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**Private Prisons in Public Discourse: Measuring Moral Legitimacy**

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### **Abstract**

New policies need some degree of legitimacy if they are to survive. Prison privatization represents a case of a policy that had to overcome initial perceptions of illegitimacy. In the 1980s, governments began to allow private firms to run correctional facilities. Privatization shifted an inherently coercive, traditionally governmental function—incarceration—to the private sector, where entrepreneurs could potentially build a profitable business. Using data from four elite newspapers, this paper presents a frame-based approach to measuring and tracking moral legitimacy. Findings reveal a positive relationship between the use of private prisons in public policy and their legitimation in public discourse; moral legitimacy grew with the industry, and it was highest in states with the most private prisons.

## **Introduction to Modern Private Prisons in the United States**

For most of the 20<sup>th</sup> century, incarceration in the United States was the sole responsibility of government, whether at the federal, state, or local level. In the 1980s, a movement to allow private entities to imprison charged or convicted persons arrived on the corrections scene, presenting itself as an alternative or a supplement to the governmental monopoly on incarceration. Private operation of prisons (or other correctional facilities) happens through a contracting process, whereby a government entity specifies its needs via a request for proposals and private firms submit bids to win the detention duties. Typically, the government offers a per-diem payment to the firm, with the firm attempting to fulfill the requirements of the contract within the confines of the budget.

Since the 1980s, private contracting for correctional facility management has continued to expand. By the year 2005, 416 private correctional facilities existed in 45 states (and Washington, D.C.), and they held more than 108,000 inmates, roughly seven percent of the nation's inmates (Stephan 2008). Yet the adoption and eventual survival of private prisons was not guaranteed at the outset. The moral propriety of private sector imprisonment has been contested, particularly during the early years of privatization. Many critics argue that imprisonment is a fundamental responsibility of the state and cannot be morally turned over to the private sector. They claim the legitimacy of the criminal justice system would be degraded if jailers were private entities driven (oftentimes) by a profit motive. Despite such critiques, correctional privatization increased. How did private imprisonment go from a relatively unknown and morally questionable policy option to a common public policy?

This paper argues that the moral legitimacy of prison privatization has increased since the early days of prison privatization and this fact has fostered an environment in which prison privatization is less objectionable and in which policymakers and the public are more amenable to such contracting. The paper makes this case by analyzing the framing of prison privatization in

American news media. The paper first describes the historical context for the emergence of prison privatization. It then addresses literatures on legitimacy and framing, attempting to link the two. After describing the newspaper articles that serve as data, the paper then presents analyses that examine longitudinal and geographic variation in levels of moral legitimacy of prison privatization. The paper concludes with a discussion of the implications of the findings and suggestions for future work.

### ***The historical context of prison privatization***

Private prisons emerged in the 1980s in the midst of an ascendant market-oriented political philosophy and increasing incarceration rates. Fiscal conservatism was strong, buoyed by a belief in the power and efficiency of markets and the ineptitude of government (Selman and Leighton 2010). As president, Ronald Reagan sought to identify goods and services provided by government that could be turned over to the private sector (President's Private Sector Survey on Cost Control 1983). States followed this lead (Chi and Jasper 1998; Fixler, Poole, and Scarlett 1989). Government provision of goods and services was viewed in an increasingly negative light. Contracting out had already become common in other areas of service provision (Fixler and Poole 1987). These typically included services that were not deemed to be core functions of government, including custodial service, garbage disposal, facility maintenance, and information technology (Auger 1999). Contracting had even made its way into the world of corrections. However, this correctional contracting provided only ancillary services, like medical care and food service, and did not extend to the management and operation of the facility (Camp and Camp 1984).

Incarceration rates were also beginning to rise in the 1980s. Politicians engaged in tough-on-crime one-upmanship (Jacobs and Jackson 2010; Pratt 2009), with sentences to prison becoming more certain and longer for convicted offenders (Blumstein and Beck 1999). The eventual result

was nearly 30 years of tremendous growth in the imprisonment rate, which grew from 139 in 1980 to 506 in 2007 (Bureau of Justice Statistics 2011; West, Sabol, and Greenman 2010).

Private operation of prisons and other detention centers combined the elements of small government and a reliance on incarceration (Shichor 1995: 60-64). With the spectacular rates of growth in prison populations in the 1980s and 1990s, corrections agencies faced the challenge of accommodating the deluge of sentenced inmates. Contracting with private firms to house these inmates was seen as one means of increasing prison capacity. And although incarceration remained the government's financial responsibility, no (or few) government jobs were created when a private firm signed on to carry out the punishment.

### *Early cases of prison contracting*

The federal Bureau of Prisons (BoP) began contracting with private firms in the 1970s to operate community corrections facilities for adult offenders preparing for release (Bronick 1989).<sup>1</sup> The first federal contract for a confinement facility came in 1980, when Immigration and Naturalization Services (INS) contracted with Behavioral Systems Southwest to operate a secure immigrant detention facility in Pasadena, California. The BoP signed its first incarceration contract in 1984, allowing Eclectic Communications, Inc., to hold 60 young adult offenders in La Honda, California. At the local level, private firms took over selected county jails in Tennessee, Minnesota, Florida, and Pennsylvania in 1984 and 1985 (Logan 1990).

States began contracting for management of small, special purpose community correctional facilities (e.g., halfway houses and drug treatment centers) in the early 1980s (Mullen, Chabotar, and Carrow 1985) and soon moved on to adult confinement contracts. In 1986, Kentucky became the first state to contract with a private firm for operation of a secure adult detention facility. It was

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<sup>1</sup> Juvenile correctional facilities have long been operated by private entities. In fact, some open, community-based facilities for juveniles have been operated by private actors since the 19<sup>th</sup> century (Sutton 1990). Privately operated institutional facilities for juveniles (with higher security levels) have been in existence since the 1970s (Logan 1990).

followed by New Mexico, which allowed Corrections Corporation of America (CCA) to operate its prison for women (Logan 1990). Texas and California were also early privatizers, opening multiple private facilities in 1988 and 1989, respectively (General Accounting Office 1991: 33; Logan 1990). Many of these early state-contracted facilities were restricted to minimum-security inmates, female inmates, pre-parole inmates, and inmates returned to custody (Logan 1990).

### ***Early interest and opposition***

Correctional privatization received a lot of attention in these early years. In 1982, President Reagan initiated a privatization task force. Its official report, released the following year, identified imprisonment as one of the many government services that could feasibly be transferred to the private sector (President's Private Sector Survey on Cost Control 1983; Selman and Leighton 2010). In 1985, the National Institute of Justice and the National Association of State Legislatures, organized separate conferences on the topic of private corrections (Tolchin 1985a, b). Also in 1985, the U.S. House Subcommittee on Courts, Civil Liberties, and the Administration of Justice held its first of two hearings on private corrections. The second occurred in March of the following year (Subcommittee on Courts, Civil Liberties, and the Administration of Justice 1986). Prison privatization was also a hot topic of conversation at the 1986 National Governors' Association meeting (Donahue 1988). The interest in private corrections extended beyond government and into academia, with *The Prison Journal* publishing a special edition on private corrections in 1985 (see Mullen 1985).

Yet there was also organized opposition to correctional privatization. Two law enforcement associations, the National Sheriff's Association and the American Jail Association, came out against privatization in 1984 and 1985, respectively. In 1985, the trade group American Correctional Association (ACA) expressed "qualified support" for expanding private sector operation (Ring 1987). Even though the ACA was not yet a full-fledged supporter of private corrections (it would

become so later as it developed ties with CCA executives; see Selman and Leighton 2010), this tepid approval of private corrections was enough to lead the American Federation of State, County, and Municipal Employees (AFSCME) to withdraw its membership from the ACA that same year (General Accounting Office 1991). In 1986, the American Bar Association called for a moratorium on prison privatization until various constitutional, contractual, and statutory concerns had been resolved (Donahue 1988). Concerns such as these were never fully ameliorated, and, in the 1990s and 2000s, religious organizations and student activists revived calls to abandon private and for-profit incarceration (Culp 2005).

### *Growth in the industry*

Figure 1, based on reports from the Bureau of Justice Statistics (Stephan 1997, 2008; Stephan and Karberg 2003), shows the growth in the number of private correctional facilities used by state and federal (Bureau of Prisons) authorities since 1990. The total number of private correctional facilities grew from 67 in 1990 to 415 in 2005. Much of the growth was in private community corrections facilities, which allow at least half of inmates to leave the premises unaccompanied. These constituted three quarters of all private facilities by 2005. Yet the number of private confinement facilities (those allowing fewer than half of the inmates to leave the premises) increased by a factor of five from 1990 (21) to 2005 (107). By 2005 all but five states (Delaware, Nebraska, New Hampshire, Rhode Island, and Vermont) had some form of private correctional facility.

[FIGURE 1 HERE]

At the local level, there were 17 privately operated jails in 1993. By 1999, that number had risen to 47, with privately operated jails located in seventeen different states. These 47 jails detained nearly 14,000 people (1.4 percent of those in local detention) (Stephan 2001). At the federal level,

U.S. immigration officials utilized 14 privately operated detention facilities in 2009. These facilities held 27 percent of the detained alien population in the country (Schriro 2009).

### On Legitimacy

The practice of delegating carceral power to private firms represented a break with traditional modes of delivering punishment and conventional assumptions about the core responsibilities of government.<sup>2</sup> Like many other new practices, it required some degree of legitimacy to survive (e.g., Aldrich and Fiol 1994; Deeds, Mang, and Frandsen 2004; Strang and Bradburn 2001). In an influential theoretical article, Suchman (1995: 574) defined *legitimacy* as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions." Based on a survey of empirical and theoretical work on legitimacy, he distinguished several variants of legitimacy, one of which is *moral legitimacy*. Moral legitimacy is consent or support that is based on norms of appropriateness. An activity has moral legitimacy if observers view it as consistent with beliefs about what "should" be done. Simply put, an action is morally legitimate if it is seen as "the right thing to do" (Suchman 1995: 579).

This paper is concerned with the moral legitimacy of private prisons. While prison privatization has faced challenges throughout its existence, perhaps the most fundamental challenges have been based on the moral legitimacy of allowing private actors to imprison and detain people. These types of challenges arose early on, and they came in different forms. Some critics questioned the propriety of handing over an inherently coercive government responsibility to private actors.

For example, a *Los Angeles Times* editorial wrote, "[W]e urge the county not to relinquish its

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<sup>2</sup> Convict leasing in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries in Southern states was a forerunner of modern American prison privatization. However, this practice differed from modern prison privatization in that private business and plantation owners paid government in order to receive labor from inmates. The imprisonment responsibility acquired by the private entrepreneurs was an incidental role, secondary to exploiting the prisoners' labor and, at a macro level, suppressing black political power after the end of slavery (Hallett 2006: 43-51).

responsibility to enforce society's laws..." (*Los Angeles Times* Editorial Staff 1988: 2). Such concerns were not lost on Corrections Corporation of America. In its initial public offering of stock, in 1986, the company alerted potential investors to this risk: "Both the purpose for which the Company [CCA] was founded and the Company's method of operations are innovative. The Company's success depends largely on its ability to convince various governmental entities to contract with a private enterprise for a service that has historically been a governmental function and to overcome opposition of a variety of interest groups that campaign against the Company's contract proposals" (Corrections Corporation of America 1986, quoted in Selman and Leighton 2010: 90).

Another form of criticism viewed prison privatization as a threat to the legitimacy (in a non-technical sense) of the criminal justice system. One critic wrote, "As a matter of symbolism and public policy, it may well weaken the integrity of the criminal-justice system when an inmate looks at his keeper's uniform and, instead of seeing Department of Corrections, sees Acme Corrections Company" (Robbins 1989: 30). Another privatization skeptic remarked that "justice is not a service, it's a condition, an idea...It's not like garbage collection" (Tolchin 1985b: 17).

Still other opponents took aim at the profit motive often involved in contracting for incarceration. One Democratic state senator from Tennessee argued that if the state contracted out its prison management, "the top priority goals of the prison system then become high occupancy and profit, and that is wrong" (Hirsley 1985: 3). Similarly, an official at the Tennessee American Civil Liberties Union said, "The profit motive cannot be part of evenhanded administration of justice" (Hirsley 1985: 3). Each of these examples, although emphasizing different points, tries to make the claim that private operation of prisons is not "the right thing to do".

Moral legitimacy has implications in a number of policy areas, including criminal justice. Mauer (2001) has written that "instrumental considerations such as cost-benefit are but one component in the development of criminal justice policy" (16); another component is moral

propriety (also see Garland 1990). For example, opposition to the death penalty may be based on the inherent (im)morality of state killing or on its application in practice (e.g., post-sentencing exonerations or racial bias) (Garland 2002, esp. 460-64). Disputed moral understandings of what is and is not "the right thing to do" have also threatened a number of nascent economic industries, including life insurance (Chan 2009; Zelizer 1979), secondary life insurance (Quinn 2008), commodified organ procurement (Healy 2006), gambling (Dombrink and Hillyard 2007), and biotechnology (Deeds, Mang, and Frandsen 2004). In each of these cases, the industry lacked moral legitimacy and had to overcome cultural resistance. Prison privatization, representing both a criminal justice practice and an economic industry (Ogle 1999), has similarly had to address questions of its moral legitimacy.

### **Framing Private Prisons in Public Discourse**

Tracking the public discourse surrounding a policy can provide a sense of how it is viewed by public actors, and frame analysis provides a useful way of analyzing this discourse. The concept of *frame* has been used in a variety of ways in the social sciences (Entman 1993).<sup>3</sup> Gamson and Modigliani (1987) defined a frame as "a central organizing idea or story line that provides meaning to an unfolding strip of events...The frame suggests what the controversy is about, the essence of the issue" (143). Frames do not necessarily imply a position on an issue (Ferree, Gamson, Gerhards, and Rucht 2002). Opposing camps may employ the same frames to support their position, making claims on a common terrain of debate. However, opponents may instead employ different frames and attempt to settle the terms of the debate in a way that they deem most favorable.

Two frames are particularly relevant in discussions of prison privatization: the Morality frame and the Instrumental frame. The *Morality frame* focuses attention on the inherent, immutable

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<sup>3</sup> This study is concerned with *media frames*, not *individual frames*. The former organizes the collection and presentation of information in the media; the latter allow individuals to interpret and process information (Scheufele 1999).

properties of a practice; it is not based on positive or negative performance or on outcomes. In the case of private prisons, the Morality frame captures at least three ideas. One is the propriety of injecting a profit motive into incarceration. For example, one privatization opponent complained, "Their [private prisons'] goal is not to protect the citizens of the county...Their goal is to make money for the company, for the investors" (Stinebaker 1995: 1). A second is the belief in the proper scope of government. For example, one District Attorney in Texas argued that "government ought to be the ones involved in punishing offenders. It's government's rules, governments ought to be the ones to handle it" (Walt and Hughes 1996: 1). A third strain of the Morality frame concerns the (in)justice of allowing private actors to imprison people. In response to a proposal to privatize city jails, an op-ed in the *New York Times* argued that the "efficacy [of the criminal justice system] is measured by how it metes out justice, not by cost economies" (Kettl and Winnick 1995: 15). The Morality frame is unconcerned with the outcomes or consequences of prison privatization, and in this sense it is non-instrumental.<sup>4</sup>

The *Instrumental frame* focuses attention instead on the expected or actual outcomes of a practice. In the case of private prisons, these outcomes refer to how well private prisons perform on various criteria. Outcomes of interest may relate to costs, physical control of inmates, treatment of inmates, relieving pressure on public prisons, staff quality, programs for inmates, and impacts on the local economy. The Instrumental frame is all about consequences. It is not concerned with the inherent nature of private prisons, only with how they perform.

This typology of Morality and Instrumental frames is based on Lindemann's (2009) analysis of *moral* and *instrumental* modes of argumentation. The former judges an issue on its inherent nature,

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<sup>4</sup> When the Morality frame is invoked, it is generally used to criticize private prisons. It can, however, be invoked in a way to support the industry. For example, one op-ed argued that private foundations should invest in operating private prisons that reduce recidivism and improve the lives of inmates and those in society. The author argued that this would promote the public good, and compared it to humanitarian aid and spending on medical research (Moran 1997).

while the latter judges an issue on the consequences it is likely to bring about (also see Kinchy, Kleinman, and Autry 2008; White 2001: 134-137). However, Lindemann was concerned with arguments (in this case made against pornographic industries in Atlanta). The approach described below is broader and considers any discussion of prison privatization, regardless of whether it is argumentative or merely descriptive.

### **Linking frames and legitimacy: Diversionary reframing**

Freudenberg and Alario (2007) have proposed that researchers pay closer attention to *diversionary reframing*. The essence of this concept is that attention to one frame deflects attention from another frame. There are a finite set of frames that will resonate with the public, and the task of proponents of a policy is to bring their frames to the forefront. An example is the 2006 disclosure of a classified National Intelligence Estimate document, which concluded that a U.S. invasion of Iraq threatened American security. In an instance of diversionary reframing, the George W. Bush administration focused on why the classified report was leaked just before the fall Congressional election. The administration attempted to undermine a "national security" frame by bringing to the fore a "political manipulation" frame (Freudenberg and Alario 2007: 163-164).

Diversionary reframing has implications for legitimacy. Freudenberg and Alario (2007) wrote that legitimation "may be achieved most efficiently by keeping public attention focused on other topics" (147): that is, by *not* discussing the legitimacy of a practice or policy. The implication is that a practice need not be affirmatively legitimized in order to be viewed as legitimate; rather, what is important is that its legitimacy not be called to question.

According to the logic of diversionary reframing, what is crucial for moral legitimacy is a lack of discussion of morality. When a practice is accepted as being in line with norms of appropriateness, this fact need not be a topic of conversation. Conversely, when there are differing views on the propriety of a practice (i.e., it is not legitimate), opposing camps will debate its

propriety. A practice is morally legitimate, then, to the extent that it is framed in public discourse as something *other* than a moral issue. To be clear, the claim being made here is not that moral illegitimacy leads to public discussion. The degree to which a potentially illegitimate practice appears in the news (or other forum) is heavily influenced by external factors, including social movement mobilization (Andrews and Caren 2010). The claim here is rather that, conditional on being discussed at all, discourse on morally illegitimate practices will tend to frame the practice in moral terms.

Considering the Morality frame and the Instrumental frame, the moral legitimacy of private prisons should increase to the extent that discourse is diverted from the Morality frame toward the Instrumental frame. If moral legitimacy enhances the prospects of prison privatization, then high levels of prison privatization and moral legitimacy should occur in tandem. The analyses below document this pattern, with moral legitimacy increasing with expanded use of private prisons and being highest in places that relied most heavily on private prisons.

### **Data and Measures**

The data used to examine the public discourse surrounding prison privatization come from a unique dataset consisting of newspaper coverage of private prisons.<sup>5</sup> Newspapers serve as a good source of data for public discourse and moral legitimacy because they are widely read. It is well known that news production is subject to a number of professional, corporate, and ideological pressures (Shoemaker and Reese 1996). Yet this fact does not negate the utility of using newspapers as a data source for measuring moral legitimacy. After all, newspapers serve as an important means of conveying information to the public. I take a *constructionist* approach to the public discourse examined here (Gamson 1988; Gamson and Modigliani 1989). Journalists inevitably write their

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<sup>5</sup> This dataset was constructed with [omitted for anonymity]. The following students assisted in gathering and coding data: Justin Deno, Kamra Krueger, Frank Leung, Aprameya Mysore, Natalie Neals, Rachel Sperling, and Elizabeth Wansley.

articles both *as* members of the public and with an eye to their public readership. Journalists are processors of information who both reflect and contribute to the culture surrounding an issue (D'Angelo 2002; Deephouse and Suchman 2008: 56; Gamson and Modigliani 1987; Scheufele 1999: 117-118; Shoemaker and Reese 1996: 59-60).

The data come from four large newspapers: the *New York Times*, the *Los Angeles Times*, the *Chicago Tribune*, and the *Houston Chronicle*. Not only are these publications among the most read newspapers in the country (Audit Bureau of Circulations 2010), they also provide regional variation. Although each paper has some degree of extra-local or national readership, each paper still provides coverage of local and regional issues, which permits examination of how discourse on private prisons varied across different parts of the country.

Another benefit of using these newspapers is that they represent states that have had very different experiences with private corrections. Data from the Bureau of Justice Statistics' *Census of State and Federal Adult Correctional Facilities* series show that Texas and California used private correctional facilities early and often (Bureau of Justice Statistics 1993, 1998, 2004, 2009).<sup>6</sup> By 1990, Texas had more than 3,700 inmates in nine private correctional facilities. Texas' private inmates represented nearly half of the country's total private inmate population that year. Also by 1990, California had over 2,000 inmates in 38 private facilities (Bureau of Justice Statistics 1993). By the year 2005, Texas was the undisputed leader in private prisons, with nearly 24,000 inmates in 37 private facilities. Texas was followed by California, which had over 8,000 inmates in 25 private facilities (Bureau of Justice Statistics 2009). California and Texas also were the states with the most private jails (eight each) in 1999 (Stephan 2001).

Illinois and New York have had a much different experience with private prisons. Both states have enacted statutory prohibitions on private prisons at some point in their histories

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<sup>6</sup> The following calculations refer to custodial (rather than jurisdictional) inmate populations and they omit federally contracted facilities.

(Anderson 2010). The Illinois legislature prohibited contracting for private imprisonment in 1990, although it allowed for privately run work release centers (Illinois Compiled Statutes N.d.). The New York state legislature banned private prisons in 2007 (New York State Legislature N.d.; Nozzolio 2007). Despite these bans, both states have had some experience with private community corrections facilities, which allow more than 50 percent of residents to leave the premises and generally hold lower risk offenders. In 2005, each state's private facilities held fewer than 400 inmates (Bureau of Justice Statistics 2009). At the local level, Illinois had one private jail in 1999 and New York had none (Stephan 2001). Thus, correctional privatization in California and Texas started early, was more widespread, and was used for more serious criminals, while correctional privatization in Illinois and New York started late, never really took off, and was severely restricted in its application.

The newspaper data range from 1985 through 2008. The year 1985 represents an early period in the development of the private prison industry; only a few small-scale local and immigration detention facilities and community correction centers were privately operated before 1985. Articles were collected from Proquest Newsstand (*Los Angeles Times*), Newspaper Source Plus (*New York Times*), the *Chicago Tribune's* online archive, and Factiva (*Houston Chronicle*). Each database offered full coverage of news articles and opinion pieces published in the specified time frame and provided full-text versions of these articles.

The analytic sample consists of the 706 articles about prison privatization published in the four newspapers in this time period. An article was deemed to be about prison privatization when it mentioned in the headline or in the first three paragraphs a privately-operated adult detention facility or company in the United States.<sup>7</sup> These articles rarely (roughly 1 in 15) appeared on the front page,

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<sup>7</sup> This definition of private detention centers includes privately operated prisons, jails, immigrant detention facilities, and custodial work release centers. It excludes private drug treatment centers, private industries located in prisons, publicly-operated facilities that contract out for private

but the majority (54 percent) of them were located in the Main (or National) section of the newspapers. Only 13 percent of the articles were opinion pieces (letters to the editor, editorials, or op-eds). The average length of an article was 534 words.

A team of four coders (three undergraduates and the author) coded the articles for the presence or absence of the Morality frame and the Instrumental frame. A given article could contain the Morality frame, the Instrumental frame, both, or neither. (The magnitude of frame use was not measured.) The Morality frame was identified by mentions of any of the following: philosophy or ethics of private prisons; imprisonment as a core responsibility of government; the proper role of government in punishment; private prisons undermining the legitimacy of the criminal justice system; or (in)justice in privatization. The Instrumental frame was identified by mentions of any of the following matters regarding private prisons: (1) control of inmates (i.e., escapes, disturbances); (2) cost to government; (3) local economy (e.g., job creation/loss, effect on the tax base, local business contracts with the facility); (4) relieving pressure on public facilities (i.e., private prisons as a means of accommodating growing prison populations); (5) programming (i.e., educational, vocational, or rehabilitative programs); (6) staffing (including quality and amount of staff); and (7) treatment of inmates (i.e., the health and well-being of inmates). Each of these seven items was coded separately, and the presence of any one of them was sufficient to identify the Instrumental frame. The coding team achieved high levels of inter-coder reliability (0.748 to 1.000) as measured by Krippendorff's alpha (Krippendorff 2004).

Two measures of moral legitimacy are presented below. The first assesses Morality frame use in relation to the number of articles published. This proportion is calculated as the number of private prison articles using the frame divided by the total number of private prison articles. This is

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provision of ancillary services [e.g., food service], boot camps, halfway houses, private firms that provide in-home detention services, juvenile facilities, private prisoner transport services, or any privately built or financed facilities that are run by government.

a measure of the salience of a frame in discussing the issue of prison privatization. The second measure of moral legitimacy, a ratio, considers Morality frame use in relation to a competing frame. This is calculated as the number of articles that use the Instrumental frame divided by the number of articles that use the Morality frame. This measure gauges the relative importance of one frame versus the other in talking about and understanding the issue of prison privatization, and it captures the essence of diversionary reframing (Freudenburg and Alario 2007). Higher levels of moral legitimacy, then, are indicated by lower levels of the proportion measure (Morality frame/articles) and higher levels of the ratio measure (Instrumental frame/Morality frame).

Assessing the causal relationship between moral legitimacy and diffusion of a policy raises thorny issues (Colyvas and Jonsson 2011). If there is a relationship between moral legitimacy and prison privatization, the direction of causality is uncertain. Generally speaking, there are three possible scenarios. One scenario is that the moral legitimacy of private prisons affected the extent to which governments used them. For example, cultural opposition to prison contracting may have put the brakes on a government's use of private prisons. A second scenario is that governments' use of private prisons influenced the level of moral legitimacy granted to them. Policymakers may have moved forward with privatization with little regard for public sentiment, perhaps because they were responding to immediate structural pressures (e.g., population pressures on state prisons). This implementation then may have led to increases in the moral legitimacy of the practice, as the public became more accustomed to prison privatization or came to focus on other, more pressing elements involved in contracting (e.g., how to fund it).

A third scenario, and the one that likely bears the closest resemblance to social reality, is that the relationship between moral legitimacy and public policy has been bidirectional, with legitimacy influencing the extent of privatization and privatization influencing the degree of moral legitimacy (Colyvas and Jonsson 2011: 46; Hirsch 1986: 803). Where moral opposition to private prisons was

particularly strong, the option of contracting for imprisonment may have been politically infeasible. Yet, the successful adoption of private prisons may have caused people to shift their attention to other, more instrumental elements of prison privatization (e.g., cost or safety). The precise relation between moral legitimacy and policy adoption is a question of chickens and eggs, one which is unlikely to be resolved neatly. The goal in this paper is simply to document variations in the level of moral legitimacy and to compare these variations with prison contracting practices undertaken by different jurisdictions.

## Findings

### *News coverage of prison privatization*

The number of publications on private prisons varied over time and, especially, across papers. Figure 2 displays the annual frequency of articles published (along with the five-year moving average) and the number of private correctional facilities in the United States. News coverage of private prisons fluctuated over time, ranging from 13 to 60 articles published in a year. The moving average shows an unsteady downward trend: coverage declined from 1985 through the early 1990s, then increased through the late-1990s, and then declined again through the end of the series. (The spike in coverage in 1996 and 1997 was due to events in Texas. That state experienced a trifecta of private prison woes in these two years: escapes from multiple private jails (Bardwell 1996; Horswell and Muck 1996); riots in multiple private facilities (Associated Press 1997; *Houston Chronicle* News Service 1996); and inmate abuse at a private jail (*Houston Chronicle* Editorial Staff 1997).) This decline in newspaper coverage runs counter to the growth in the number of private correctional facilities in the U.S. As contracting for correctional facilities became more prevalent, it clearly became less newsworthy.

[FIGURE 2 ABOUT HERE]

Among the four newspapers, the *Houston Chronicle* led coverage of private prisons, publishing 338 articles in the 24 years considered here (roughly 14 articles per year). The *Los Angeles Times* and *New York Times* offered moderate levels of coverage, publishing 186 and 128 articles, respectively. The *Chicago Tribune* published only 54 articles in this span, just over two per year. The cross-paper differences in coverage are not surprising considering the experiences with private prisons in the newspapers' home states. Texas was at the forefront of prison privatization, and its paper produced the most output on private prisons; Illinois and New York banned most private prisons, and the papers from these states produced the least amount of coverage on private prisons.

### ***Frame use in the aggregate sample***

Figure 3 displays the annual proportion of all articles that used the Morality frame and the Instrumental frame, along with a five-year moving average. The most immediate finding is that the Instrumental frame was used much more frequently than the Morality frame. This, though, is not surprising; after all, the Instrumental frame comprises a number of disparate elements, such as cost, staffing, programming, and public safety.

Looking at each frames' trend individually shows that the aggregate use of the Morality frame declined over time.<sup>8</sup> The highest rates of Morality framing happened at the beginning of the series, in the 1980s. In 1985, more than one third of articles used the Morality frame. At this point, there were real questions about the scope of government and the place of profits in incarceration. After CCA proposed taking over Tennessee's entire state prison system, in 1985, a Democratic state senator from Memphis, said, "The state makes arrests, determines guilt or innocence and convicts criminals. Imprisoning them and trying to rehabilitate them should be a state function also, not

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<sup>8</sup> Pragmatic framing and Morality framing were not mutually exclusive. In practice, very few articles (two percent) contained only the Morality frame. Thus, most of the variation in Morality framing was a matter of whether the Morality frame was included alongside the Pragmatic frame (10 percent of articles). The likelihood of an article containing neither frame increased slightly over time (22 percent in the first half of the series versus 27 percent in the second half).

parceled out to a private organization" (Hirsley 1985: 3). As for the profit motive in private corrections, the *Los Angeles Times* quoted an early federal study, which noted that "there are those who will argue that some functions (including the administration of justice) are the *raison d'être* (reason for being) of government and cannot nor should be delegated" (Ostrow 1985: 19). From the 1980s on, the use of the Morality frame declined, albeit with a temporary rise in the mid-1990s.<sup>9</sup>

[FIGURE 3 ABOUT HERE]

Instrumental framing did not consistently rise or fall during the time period examined here. Instead, the use of the Instrumental frame fluctuated over time, appearing in between 60 and 80 percent of articles. In the aggregate, it appears that the salience of instrumental issues was rather high over time and unrelated to the growing number of private prisons in the country. Breaking down the Instrumental frame into its component elements reveals that cost was the most frequently used element, appearing in 37 percent of all articles (see also Blakely and Bumphus 2005).

The ratio of Instrumental to Morality frame use provides a sense of the *relative* importance of each of the two frames. Figure 4 presents the five-year moving average of this trend, along with its natural log transformation.<sup>10</sup> The raw ratio starts below four, meaning that there were four articles containing an Instrumental frame for every one article containing the Morality frame. The ratio rises, in fits and starts, through the late-1990s, where it peaks above 14. It then declines somewhat after that, but it generally remains above 10, more than twice as high as its starting point in the 1980s. While the Morality frame never dominated public discourse on private prisons, it continually lost ground to the Instrumental frame, which itself came to dominate the discourse on private

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<sup>9</sup> The uptick in Morality framing in 1995 was driven by the *Houston Chronicle*, which contributed the most articles (five) using the Morality frame in this year.

<sup>10</sup> The log transformation exaggerates the low end of the distribution and compresses the high end of the distribution. This is useful because equivalent changes in the ratio are more meaningful at the low end of the distribution than at the high end of the distribution. For example, a one-point change from 4:1 to 5:1 is a 25 percent increase, but a one-point change from 13:1 to 14:1 is only an eight percent increase. Because of its greater intuition, the raw ratio is discussed in the text.

prisons in elite national newspapers.

[FIGURE 4 HERE]

### *Variations across newspapers*

The aggregate analysis shows the decline in the use of the Morality frame to negligible levels by the late-1990s and the dominance of the Instrumental frame. Were these trends consistent in different newspapers across the country or do the trends in framing (and moral legitimacy) vary according to local or regional usage of private prisons? If moral legitimacy of private prisons was related to support for (or opposition to) private prisons, we would expect to see the greatest use of the Morality frame in the *Chicago Tribune* and the *New York Times*, whose home states resisted prison privatization.

Across the entire series, the Morality frame was in fact used most often by the newspapers in states without private prisons. The *Tribune* and *New York Times* used it in 22 and 23 percent of their articles on private prisons, respectively. The *Los Angeles Times* used the Morality frame in 15 percent of its articles. The *Chronicle* used it very rarely, in only five percent of articles. Thus, little weight was given to moral dimensions of private prisons in states that were leaders in prison privatization—California and, especially, Texas—and this is an indication of a relatively high degree of moral legitimacy in those states.

Figure 5 disaggregates Morality frame use by newspaper and considers the changing usage from the first half of the series (1985-1996) to the second half (1997-2008). Perhaps the most striking feature is the high rate at which articles in the *Tribune* and the *New York Times* raised moral issues early on. Roughly one in three articles in these papers through 1996 contained the Morality frame. This level of Morality framing was not sustained, though. Comparing the first and second halves of the series, Morality frame use in the *Tribune* fell from 29 percent to six percent ( $\chi^2=3.36$ ,  $p=0.07$ ), and from 34 percent to 12 percent ( $\chi^2=9.21$ ,  $p<0.01$ ) in the *New York Times*. The *Chronicle*

also showed a statistically significant decline in Morality frame use from the first half to the second half of the series (nine percent to one percent;  $\chi^2=11.36$ ,  $p<0.01$ ), but its level of use was consistently low. The *Los Angeles Times*' use of the Morality frame showed no increase or decrease over time.

[FIGURE 5 HERE]

Figure 6 shows the corresponding rates of Instrumental frame use for each newspaper. The California and Texas papers showed trivial increases (of less than two percentage points) in their use of the Instrumental frame, while the Illinois and New York papers showed declines (albeit modest ones) in the use of the Instrumental frame. Use of the Instrumental frame fell from 84 to 63 percent ( $\chi^2=3.07$ ,  $p=0.08$ ) in the *Chicago Tribune* and from 77 to 58 percent ( $\chi^2=5.14$ ,  $p=0.02$ ) in the *New York Times*.

[FIGURE 6 HERE]

Ratios (raw and log-transformed) of Instrumental frame use to Morality frame use are presented in Table 1, which compares the first half of the series to the second. In the first half of the series, the *Chicago Tribune* and the *New York Times* had the lowest ratios, indicating low levels of moral legitimacy. Over time, three of the four newspapers moved away from Morality framing toward Instrumental framing. The most dramatic change was in the *Houston Chronicle*, whose (raw) ratio went from under nine (the highest ratio in the first period) to 116. The magnitude of this ratio in the second time period is due more to the sparseness of the Morality frame than to the slight increase in Instrumental frame use. The ratio more than tripled in the *Tribune*, going from less than three to ten; it doubled in the *New York Times*, going from just over two to nearly five. In the *Tribune* and the *New York Times*, both Instrumental framing and Morality framing declined over time, but Morality framing declined more rapidly. In all three papers—the *Tribune*, the *Chronicle*, and the *New York Times*—prison privatization persisted as a practice with instrumental implications but with

diminishing moral relevance. The *Los Angeles Times* was the exception to this pattern. Its reliance on both Morality framing and Instrumental framing was remarkably stable over time. The result is that the ratio of Instrumental to Morality framing remained essentially unchanged over time.

[TABLE 1 ABOUT HERE]

### Discussion

New practices often face cultural challenges. In order for a practice to persist, it must achieve some degree of legitimacy. When the practice challenges assumptions about what types of actions or relations are normatively appropriate, the practice faces the specific challenge of gaining an adequate degree of moral legitimacy (Suchman 1995). This paper took the Morality frame in public discourse as an indicator of the moral (il)legitimacy of private prisons. In doing so, it documented the decline of Morality frame use in public discourse and the associated increase in moral legitimacy of private prisons.

The amount of Morality framing varied substantially across newspapers and over the 24 years considered. Over time, the aggregate rate of Morality frame use declined after a high point in 1985, the earliest year in this dataset. As private prisons became more common in the United States, the question of whether private imprisonment was normatively appropriate became a moot point. Rather than focus on fundamental questions about the inherent nature of contracting out the coercive power of the state, public debates could instead argue over instrumental matters (Kinchy, Kleinman, and Autry 2008; Lindemann 2009), such as the performance and outcomes of private prisons, whose increasing implementation was providing policymakers and the public with more "data" regarding their actual performance. This shift in attention to more instrumental matters likely made it easier for policymakers to either adopt private prisons or increase their use of them. Although private prison proponents hardly had an easy time making their case on performance grounds (Perrone and Pratt 2003), they could at least summon their own evidence to support their

arguments. Disagreements over fundamental moral matters are intractable. If proponents could not win the moral debate over the "rightness" of private prisons, they could at least shift the terms of the debate and treat prison privatization as a practice devoid of moral implications.

News framing studies often use data from a single news source (e.g., Lindemann 2009; Steensland 2008), or they group multiple sources together and fail to analyze differences in framing across sources (e.g., Gamson and Modigliani 1989; Misra, Moller, and Karides 2003). This paper examined differences in frame use across newspapers and how they relate to privatization in those regions. Disaggregation revealed variations in the moral legitimacy of private prisons, which corresponded to private corrections policy in a newspaper's home state. Over the entire period, the *Chicago Tribune* and the *New York Times* were most likely to use the Morality frame in their coverage of private prisons; the *Houston Chronicle* and the *Los Angeles Times* published the Morality frame at lower rates (much lower for the *Chronicle*). Thus, states with the most extensive experience with private prisons were least likely to discuss them in moral terms. The most striking feature of the disaggregated trends of Morality frame use is the relatively high rate of use in the *Tribune* and the *New York Times* during the earliest phase of prison privatization. With the Morality frame in play in these papers, the question of private prisons' fundamental right to exist was on the table. Illinois and New York were the two states examined here that most effectively blocked prison privatization. While the newspaper coverage of private prisons in the *Tribune* and the *New York Times* certainly was not *sufficient* to block privatization in these states, it did capture an important cultural opposition to—or, at least, ambivalence toward—prison privatization that was almost nonexistent in the California and Texas papers considered here.

The paper utilized the concept of diversionary reframing, borrowed from literature on social movement frames (Freudenburg and Alario 2007). The idea of *diversion* reminds us that legitimacy need not be actively and explicitly affirmed. Rather, legitimation can occur by failing to raise

concerns about *illegitimacy*. In this case, moral legitimacy may be bolstered by framing prison privatization as a matter of consequences and outcomes rather than inherent, ethically laden properties. This diversion-based approach to analyzing legitimacy is general and can be extended to other areas of inquiry. It can be used to systematically assess the moral legitimacy of other controversial industries (e.g., gambling (Dombrink and Hillyard 2007) or pornographic industries (Lindemann 2009)) or attempts to delegate other coercive or “core” state functions to the private sector. The latter might examine the legitimation process of attempts by firms to take over adjudication duties (Edelman, Erlanger, and Lande 1993), to provide private police forces domestically (D'Alessio, Eitle, and Stolzenberg 2005), or to run security forces in foreign countries (McCoy 2009). This approach may also be used in a cross-national comparison of the moral legitimacy of prison privatization. Conceptions of the proper role of the state in new industries vary across countries (Dobbin 1994), and a proposal to contract out for imprisonment in a country with a historically strong state would likely not go far. A reasonable hypothesis is that the (im)morality of prison privatization would remain highly salient in public discussions over the policy in those countries and that the moral illegitimacy of private prisons would forestall their emergence or minimize their use.

A limitation of this paper is the use of individual newspapers to represent states. In reality, the mass media in a state present a complex and inconsistent picture of private prisons; no single newspaper can capture all of this complexity. The ideal dataset would include multiple newspapers from each state. Unfortunately, collection and coding of newspaper articles is costly and time-consuming, and increasing variation within a state would require a corresponding decrease in regional or temporal variation. A related issue is the reliance on a single medium for data: newspapers. However, the tendency for other mainstream media (e.g., television news) to follow the agenda of elite newspapers (Danielian and Reese 1989; Golan 2006) implies that the results would

not be substantially different if other media were considered. And although digital media—websites, blogs, and Twitter—may provide more diverse styles of coverage of prison privatization, these technologies did not exist in the early years of prison privatization, a time which was especially critical in shaping the discourse on the issue.

Limitations notwithstanding, this paper has documented declines in the use of the Morality frame to discuss private prisons. This decline indicates an increase in the moral legitimacy of private prisons in the country. With attention diverted from fundamental questions about whether private imprisonment is "the right thing to do," proponents of privatization faced one less obstacle on the path to further privatization. Supporters still had to make the case that private prisons were economical, effective, and safe, but they no longer had to convince opponents of their fundamental right to exist.

## Figures

Figure 1: Private correctional facilities in the United States, 1990-2005.

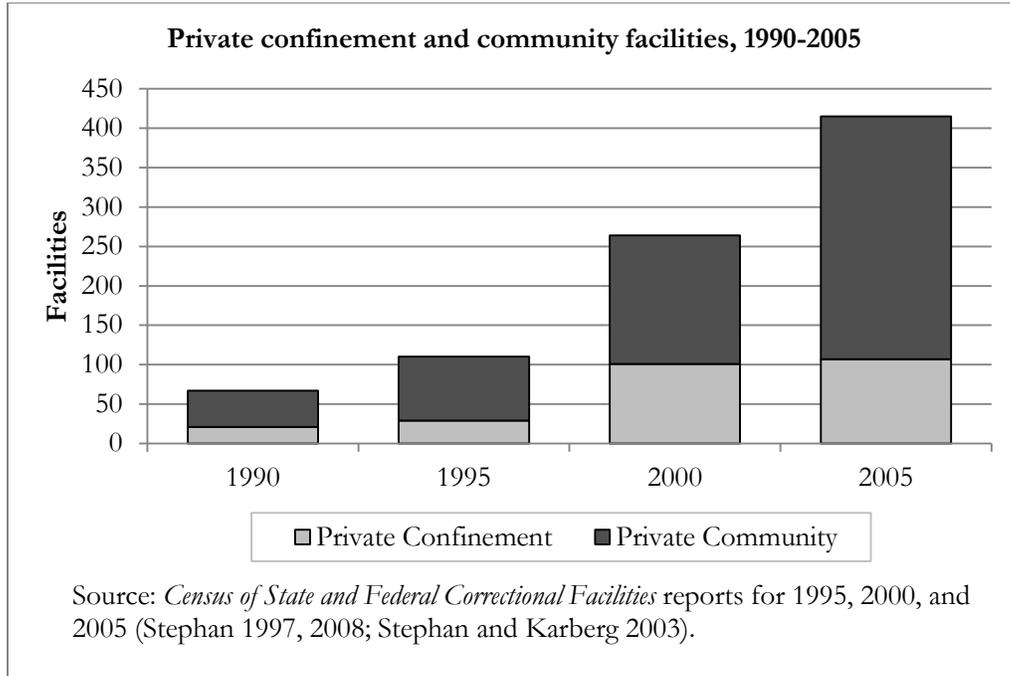


Figure 2: Articles published about prison privatization per year, with private correctional facilities overlaid.

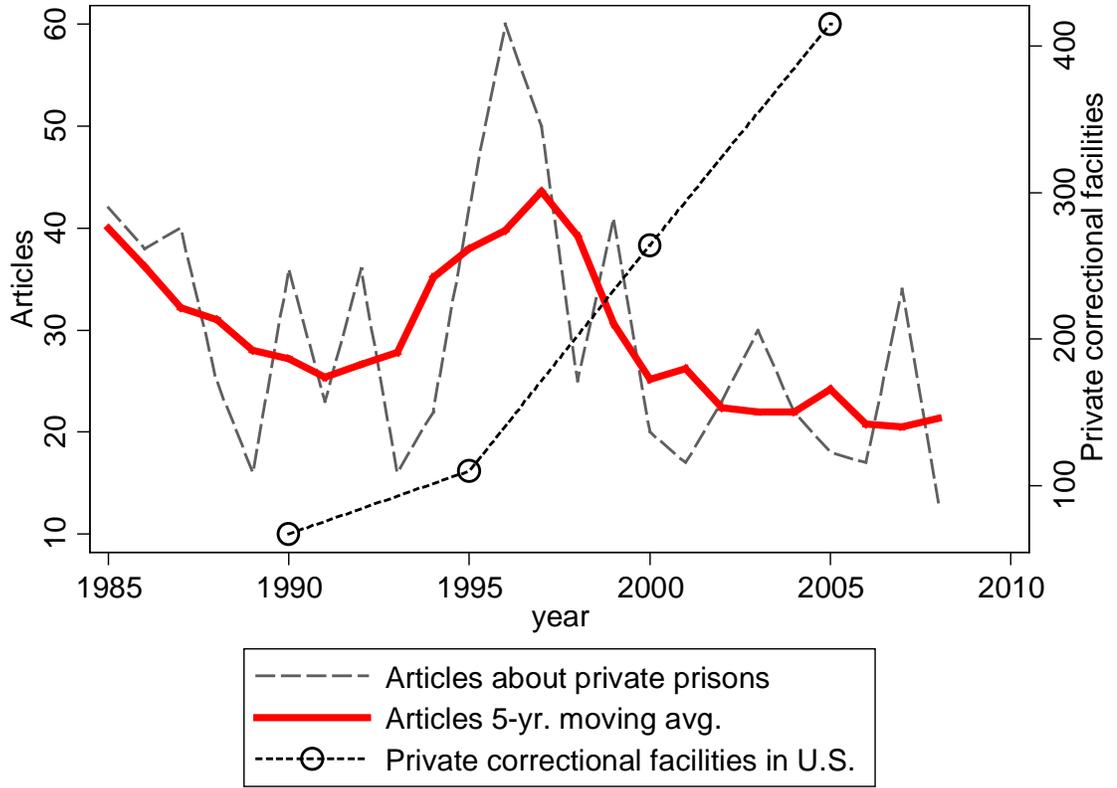


Figure 3: Morality frame and Instrumental frame use, 1985-2008.

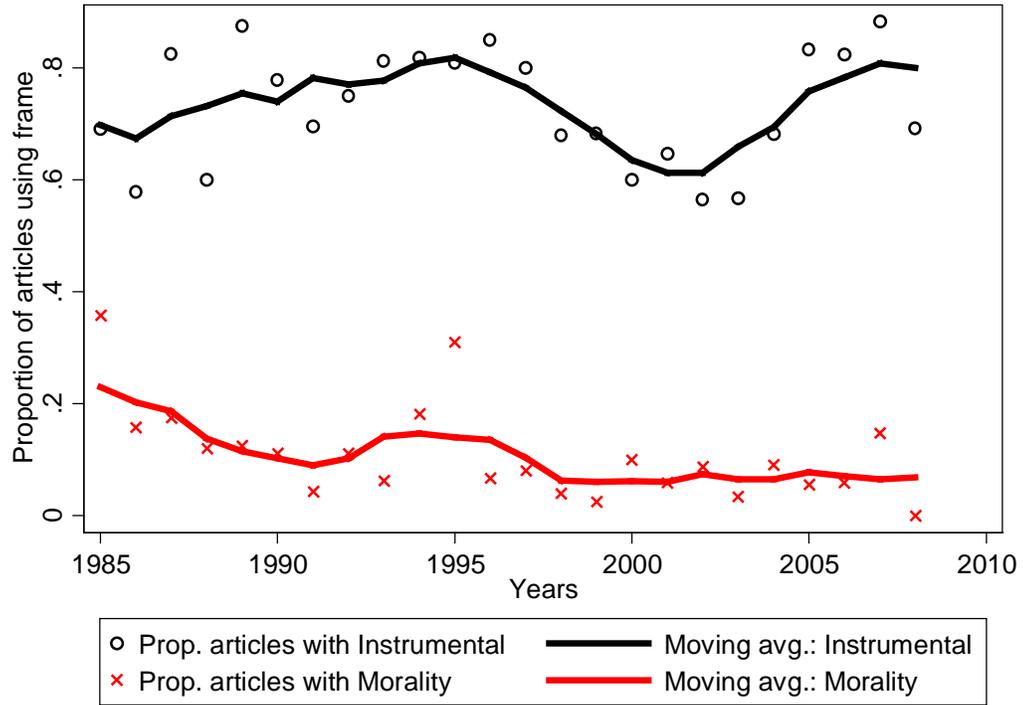


Figure 4: Ratio of Instrumental to Morality frames.

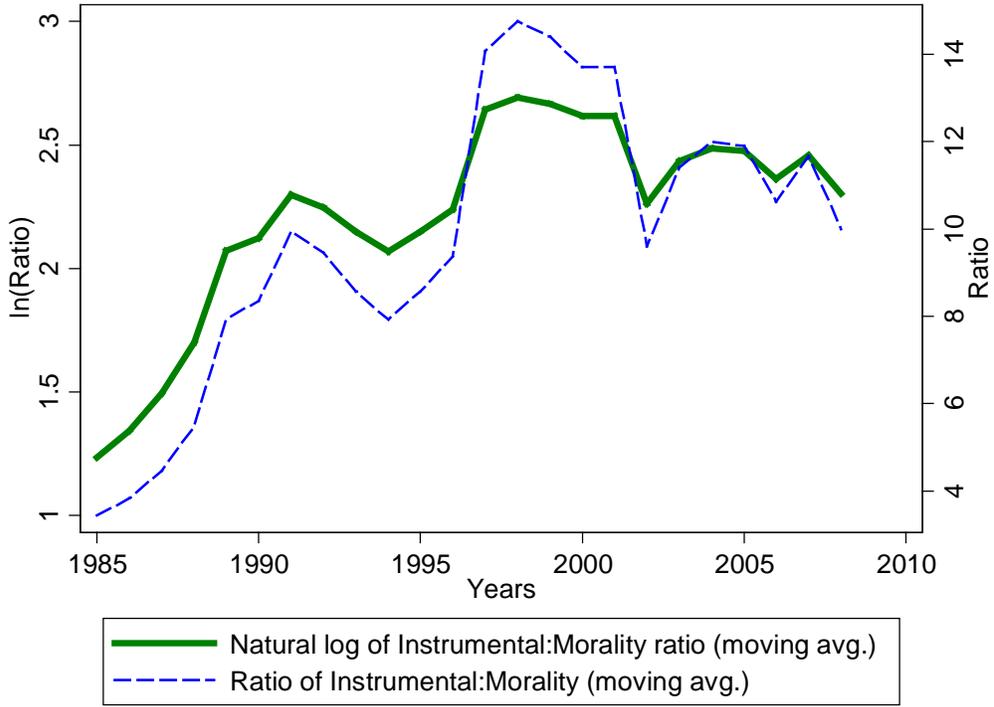


Figure 5: Proportion of articles containing Morality frame, by newspaper.

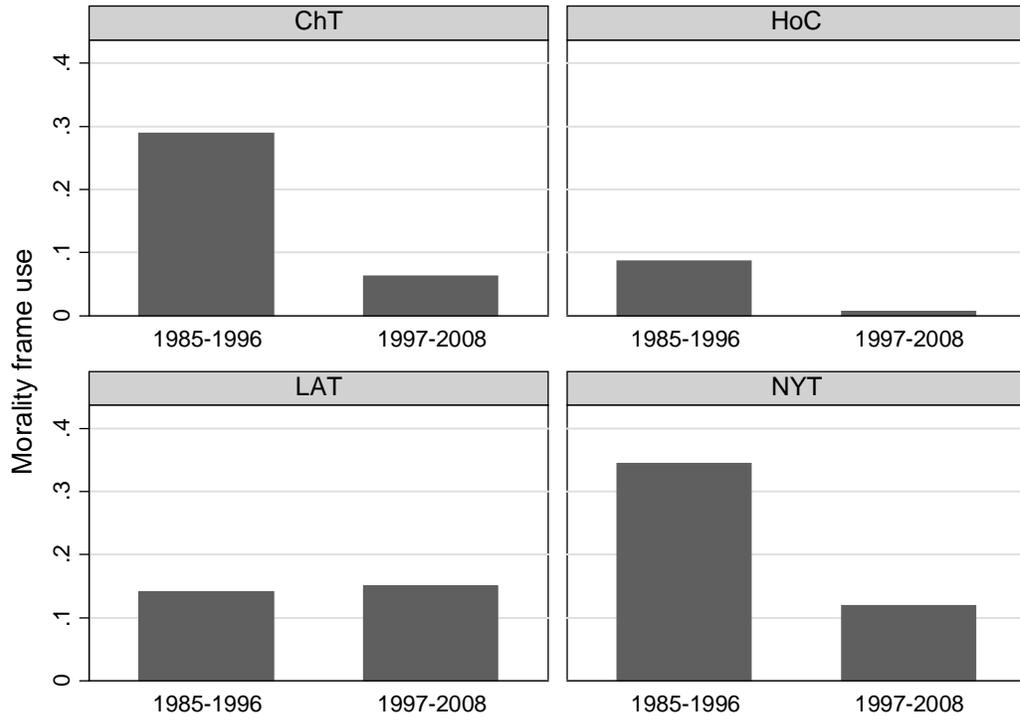


Figure 6: Proportion of articles using Instrumental frame, by newspaper.

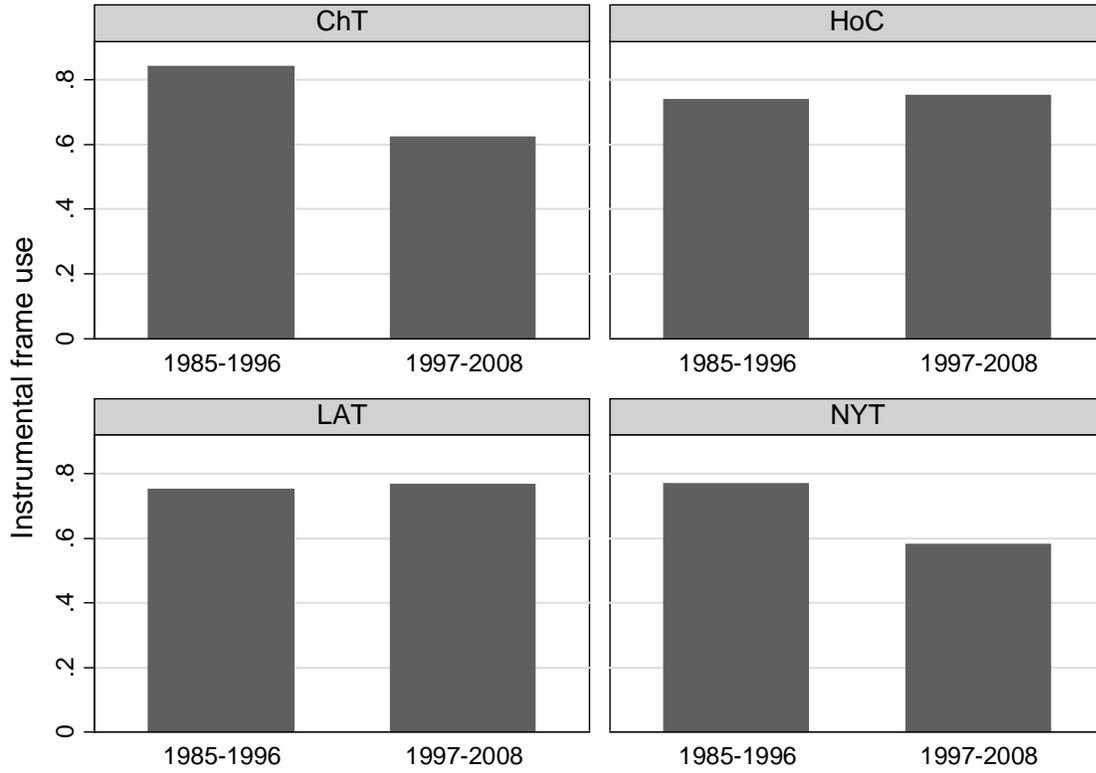


Table 1: Ratio of Instrumental frames to Morality frames, by newspaper and time period.

Newspaper	Ratio ( $\ln(\text{Ratio})$ )			
	1985-1996		1997-2008	
<i>Chicago Tribune</i>	2.9	(1.1)	10.0	(2.3)
<i>Houston Chronicle</i>	8.5	(2.1)	116.0	(4.8)
<i>Los Angeles Times</i>	5.3	(1.7)	5.1	(1.6)
<i>New York Times</i>	2.2	(0.8)	4.9	(1.6)

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