WHEN RACE MATTERS: THE INFLUENCE OF RACE ON CASE CLEARANCES
IN CAPITAL VS. NON-CAPITAL HOMICIDES IN TEXAS

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Texas leads the nation in the number of executions carried out since capital punishment was reinstated in 1976. Race was a key factor in the 1972 moratorium, and though the Supreme Court allowed for its return under new statutes, race continues to plague the capital punishment legal system. In this study, I examine the influence of race on case clearances in capital and non-capital homicides in Texas, using the extra-legal and non-discretionary theories from existing clearance literature. I find that race influences the probability of cases being cleared in non-capital cases but has no statistically significant effect in clearing capital cases.
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Introduction

Political legitimacy is predicated on the government’s ability to protect those who consent to be governed, and the people expect to see the legal system as legitimate, fair, and just. Despite increased awareness and programs to address race and ethnicity tensions between law enforcement and black communities, a majority of black citizens continue to believe that the police are more biased against them than against whites (Matsueda and Drakalich 2009). The role of race in our criminal justice system has been a consistent research focus for scholars of law and policy. Much research emphasizes the effect of white victims on the outcome of who ultimately gets sentenced to death, and nowhere is the issue about institutional racism more hotly debated than when examining the issue of capital punishment with most research finding that there exists a bias against minority offenders in favor of white victims (Alesina and La Ferrara 2014, Baldus et al. 1983, Girgenti 2015, Keil and Vito 2006, Lenza, Keys, and Guess 2005, Phillips 2012).

The principal question here is whether racial biases exist in capital punishment procedures in Texas, but the process is multifaceted and must be examined in stages—of which the imposition of the death penalty is a series of decisions. Capital punishment research focuses on many aspects of the trial, including the prosecutor’s decision to seek the death penalty, the process of selecting the jury, the judge’s handling of trial proceedings, and the sentencing. Yet one of the most critical stages of the ultimate outcome to any case, and one that is relatively less considered, is whether the crime
(incident reported) goes forward for an arrest—that is whether it is cleared. Examining what happens in this first step is important in understanding the overall process, since evidence of discrimination here can influence subsequent phases. If the population of cases entering the system has racial discrepancies, then evidence of racial disparity at later stages may occur not because of biases on the part of decision makers—prosecutors, juries, and judges—but because that is the pool of offenders moving through the system. On the other hand, if racial biases are not apparent at the clearing phase but are at the sentencing phase, then the bias is entering at some point during the process after arrest. In this study, I ask a basic question about racial and ethnic prejudices and whether at the initial stage of the process, they exist with respect to the race of the victim, depending on whether the homicide is a capital or a non-capital homicide. Specifically, do cases have a higher probability of being cleared in homicides involving white victims than those involving Hispanic or Black victims?

I argue that the races of victims influence decisions in the clearance phase for non-capital murders, but victim racial and ethnic factors are not as determinative in capital murders, because capital cases are more likely to face coverage and scrutiny by the media, placing pressure on detectives to clear capital cases. A Los Angeles study on news coverage of homicides shows that several factors that elevate a murder to a capital crime also increase its chances of being reported in the news, including incidents

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1 “Crime in the United States 2013: Clearances,” FBI UCR, last accessed October 22, 2017, https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/offenses-known-to- law-enforcement/clearances/clearancetopic_final. The FBI defines a case as ‘cleared’ if the incident is closed because the police make an arrest of it is closed for exceptional means. Exceptional means is not distinguished from arrests in FBI data, though it is reasonable to assume that most cases that are cleared result in an arrest, since ‘exceptional means’ involves situations such as the offender dying or the detectives losing the cooperation of the victim. For the purposes of this paper, I use the terms ‘clear’ and ‘arrest’ interchangeably.
with multiple murders, those involving very young victims, and those with special circumstances (which the authors define as those eligible for capital charges) (Sorenson, Manz, and Berk 1998).

I conduct a logit analysis to determine if racial biases are present at the initial stage of criminal proceedings—the case clearance. This study adds to the homicide clearance literature in three ways. First, I explicitly incorporate an analysis which includes race and ethnicity categories for Black, White, and Hispanic victims. While some studies consider the impact of Hispanics (Alderden and Laverly 2007, Litwin 2004, Litwin and Xu 2007), much of the research examines only the dichotomy between black and white victims and offenders (Puckett and Lundman 2003, Regoeczi 2000, Roberts 2007). Lumping this category together misses a critical distinction and misrepresents the racial and ethnic divisions that may be present in highly salient policy domains like capital punishment, especially in states with a large Hispanic population such as Texas where Hispanics make up more than a third of the state’s population.²

Before distinguishing between Hispanic and White in the data, White victims account for 10,786 of the total victims. Once separated, Hispanics become the largest represented race with 5,597 victims and White victims total 5,189, further highlighting the need to separate the two in analyses on race and ethnicity, since racial biases may look different when accounting for Hispanic victims as their own racial category.

Second, this study advances prior research because it provides a current picture specific to procedures in the state of Texas, adding to the series of other state-level

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studies. With documented differences involving race in the South (Alesina and La Ferrara 2014), and with Texas leading in most death penalty statistics, studies focusing on Texas assist in broadening our understanding of death row generally and particularly shows us what is happening within the state with large numbers of Hispanic defendants and victims. Finally, this study adds to the literature as it differentiates capital and non-capital homicides in separate models to see if the influence of race is different depending on these circumstances.

In the following section I provide a brief history and overview of the death penalty in Texas. Next, I review the literature on race and homicide clearances and discuss three hypotheses. Then, I present the data and methods before discussing the findings. Finally, I conclude with the finding that the race of the victim has a significant influence in clearing non-capital cases but has no effect on whether a case is cleared in capital homicides. I close with suggestions for future research.

Capital Punishment in Texas

The U.S. Supreme Court has decided dozens of landmark cases defining the boundaries of capital punishment. In *Furman v. Georgia* (1972) the Court suspended executions, holding that its use was cruel and unusual in violation of the Eighth Amendment. In his concurring opinion in *Furman*, Justice Stewart said that while capital punishment was not cruel and unusual in and of itself, it was nevertheless unconstitutional in that it was at the time “so wantonly and so freakishly imposed (*Furman v. Georgia*, 310).” Criticism surrounding the death penalty focused on racial discrimination, particularly against black offenders, and Justice Douglas stated that capital punishment procedures should not discriminate against an offender “by reason
of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices (Furman v. Georgia, 242).” Of particular concern for some of the justices in this case was not the laws themselves but the application of the laws that resulted in sentences and executions meted out arbitrarily or disproportionately to individuals who were black or lacked the financial resources to afford adequate counsel. The Court pointed to the unfettered discretion of judges and juries, stating that offenders in capital murder trials, “live or die, dependent on the whim of one man or of 12 (Furman v. Georgia, 253).” States began working on new statutes to limit discretion, and four years later the Court heard and affirmed new statutes in Gregg v. Georgia (1976), including companion cases from Louisiana, Florida, North Carolina, and Texas.

In Jurek v. Texas (1976), the companion case heard with Gregg, the Court was convinced that the new Texas statute would reduce the Eighth Amendment concerns it had in Furman. First, Texas clearly defined capital crimes, limiting death eligibility to a narrow subset of crimes that involved aggravating elements (Jurek v. Texas 1976, 270). It also implemented a bifurcated system for capital trials, separating them into a guilt/innocence phase and a sentencing phase (276). Furthermore, the statute allowed for the inclusion of both aggravating and mitigating factors for judges and jurors to consider when deciding punishment (276). The Court held in favor of the state, believing the changes to be sufficient to alleviate arbitrary sentencing, and the moratorium induced in Furman ended.

Texas capital trials are unique in that juries must unanimously answer in the affirmative during the sentencing phase about whether the defendant is a future danger
to society (*Jurek v. Texas* 1976, 268). Despite the safeguards intended by the state and affirmed by the Court, biases based on race and ethnicity continue to appear in decisions to impose capital punishment, and may even be sanctioned during the court proceedings. For example, the U.S. Supreme Court heard arguments during the 2016 term from a Texas case involving black defendant Duane Buck who claimed racial discrimination in his original capital trial.\(^3\) During his 1997 trial, a psychologist testified that black people are more likely than others to commit violent crimes.\(^4\) As one of six capital sentences in Texas where such testimony assisted in the sentencing of black offenders (with evidence of discrimination in their individual cases), these cases meet the standard required under the Court’s decision in *McCleskey v. Kemp* (1987).\(^5\)

Attorneys for McCleskey argued that systematic evidence of racial discrimination in death penalty cases was sufficient to show an Eighth Amendment violation in his case.\(^6\) Petitioners in the case used statistical analyses from a study that showed that cases involving white victims are more likely to result in a death sentence (Baldus et al. 1983). The Court held that systemic evidence is insufficient to show racial discrimination in individual cases, encouraging instead that such analyses be presented to state legislatures.\(^7\) Post-*McCleskey*, it is important to provide updated information to state legislatures and voters, decision-makers in the best position to effect change in the

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\(^5\) Ibid.


\(^7\) Ibid.
system if they deem it necessary. Furthermore, state studies are important, because capital punishment exists in jurisdictions where the public supports the process and elected officials use the practice of being tough on crime as part of their campaigns, yet the state of Texas “provides the public with inadequate information to understand and evaluate capital punishment in the state.”\(^8\) Current and unbiased analyses on \textit{de facto} death penalty procedures give the people and her representatives the opportunity to consider its continued practice.

State studies are also necessary as jurisdictions vary greatly, whether by statute, culture, or ideological climate—differences that inevitably result in a wide range of practical applications. Executions resumed in 44 states after the 1976 \textit{Gregg} decision, though nine of those states have since abolished or overturned their statutes, and four governors have issued a moratorium.\(^9\) Texas executed Charlie Brooks on December 7, 1982, as its first execution post-\textit{Gregg}\(^10\), and has since led the nation in the number of executed offenders with 544 out of the 1,463 national total since 1976.\(^11\) California leads the nation in its death row population with 744 followed by 386 in Florida and 247 in Texas.\(^12\) The biggest difference is that through September, 2017, California has


\(^{9}\) “States with and without the Death Penalty,” last updated November 9, 2016, https://deathpenaltyinfo.org/states-and-without-death-penalty

\(^{10}\) “Death Row Facts,” last accessed September 7, 2017, https://www.tdcj.state.tx.us/death_row/dr_facts.html The death penalty was allowed to recommence on January 1, 1974. John Devries was the first person to be sentenced to death after the moratorium and was received on death row February 15, 1974. On December 7, 1982, Charlie Brooks was the first person executed post \textit{Gregg}.


\(^{12}\) “Death-Row Prisoners by State and Size of Death Row by Year Death Penalty Information Center, last
executed 13 offenders since 1976, Florida 94, and Texas an unparalleled 544.\textsuperscript{13} Oklahoma ranks second in the number of executions since 1976 with 112.\textsuperscript{14} Since Texas is one of few states that routinely carries out executions and does so at an exceptionally high rate, it is critical to understand the influence of race in its use of the ultimate punishment.

In the following section, I review the literature on homicide clearances and discuss theories on clearing cases for both capital and non-capital murder. The literature focuses on all first-degree murders, rarely distinguishing between the two types. I consider this difference under the non-discretionary and extra-legal theories within the clearance literature.

Race and Clearing Homicides

The process of adjudicating murder cases is almost always the lengthiest procedure in the criminal justice system, since these cases often carry much greater penalties than other offenses. Racial bias can enter at any point in the process from clearing a crime (the arrest) to sentencing. In this research, I examine the initial investigation into the crime to see which victims receive “justice” if it is measured as an arrest of an alleged perpetrator accused of being the person responsible for the homicide, since the arrest identifies a specific individual, setting the wheels in motion for someone being held responsible for the death of the victim. As Black (1976) states, “an


\textsuperscript{14} Ibid.
arrest is *more law* than no arrest” (pg. 3). Using data from the FBI Supplementary Homicide Reports (SHR), I examine the influence of race on whether or not an offender is identified for arrest during the initial investigation of first-degree murders in Texas, that is, whether a case is cleared. I do this to see if the race of the victim impacts the odds of the police clearing a case.

Just as there have been theories about the imposition of who receives the death penalty, there have been similar debates about the clearance of homicides. Two competing theories have driven studies in the past few decades for homicide clearances. Do law enforcement and detectives use their own discretion when making decisions about whether to clear a case to move forward in the system (extra-legal theory) (Black 1976), or do they treat each case equally based on the merits of the individual case and the crime involved (non-discretionary theory) (Litwin 2004, Roberts 2007)? First, the extra-legal theory suggests that police use their own discretion when clearing homicide cases and may consider factors such as victim characteristics (including racial and ethnic status), the location of the crime, or other factors that are outside the legal framework for making arrest decisions (Black). According to Black’s stratification argument, officers are less likely to clear cases involving black victims, suggesting that the implementation of capital murder laws are less effective for some persons based on their racial status. This is thought to be ‘less law’ in the pursuit of justice that Black victims receive than other non-Black victims because racial bias interferes with the decisional process (Black). The research that directly tests and supports this theory is limited when considering the impact of race on clearance rates. An increase in homicides involving Black and Hispanic victims coinciding with a
decrease in clearance rates for cases with both minority groups provides evidence that race has an impact on whether cases are cleared (Litwin and Xu 2007). Some research shows decreases in clearance rates for only Latino victims (Litwin 2004), although both Black and Latino victims have seen a decrease in rates more recently than in the past, showing that rates change over time (Litwin and Xu 2007). Still others find that victims’ races matter but only under certain circumstances such as gang-related activities (Alderden and Laverly 2007). That the “media, local political figures, and prosecuting attorneys exercise significant impact on police practices and procedures, investigative decision making, and even fluctuations in murder clearance rates” suggests that, at the very least, cases are not uniformly investigated (Davies 2007 p. 146).

In contrast, the non-discretionary theory emphasizes that police approach all homicides equally because of the seriousness of the crime itself (Litwin 2004, Roberts 2007). The theory suggests that police departments use clearance rates as a quantifiable measure of productivity, so detectives are motivated to clear all homicide cases. This means that details that matter to the individual case such as the murder weapon (Puckett and Lundman 2003), circumstances, and situational characteristics (Roberts 2007) influence whether a case is cleared. For example, homicides involving physical contact, such as stabbing or strangulation, provide police with more physical evidence to collect since contact was made during the attack, assisting them in solving cases and increasing the clearance rate for these cases (Geberth 1996, Litwin 2004, and Puckett and Lundman 2003). A decline in clearance rates coincided with an increase in firearms as the cause of death in homicides in Chicago between 1991 and 2002, providing further evidence that the murder weapon is a strong influence in
clearance rates (Alderden and Lavery 2007). These findings support the theory that legal factors are determinative in clearing cases rather than race or other extra-legal factors.

Though the literature is inconsistent when considering the influence of victim race on clearance rates, the analyses do not distinguish between capital and non-capital cases. In the present study, I argue that this distinction is necessary and that both theories are relevant but under different circumstances. The extra-legal theory is more appropriate for non-capital homicides and the non-discretionary theory for capital homicides when it comes to clearing cases. Texas defines capital crimes as homicides, which include those involving murder with certain types of aggravating factors (such as burglary, robbery, aggravated sexual assault, and arson), murder of more than one person, and murder of certain individuals—children under ten, peace officers, and firemen.\(^{15}\)

With unlimited time, money, and other resources, police might have the ability to clear homicides consistent with the non-discretionary theory. The goal of each department and its individual officers might be to clear all homicides that occur within their jurisdictions. The reality is, however, that departments only have limited resources with overlapping cases forcing officers and detectives to make decisions and their choices are constrained by time (Corsianos 2003, Goldstein 1977). In this decision-making environment, bias based on ethnicity and race can have an impact on the outcome to clear a case (Black 1976). I argue that these choices allow officer discretion

in resolving non-capital homicide investigations, since they must balance resources with outcomes. Whether intentional or not, this process of decision-making makes way for extra-legal factors to influence decisions to prioritize some cases over others. In these cases, I expect race of the victim to be part of the calculation on whether or not cases are cleared in non-capital homicides. Therefore, I test the following hypotheses:

The organizational and political pressures of capital cases make it more difficult for extra-legal factors to influence the decision to prioritize certain cases. Capital crimes are more likely to be covered in the media (Sorenson, Manz, and Berk 1998), so these cases are under more scrutiny from the community. This media attention along with motives by area politicians to appear tough on crime can increase pressure on law enforcement to clear these particular homicide cases (Corsianos 2003, Davies 2007), and politicians are known to bend to the pressures of strong public opinion in death penalty cases (Brace and Boyea 2008). Professional expectations and public attention increase with more heinous crimes, which I argue places more pressure on law enforcement to clear capital cases. Therefore, I expect race to matter less in capital cases as detectives work to clear all capital cases to satisfy an observant public and those in their political hierarchy. Therefore, I test the following hypothesis:

H1a: In non-capital homicides, consistent with extra-legal theories, cases with Hispanic victims are less likely to be cleared than cases with white victims.

H1b: In non-capital homicides, consistent with extra-legal theories, cases with Black victims are less likely to be cleared than cases with white victims.

Though race of both the victim and offenders could influence these decisions, the available data do not indicate race of the offenders unless an arrest was made. In other words, the SHR only shows race of offender for cases that are cleared; therefore, analyses that use a binary variable of cleared or not cleared cannot include race of offenders, as only cleared cases will list that information.
H2: In capital homicide cases, consistent with non-discretionary theories, race of the victim will not have a statistically significant impact on cases being cleared.

Data and Methods

To test the hypotheses, I examine the influence of the victims’ races on whether or not cases are cleared, using separate models for capital and non-capital cases. I expect cases involving white victims to have a positive and significant effect on cleared cases in non-capital homicides consistent with the extra-legal theory. In line with the non-discretionary theory, I do not expect race to significantly affect clearances in capital cases, because attention from the media and political players pressure detectives to attempt to clear all cases regardless of extra-legal factors such as race.

I use SHR located on the Inter-university Consortium for Political and Social Research website hosted by the University of Michigan – Ann Arbor.17 The SHR is compiled as part of the FBI’s Uniform Crime Reporting Program to provide monthly data from local agencies reporting crimes. The dataset includes race, ethnicity, gender, and age of victims and offenders (information on offenders is only available for cleared cases) along with details of the crime, including the location of the crime, the cause of death, and the circumstances surrounding the crime. The unit of analysis is the crime incident.

I examine all first-degree homicides in Texas between 1998 and 2014 for which the police know the circumstances of the crimes. For consistency of data, I started with

the date at 1998 because that is when the US Department of Justice changed the way it catalogs the SHR, and the last data currently available are reported through 2014. The SHR data use the incident as the unit of analysis and not the offender or the victim. Therefore, some observations consist of more than one offender and/or more than one victim. There are a number of cases that have multiple offenders of different races, so I coded only the person identified in the data as the main offender. Similar to prior research methods, I removed 70 cases in which the victims in a given crime were of different races than one another, because it is impossible to determine racial biases, since multiple races are represented. Finally, I removed 664 cases that involved felons who were killed by police officers. In these cases, the clearance rate is dramatically different from cases that do not involve police officers who are responsible for the homicide. In fact, I ran a crosstab analysis on the data, and it shows cases were cleared 98% of the time when a police officer killed a felon and 89% of the time in all other cases. Even though these are homicides in the data, the circumstances are exceptionally different from cases cleared where officers are not the offenders. It seems likely that these cases have a much higher chance of being cleared than the remaining cases, since the police were responsible for the homicide and are the same people who are responsible for clearing the cases. After these exclusions and those dropped for missing data, I examine a total of 15,740 observations.

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18 Girgenti (2015) excludes from her analysis cases involving multiple victims of different races. Taylor, Holleran, and Topalli (2009) use only cases involving a single offender and a single victim. Roberts (2007) runs the models with all victims then with only single-victim homicides and finds similar results between them.
Dependent Variable

The dependent variable is whether the case is "cleared," meaning the police made an arrest and/or charged at least one person for a homicide. Alternatively, if a case is not cleared, it means that no one was arrested for or charged with the incident.\textsuperscript{19} Consistent with previous research on clearances (Regoeczi 2000), I code a case as cleared (cleared=1) if the "situation" variable in the SHR is coded as 'single victim/single offender,' 'single victim/multiple offenders,' 'multiple victims/single offender,' or 'multiple victims/multiple offenders.' The case is coded as not cleared (cleared=0) if the "situation" is coded as 'single victim/unknown offender(s)' or 'multiple victims/unknown offender(s). Homicide detectives know details of offenders when they are arrested and processed, but the details are unknown if no arrest is made. Coding the variable in this manner distinguishes between those cases that are cleared and those that are not. Eighty-nine percent (14,591) of the cases in these data were cleared and 11 percent (1,725) were not. One important caveat on data limitations: What local offices report on the SHR is information based on the officers' initial investigations and not the final outcome of any given case. A case that shows in these data as "not cleared" does not mean the case was never cleared, it means that officers did not clear the case during their initial investigation.\textsuperscript{20} Thus the analysis here is limited to the impact of race during that initial time frame. Future research may want to consider the next stage of the analysis by collecting data related to those cases "cleared" after the initial investigation.

\textsuperscript{19} For the purposes of this study, I consider cleared cases strictly as those that are reported as such to the FBI.

\textsuperscript{20} To determine the number of cases that were cleared after police departments reported to the FBI would involve researching each of the cases individually and is beyond the scope of this project.
The SHR lists 31 circumstances under which the homicides in the data take place. I use these circumstances to code the variable for capital homicides. I code as capital=1 those with circumstances listed as rape, robbery, burglary, larceny, motor vehicle theft, arson, other sex offenses, and felony, because these are situations that elevate homicides to capital crimes in Texas. I also code as capital those homicides that involve a victim under the age of ten and those that result in more than one homicide, as these are also situations eligible for capital charges. I code the other cases that are not death eligible as capital=0, because they are listed as one of the following situations that are not eligible for the death penalty: argument over money or property, brawl due to influence of alcohol, brawl due to influence of narcotics, child killed by babysitter, felon killed by private citizen, gambling, gangland killings, gun-cleaning death-other than self, institutional killings, juvenile gang killings, lovers triangle, narcotic drug laws, other, other-not specified, other arguments, other negligent handling of gun, prostitution and commercialized vice, sniper attack, and victim shot in hunting accident. Twenty-six percent (4,232) of the cases are capital and 74 percent (12,084) are non-capital. I present three separate models—one with all capital homicides to test the non-discretionary hypothesis, one with all non-capital homicides to test the extra-legal hypotheses, and one with all homicides combined for comparison.

The explanatory variable I consider in this study is the race of the victim. In each model, I also include the following control variables: multiple victims, major counties, physical contact, and gender of victim. Below I explain each of these variables in turn.

21 The ‘multiple victims’ variable is excluded from the non-capital model, because if a case has multiple victims it is automatically eligible for a capital case. Therefore, there are zero cases with multiple victims in the non-capital homicide model.
Race of Victim

Race of the victim is the primary variable under examination in the clearance models of this study. I expect race of the victim to influence whether a case is cleared in non-capital homicides consistent with the extra-legal theory (Black 1976), while I do not expect race to have a significant effect in capital homicides consistent with the non-discretionary theory (Litwin 2004, Roberts 2007) and I test the following hypotheses:

H1a: In non-capital homicides, consistent with extra-legal theories, cases with Hispanic victims are less likely to be cleared than cases with white victims.

H1b: In non-capital homicides, consistent with extra-legal theories, cases with Black victims are less likely to be cleared than cases with white victims.

H2: In capital homicide cases, consistent with non-discretionary theories, race of the victim will not have a statistically significant impact on cases being cleared.

The Texas Department of Criminal Justice (TDCJ) categorizes race as White, Black, Hispanic, and Other. For comparison and consistency in future research, I recode these SHR data to match the TDCJ categories. The SHR identifies Hispanic as an ethnicity rather than a race, so I recoded race to include Hispanic. Table 1 details the Hispanic victims by race. Hispanics in the Black and Other categories combined account for less than one percent of the total victims. As you can see in the table, almost all Hispanics in the data are White. I recoded 5,597 victims who were White and Hispanic as Hispanic.22

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22 Those who are Black and Hispanic remain as Black, because if I am considering whether or not decision makers are biased based on race, they are likely to do so based on appearance. It is reasonable to expect that most Black Hispanics are more likely to be viewed as Black than Hispanic. Furthermore, Hispanics in the Black, Other, and Unknown categories account for only .008 percent of the total victim count. If any of these categories constituted a non-negligible amount of the total population, perhaps the appropriate method would be to have White-Hispanic, Black-Hispanic, Other-Hispanic, though that does not seem necessary with the present dataset, because the amount is miniscule.
Table 1: Hispanic Victims by Race

<table>
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<th>Non-Hispanic</th>
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<td>5597</td>
<td>4032</td>
<td>1157</td>
<td>10,786</td>
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<tr>
<td>Black</td>
<td>40</td>
<td>4704</td>
<td>465</td>
<td>5209</td>
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<tr>
<td>Other</td>
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<tr>
<td>Total</td>
<td>5640</td>
<td>9012</td>
<td>1664</td>
<td>16,316</td>
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Before recoding Hispanics into the racial categories, White victims are the largest racial category with 10,786 total. Accounting for Hispanics reduces White victims to 5,189 (see Table 2). Black victims number 5,209 and Hispanics emerge as the largest category with 5,597 victims. The data include 272 Asian offenders and 29 American Indian or Alaskan native offenders, combined in an ‘Other’ category. The race of 20 victims is unknown. Table 2 also shows the percentage of cases cleared in each category. Cases involving White victims are cleared more often than any other racial category, and Black and Hispanic victim homicides have similar clearance rates as one another. As you can see, adding Hispanic to the racial categories makes a substantial difference as it emerges as the largest category, accounting for 34% of the total number of victims. This highlights the need to account for Hispanics in studies on race and the death penalty, particularly in a border state with a large Hispanic population. Failing to do so distorts the data and can interfere with the generalizability of the data.
Table 2: Race of Victim for Homicides in Texas 1998-2014

<table>
<thead>
<tr>
<th></th>
<th>All</th>
<th>Cleared</th>
<th>% Cleared</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Homicides</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>5189</td>
<td>4802</td>
<td>92.54</td>
</tr>
<tr>
<td>Black</td>
<td>5209</td>
<td>4582</td>
<td>87.96</td>
</tr>
<tr>
<td>Hispanic</td>
<td>5597</td>
<td>4943</td>
<td>88.32</td>
</tr>
<tr>
<td>Other</td>
<td>301</td>
<td>249</td>
<td>82.72</td>
</tr>
<tr>
<td><strong>Capital Homicides</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>1379</td>
<td>1172</td>
<td>84.99</td>
</tr>
<tr>
<td>Black</td>
<td>1275</td>
<td>1016</td>
<td>79.69</td>
</tr>
<tr>
<td>Hispanic</td>
<td>1430</td>
<td>1153</td>
<td>80.63</td>
</tr>
<tr>
<td>Other</td>
<td>141</td>
<td>108</td>
<td>76.60</td>
</tr>
<tr>
<td><strong>Non-Capital Homicides</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>3801</td>
<td>3630</td>
<td>95.28</td>
</tr>
<tr>
<td>Black</td>
<td>3934</td>
<td>3566</td>
<td>90.65</td>
</tr>
<tr>
<td>Hispanic</td>
<td>4167</td>
<td>3790</td>
<td>90.95</td>
</tr>
<tr>
<td>Other</td>
<td>160</td>
<td>141</td>
<td>88.13</td>
</tr>
</tbody>
</table>

Multiple Victims

I expect that the presence of additional victims will increase the likelihood of cases being cleared, since more victims provide more information and evidence for detectives to draw from to solve a case. The SHR has a variable that indicates whether each crime involves single or multiple offenders and victims. I code as multiple victims the three combinations that involve more than one victim—multiple-single, multiple-multiple, and multiple-unknown. Almost all crimes in these data involve one victim, accounting for 95 percent (16,316) of the cases, and five percent (754) of the homicides involve two or more victims.

Major Counties

Crimes can be difficult for offenders to cover up in smaller cities and towns,
because people tend to know more about what is happening within their communities (Pare, Felson, and Ouimet 2007). It is also likely that the larger counties are more likely to have a back log of cases. Therefore, I expect the largest counties in the state to be less likely to clear cases than the counties with populations less than one million. I code as a major county Bexar, Dallas, Harris, Tarrant, and Travis Counties (major county=1; all other counties=0), as these are the counties in Texas with a population exceeding one million.23

Contact

Causes of death that involve physical or close contact, such as blunt force trauma, strangulation, and stabbing, are more likely to leave physical evidence (Geberth, 1996; Litwin 2004). Therefore, I expect cases are more likely to be cleared if the cause of death involved physical contact between the offender and the victim. Contact is coded as ‘1’ for deaths caused by asphyxiation, blunt force trauma, drowning, knives, personal weapons (including beating), strangulation, and being pushed or thrown out of a window, because these are the situations most likely to require physical contact. Contact is coded as ‘0’ for deaths involving guns, explosives, fire, drugs, and poison because the perpetrator does not have direct contact. Sixty-seven percent of the incidents in this study involve a cause of death that does not require physical contact.

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Gender of Victim

The gender of the victim can make a difference in whether or not cases are cleared, but the results are mixed within the literature. The extra-legal theory (Black 1976) suggests that cases involving female victims are less likely to be cleared by police, since they are expected to receive ‘less law’ similar to minority victims. Some studies show that homicides involving male victims are more likely to be cleared than those with female victims (Litwin and Xu 2007, Regoeczi 2007), while some show that female-victim cases are more likely to be cleared (Roberts 2007, Taylor, Holleran, and Topalli 2009). Still, others show no significant influence of gender on case clearances (Litwin 2004, Puckett and Lundman 2003). Therefore, I control for gender, but I do not indicate a direction. Gender is coded as a dichotomous variable (male=1, female=0).

Results and Discussion

The estimates (Tables 3, 4, and 5) show support for both the non-discretionary hypothesis and the extra-legal hypothesis depending on the circumstances of the crime. Overall, the results show that race influences case clearances in non-capital homicides but does not in capital homicides. The results of the three models stress the need to distinguish between the circumstances in studies involving homicide clearances.

Though much of the literature separates the circumstances into collapsed categories (Alderden and Laverly 2007, Litwin 2004, Litwin and Xu 2007, Pare, Felson, and Ouimet 2007, Puckett and Lundman 2003, Regoeczi 2000, Roberts 2007), I have not seen a single study that differentiates between capital and non-capital homicides.

In Table 3, I present the results of all homicides combined. This table includes capital and non-capital homicides and shows that White-victim homicides are more
likely to be cleared than homicides involving minority victims. The probability of clearing a homicide is 1.8 percent less likely for cases involving Black victims, 2.5 percent less likely for Hispanic victims, and 7.5 percent less likely for victims in the Other category, with all results reaching the highest level of statistical significance. This is consistent with the extra-legal theory that suggests that the lives of minorities are valued less that the lives of White victims (Black 1976).

**Table 3: Logit Models for Influence of Victim Race on All Combined Homicide Clearances in Texas 1998-2014**

<table>
<thead>
<tr>
<th></th>
<th>Marginal Effects</th>
<th>Odds Ratio</th>
<th>Std. Error</th>
<th>P Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Victim Homicides</td>
<td>-0.018</td>
<td>0.806</td>
<td>0.059</td>
<td>0.003</td>
</tr>
<tr>
<td>Hispanic Victim Homicides</td>
<td>-0.025</td>
<td>0.750</td>
<td>0.054</td>
<td>0.000</td>
</tr>
<tr>
<td>Other Victim Homicides</td>
<td>-0.075</td>
<td>0.483</td>
<td>0.080</td>
<td>0.000</td>
</tr>
<tr>
<td>Female Victim Homicides</td>
<td>0.068</td>
<td>2.124</td>
<td>0.175</td>
<td>0.000</td>
</tr>
<tr>
<td>Multiple Victims</td>
<td>-0.015</td>
<td>0.843</td>
<td>0.098</td>
<td>0.139</td>
</tr>
<tr>
<td>Major County</td>
<td>-0.066</td>
<td>0.478</td>
<td>0.061</td>
<td>0.000</td>
</tr>
<tr>
<td>Physical Contact</td>
<td>0.041</td>
<td>1.571</td>
<td>0.102</td>
<td>0.000</td>
</tr>
<tr>
<td>Constant</td>
<td></td>
<td>13.679</td>
<td>1.001</td>
<td>0.000</td>
</tr>
</tbody>
</table>

N=15,740; Pseudo R2=.0435

All of the controls reached significance at the .001 level except for homicides involving multiple victims. Consistent with some of the prior research (Roberts 2007 and Taylor, Holleran, and Topalli 2009, although see Litwin and Xu 2007 and Regoeczi 2007), the results show that homicides involving female victims have a probability of being cleared that is 6.8 percent higher than for cases involving male victims. The literature has been mixed on female victims, and the fact that it emerges here with the largest marginal effect might mean that Texas places more value on the lives of female
victims. It could also mean that females are more often the victims of certain types of crimes that are more likely to be cleared. Further research is necessary to parse out this result that is consistent with some research and counter to others.

I expected detectives in major counties to be less likely to clear cases than those in relatively smaller counties. Indeed, the results show that the five counties with populations exceeding one million have a probability 6.6 percentage points lower than those with populations under a million. This is consistent with prior research that shows that larger areas provide more anonymity and privacy for offenders to hide crimes (Pare, Felson, and Ouimet 2007). I arbitrarily selected the population cutoff at one million. It seems reasonable that to a certain point, larger counties relative to smaller will be less likely to clear homicides. In Texas, these five largest counties have a much lower probability of clearing cases than smaller counties, though many of the smaller counties may not ever see a capital homicide.

Homicides with causes of death that involve physical contact have a clearance probability 4.1 percentage points higher than those involving a gun. This is consistent with prior research that posits that contact provides more physical evidence for police to use when investigating homicides (Puckett and Lundman 2003, Roberts 2007).

Though the results of the full model appear consistent with the extra-legal theory for victim race, a different picture emerges when considering capital homicides separately. I argue that race fails to influence decision making in capital homicides, because there is pressure on detectives to clear these cases. The results of the capital homicide model presented in Table 4 show support for the non-discretionary hypothesis, which states that race will not have a statistically significant effect on
whether a homicide is cleared. Indeed, none of the race variables reach significance in the capital model. Prior research codes different circumstances in a variety of ways, such as concomitant felony, gang-related circumstance, or alcohol or drug related circumstance (Alderden and Laverly 2007, Litwin 2004, Litwin and Xu 2007, Pare, Felson, and Ouimet 2007, Puckett and Lundman 2003, Regoecki 2000, Roberts 2007), but I did not find any studies that code the homicides as capital or non-capital. The results of this study suggest that the distinction is important when studying homicide clearances, since race acts differently in the separate models.

**Table 4: Logit Models for Influence of Victim Race on Capital Homicide Clearances in Texas 1998-2014**

<table>
<thead>
<tr>
<th></th>
<th>Marginal Effects</th>
<th>Odds Ratio</th>
<th>Std. Error</th>
<th>P Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Victim Homicides</td>
<td>-0.017</td>
<td>0.884</td>
<td>0.099</td>
<td>0.268</td>
</tr>
<tr>
<td>Hispanic Victim Homicides</td>
<td>-0.019</td>
<td>0.875</td>
<td>0.095</td>
<td>0.220</td>
</tr>
<tr>
<td>Other Victim Homicides</td>
<td>-0.034</td>
<td>0.790</td>
<td>0.174</td>
<td>0.283</td>
</tr>
<tr>
<td>Female Victim Homicides</td>
<td>0.056</td>
<td>1.473</td>
<td>0.179</td>
<td>0.001</td>
</tr>
<tr>
<td>Multiple Victims</td>
<td>0.084</td>
<td>1.798</td>
<td>0.221</td>
<td>0.000</td>
</tr>
<tr>
<td>Major County</td>
<td>-0.077</td>
<td>0.584</td>
<td>0.061</td>
<td>0.000</td>
</tr>
<tr>
<td>Physical Contact</td>
<td>0.078</td>
<td>1.719</td>
<td>0.170</td>
<td>0.000</td>
</tr>
<tr>
<td>Constant</td>
<td>0.078</td>
<td>5.120</td>
<td>0.607</td>
<td>0.000</td>
</tr>
</tbody>
</table>

N=4,010; Pseudo R2=.0371

All of the controls reach statistical significance in the capital model. Though the multiple victim variable did not reach significance in the combined model, it reaches significance at the highest level in the capital model, and shows that homicides involving multiple victims have a probability 8.4 percent higher than those with a single victim. Much of the prior literature does not control for multiple victims, and in fact many only consider single-victim cases (Roberts 2007; Taylor, Holleran, and Topalli 2009). Multiple
victims means more evidence and more information for police to be able to solve cases, so it makes sense that these cases are more likely to be cleared. Furthermore, there is likely added pressure on detectives, not only because the case is a capital crime, but also because it involves multiple victims. It also could be the case that more than one victim provides more leads for detectives to use when solving a case. For example, a second victim can possibly expand the suspect pool and subsequently help detectives narrow it down, since they can evaluate relationships to see if any overlap among the victims and the offender.

Similar to the combined model, capital homicides in the top five major counties have a probability of clearing cases that is 7.7 percent lower than that of the other counties. Cases involving physical contact are 7.8 percent more likely to be cleared than cases involving a gun. This is almost twice the percentage of cases with physical contact in the combined model. That the victim is female remains significant and shows a 5.6 percent increase in the probability of the case being cleared.

As we turn to the final model in Table 5, we see that the extra-legal theory is supported as race emerges as highly significant, showing that offenders whose victims were White are more likely to face arrest than if their victims were minorities. Black victim homicides result in a probability of being cleared that is 2.4 percent lower than White victim homicides. Hispanics are 3 percent lower, and those in the Other category are 6.3 times lower. Across the board, Hispanic victim homicides are less likely to be cleared than Black victim and White victim homicides. This emphasizes the need to include a Hispanic category in the model and to distinguish between Black and Hispanic.
The multiple victim variable drops from the model as the non-capital homicides do not include any cases with more than one victim. The remaining control variables are significant at the .001 level and show similar results to the other two models. Offenders who kill female victims are arrested at a 6.9 percent higher probability than those who kill males. Non-capital homicides committed in the five largest counties have a probability 4.6 percentage points lower than those in the remaining counties. Finally, cases involving physical contact have a probability of being cleared that is 4.7 percent higher than cases involving a gun.

Table 5: Logit Models for Influence of Victim Race on Non-Capital Homicide Clearances in Texas 1998-2014

<table>
<thead>
<tr>
<th></th>
<th>Marginal Effects</th>
<th>Odds Ratio</th>
<th>Std. Error</th>
<th>P Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Victim Homicides</td>
<td>-0.024</td>
<td>0.696</td>
<td>0.070</td>
<td>0.000</td>
</tr>
<tr>
<td>Hispanic Victim Homicides</td>
<td>-0.030</td>
<td>0.638</td>
<td>0.063</td>
<td>0.000</td>
</tr>
<tr>
<td>Other Victim Homicides</td>
<td>-0.063</td>
<td>0.420</td>
<td>0.110</td>
<td>0.001</td>
</tr>
<tr>
<td>Female Victim Homicides</td>
<td>0.069</td>
<td>2.735</td>
<td>0.327</td>
<td>0.000</td>
</tr>
<tr>
<td>Multiple Victims</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Major County</td>
<td>-0.046</td>
<td>0.512</td>
<td>0.042</td>
<td>0.000</td>
</tr>
<tr>
<td>Physical Contact</td>
<td>0.047</td>
<td>1.929</td>
<td>0.178</td>
<td>0.000</td>
</tr>
<tr>
<td>Constant</td>
<td></td>
<td>18.644</td>
<td>1.829</td>
<td>0.000</td>
</tr>
</tbody>
</table>

N=11,730; Pseudo R2=.0539

The study supports both the extra-legal and the non-discretionary hypotheses, depending on the circumstances. Consistent with the extra-legal theory, race of the victim matters in most homicides in Texas unless offenders commit capital crimes, in which case race no longer has the same impact on clearances, consistent with the non-discretionary theory. Furthermore, gender matters across all models, which is in line with the extra-legal theory. Multiple victims and physical contact increase the probability of cases being cleared, which follows the non-discretionary theory.
Conclusion

Overall, the results of these models show that the race of the victim influences decision-makers when clearing homicides unless the homicide involves a circumstance that elevates the crime to capital murder, then the effect of a white victim over a minority victim disappears. Therefore, racial bias does not appear to be present when considering victims' races during the initial phase of the capital process. Of particular concern here are the results of the non-capital homicide model. This model shows racial biases in which crimes are more likely to be cleared. Specifically, White-victim crimes are more likely to be cleared than crimes against any of the minority categories. Though this is not the focus of this study on the death penalty, it adds support for the extra-legal theory that suggests that officers value minority lives less than they value the lives of White victims.

This study is a first step in examining racial bias in contemporary Texas death penalty procedures. While I do not find racial biases at this first stage in the death penalty process, it is important to note that this study is conducted with data limitations. One challenge of evaluating bias at the clearance phase is that we can only consider the race of the victim, since data is missing for offenders in cases that are not cleared. We cannot gather from these data whether detectives consider suspects but do not move forward for arrest, situations that can certainly be racially motivated. Furthermore, the analysis is limited to information reported to the FBI through the SHR. It is likely that not all homicides are reported through this process. It is also likely that some homicides identified in these data as not cleared are in fact cleared after the information is reported to the FBI. It is also possible that some homicides appearing here as cleared may
become uncleared if charges are dropped. Furthermore, the status of the cases may have changed throughout the process. For example, with additional evidence some cases could have changes in the circumstances that elevated or lowered the aggravating factors that make it capital or non-capital. For these reasons, I advise the reader to consider these limitations when using these results.

Furthermore, a lack of racial bias during the clearance phase does not necessarily mean a racial disparity does not exist among homicide clearances. It simply means that the cause is less likely to be from bias than another factor. Additional research can analyze what drives this disparity. For example, are certain racial or ethnic groups more likely to be victims of certain types of crimes that are more difficult to clear, or are some groups more likely to be killed with a gun, which reduces the probability of being cleared? These are possible explanations that may also result in a racially disproportionate pool of offenders entering the capital punishment system.

I started this study with the overall question of whether racial biases exist in capital punishment procedures in Texas. A plethora of literature shows racial biases throughout capital procedures (Alesina and La Ferrara 2014, Girgenti 2015, Keil and Vito 2006, Phillips 2012), so, in a sense, I began this study with the assumption that racial biases exist in the Texas capital punishment process, asking if the biases are present at entry. The results of this study suggest that racial biases are not a major influence of who is arrested for capital crimes in Texas. Since it is not present at entry, the next logical question is whether it is present at all. The next step is to examine racial influence in capital murders at arrest compared to capital sentences to see the difference in proportionality. This would show if racial discrepancies exist somewhere
within the process. Then, subsequent studies can examine the individual stages of the process, such as the decision to seek the death penalty, jury selection, behavior of jurors and judges during the trial, sentencing, and who ultimately gets executed to see where racial biases occur. The major decision makers in the capital process are law enforcement officers, prosecutors, jurors, and judges. If racial bias exists, but does not exist at entry, then it may be entering the system through these elected officials and members of the community at the other stages. Further analysis is needed before making this determination.
REFERENCES


