (be it the purchase of an apple or the act of killing someone) becomes too high, people will change their behavior (forego apples or shy away from murder).

To explore the question, they look at executions and homicides, by year and by state or county, trying to tease out the impact of the death penalty on homicides by accounting for other factors, such as unemployment data and per capita income, the probabilities of arrest and conviction, and more.

Among the conclusions:

_ Each execution deters an average of 18 murders, according to a 2003 nationwide study by professors at Emory University. (Other studies have estimated the deterred murders per execution at

three, five and 14).

_ The Illinois moratorium on executions in 2000 led to 150 additional homicides over four years following, according to a 2006 study by professors at the University of Houston.

_ Speeding up executions would strengthen the deterrent effect. For every 2.75 years cut from time spent on death row, one murder would be prevented, according to a 2004 study by an Emory University professor.

In 2005, there were 16,692 cases of murder and nonnegligent manslaughter nationally. There were 60 executions.

The studies' conclusions drew a philosophical response from a well-known liberal law professor, University of Chicago's Cass Sunstein. A critic of the death penalty, in 2005 he co-authored a paper titled "Is capital punishment morally required?"

"If it's the case that executing murderers prevents the execution of innocents by murderers, then the moral evaluation is not simple," he told The Associated Press. "Abolitionists or others, like me, who are skeptical about the death penalty haven't given adequate consideration to the possibility that innocent life is saved by the death penalty."

Sunstein said that moral questions aside, the data needs more study.

Critics of the findings have been vociferous.

Some claim that the pro-deterrent studies made profound mistakes in their methodology, so their results are untrustworthy. Another critic argues that the studies wrongly count all homicides, rather than just those homicides where a conviction could bring the death penalty. And several argue that there are simply too few executions each year in the United States to make a judgment.

"We just don't have enough data to say anything," said Justin Wolfers, an economist at the Wharton School of Business who last year co-authored a sweeping critique of several studies, and said they were "flimsy" and appeared in "second-tier journals."

"This isn't left vs. right. This is a nerdy statistician saying it's too hard to tell," Wolfers said. "Within the advocacy community and legal scholars who are not as statistically adept, they will tell you it's still an open question. Among the small number of economists at leading universities whose bread and butter is statistical analysis, the argument is finished."

Several authors of the pro-deterrent reports said they welcome criticism in the interests of science, but said their work is being attacked by opponents of capital punishment for their findings, not their flaws.

"Instead of people sitting down and saying 'let's see what the data shows,' it's people sitting down and saying 'let's show this is wrong,'" said Paul Rubin, an economist and co-author of an Emory University study. "Some scientists are out seeking the truth, and some of them have a position they would like to defend."

The latest arguments replay a 1970s debate that had an impact far beyond academic circles.

Then, economist Isaac Ehrlich had also concluded that executions deterred future crimes. His 1975 report was the subject of mainstream news articles and public debate, and was cited in papers before the U.S. Supreme Court arguing for a reversal of the top U.S. court's 1972 suspension of executions. (The court, in 1976, reinstated the death penalty.)

Ultimately, a panel was set up by the National Academy of Sciences which decided that Ehrlich's conclusions were flawed. But the new pro-deterrent studies have not gotten that kind of scrutiny.

At least not yet. The academic debate, and the larger national argument about the death penalty itself — with questions about racial and economic disparities in its implementation — shows no signs of fading away.

Steven Shavell, a professor of law and economics at Harvard Law School and co-editor-in-chief of the *American Law and Economics Review*, said in an e-mail exchange that his journal intends to publish several articles on the statistical studies on deterrence in an upcoming issue.

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