

IV. CONCLUSION

Using historical data on murders in Chicago from 1870 to 1930, this Article examined the impact of judge-specific effects on the likelihood that a defendant would be found guilty of murder and the likelihood of the defendant receiving various sentences. We observe significant judge-specific effects for both convictions and sentencing outcomes. Additionally, we observe a strong relationship between election years for judges and the likelihood that a defendant will receive a death sentence. Defendants in our sample were approximately 15% more likely to be sentenced to death when the sentence was issued during the trial judge's election year. The size and significance of correlation between judicial election years and death sentences is in some ways surprising because Chicago judges generally did not have discretion to order death sentences. That is, if a defendant did not waive his or her right to a jury trial, then the jury decided both the guilty verdict and the sentence.⁴² Of course, even in a jury trial, judges were still able to influence the juries' decisions in various ways, particularly through jury instructions. During the period of this study, the electoral incentives for trial judges might have encouraged them to facilitate a death sentence, only to later privately request clemency from the governor. Through private communications with the governor, trial judges were often the most influential voice advocating or challenging the worthiness of the defendant's request for clemency.⁴³

A more contemporaneous examination of the connection between judicial elections and capital sentencing would constitute a valuable line of future research. Particularly useful would be an analysis that compares a jurisdiction where juries decide on death sentences with a jurisdiction where judges have full discretion to im-

⁴² See Act of Mar. 5, 1867, 1867 Ill. Laws 90, 90 (establishes law according to which juries in capital cases would decide both guilt and punishment). Around the beginning of the data set used in this analysis, many states, including Illinois, departed from laws requiring a mandatory death penalty for defendants found guilty of certain offenses to a system where the jury was given the discretion to impose death. Juries were given discretion in many states because lawmakers feared juries would not convict clearly guilty defendants for whom they did not view a death sentence to be appropriate. BANNER, *supra* note 4, at 214–16.

⁴³ We are grateful to Stuart Banner for bringing this point to our attention. The governor may then have to pay the political price the judge avoided in guiding the jury toward a death sentence. Governors may have been more insulated from the political consequences of granting clemency than they are today simply because clemency was more frequently ordered. Governors during that period commuted death sentences to imprisonment at rates between 25% and 50%, which are much higher rates than those seen today.

pose death sentences, such as in Alabama. In these jurisdictions, where ultimate responsibility for a life or death sentence cannot be placed on the jury, a politically-minded elected judge may be more responsive to popular opinion about capital punishment.