

POLI 203: Race, Innocence, and the End of the Death Penalty

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- As of 2016, over 206,268 people were serving some type of life sentence in US prisons.
- Over 53,000 people are serving life without the possibility of parole sentences.
- Noncapital prisoners receive no legal representation on their appeals.
- More than 100 people sentenced to LWOP have been exonerated since 2013
- Lifers account for approximately 12 percent of North Carolina's prison population; 40 times the number of life sentenced prisoners in the United Kingdom.

### DEATH BY INCARCERATION

It is scary to think lawmakers and death penalty abolitionists alike believe life without the possibility of parole (LWOP) is a more humane alternative to executions. It seems unlikely they really understand what living the rest of your life in prison is like. If they did, LWOP wouldn't exist.

I don't want to die in prison, yet if I am executed or receive LWOP, that's exactly what will happen. For many people on death row, LWOP is the only form of "relief" they may receive from a court. In many ways it's worse than being executed. You watch all of your family and friends die or drift away as the world leaves you behind. You work 50-60 hours a week earning 40 cents a day, unable to afford a stamp let alone a tube of toothpaste. Refuse to work and get put in solitary confinement. If you get sick you suffer. Medical care in prison is a joke, and the only people laughing live in the free world. Prison can be a violent place and no one escapes that threat if they spend their whole life here. Some might try to argue it's a better quality of life than on death row - I'm pretty sure those people don't live in prison or know how degrading it can be. Maybe, under some circumstances, a lifer has access to "programs", but they're limited. The state of higher education in prison is abysmal, which leaves GED programs and Basic Adult Education - not the kind of stuff that stimulates growth.

Let's not forget about the gangs. Imagine being 60 years old and needing to call home, but having to deal with whichever gang claims the phone in their territory. Maybe they charge you a fee - are you going to pay them with your 40 cents a day? Imagine being 19 or 20 and trying to resist recruitment - for the rest of your life.

And then there are the rigors of aging in prison. Nurses care little and doctors even less. Imagine being 70 years old and relying on another prisoner to push your wheelchair, wipe your butt and wash you and provide

any care you need. Assuming you reach the age of 70 in prison, and you haven't been crippled by kitchen or janitorial work, and you don't have a chronic disease, you're probably begging God to take you in your sleep, or contemplating doing it yourself. What if your family is long-lived and you have another 30 years to go after that?

Death by incarceration is capital punishment, the only difference between it and execution a matter of suffering for 50+ years as an exception to the Thirteenth Amendment, or for 50 minutes as an exception to the Eighth. Either way your physical body is state property.

What if the crime you committed doesn't really warrant death by incarceration? Or worse, what if you're innocent?

Before he died, conservative US Supreme Court Justice Antonin Scalia said an innocent person is "infinitely better off" challenging a death sentence than a life sentence. He explained that the same "risk of wrongful convictions" exists if "horrendous death penalty cases were converted into equally horrendous life without parole cases," but because a person will obtain more legal assistance and court attention with a death sentence, an innocent person sentenced to life without parole is more likely to languish unnoticed behind bars. ①

More than 100 people sentenced to LWOP have been exonerated since 2013, but there are likely hundreds, if not thousands more waiting for their chance. ②

Pursuing a claim of innocence under a life sentence is much more difficult than has been implied by those who say "At least with a life sentence you're alive to pursue justice."

Maybe. Maybe not.

In August, 2019, the NC Innocence Inquiry Commission overturned the wrongful murder conviction of 66 year old James Blackman. An intellectually disabled black man committed to Nannette Dix Hospital, Blackman had actually been in another state when the 1979 murder of Helena Payton occurred. Police narrowed down the description of the perpetrator and decided it must have been Blackman. With no other evidence, detectives obtained a false, coerced confession from a man wearing a superman cape in a mental hospital who had an IQ of 69. It would be over three decades before Blackman was exonerated. He left prison in a wheelchair. ③

Unless one has an airtight alibi, physical proof, or other incontrovertible evidence, most innocence projects will refuse a prisoner's claim or drag out the process for many years. For lifers not guilty of their crime of conviction, but instead a lesser crime, they're virtually helpless. Without legal representation LWOP is a certain death sentence.

Think of the death penalty as an icy peak thrust above the dark waters of America's criminal justice system. Judicial scrutiny

and a warming national climate have shrunk capital punishment until only a tiny, arbitrary percentage of those convicted of murder end up on death row. This focus ignores the rising tide of LWOP sentences, which, as of 2016, has effectively claimed the lives of over 53,000 men, women, and children. In the modern era of executions 530 people have been put to death; LWOP is 100 times more deadly than the lethal injection, firing squad, electric chair, gas chamber, or hanging. ④

As of a 2016 Sentencing Project Report, the combined number of lifers in America's prisons, which includes LWOP (53,290), life with parole (108,667), and virtual life sentences 50 years or more (44,311), was over 206,268. ⑤ As this population ages and begins dying the costs will cripple state penal budgets and what medical care is provided will be so inadequate as to be inhumane.

I understand what some of you may be thinking: what about the worst of the worst? The truly horrific murderers, rapists, and habitual offenders? Surely out of the 2900 or so people on death row and over 206,000 lifers there are people who should die in prison?

First, when has this country ever proven capable of reserving the most severe punishments for the most deserving? Over 165 innocent people have been exonerated from death row since 1977. Before their exoneration they were all considered "deserving." Second, there is no exact criteria for the worst because LWOP and the death penalty

are arbitrarily applied. Amongst the 206, 268 lifers: 59 percent were convicted of homicide; 17 percent rape or sexual assault; 15 percent aggravated assault, robbery, or kidnapping; and 8 percent nonviolent crimes. Who is really guilty? Who is innocent? How many of these hundreds of thousands actually should die in prison? Can you, sitting at home watching the news, make such a judgement without knowing all of the facts, circumstances, and players?

That it is considered acceptable to punish lesser crimes the same as murder, effectively circumventing the US Supreme Court's ban on capital punishment for crimes other than First degree murder, is beyond draconian. It shares space with the very people society would rather hide behind prison walls. There is no public outcry. Instead, even progressive Democratic presidential candidates believe LWOP is a fine alternative to executions.

The US is alone in its unrestrained use of death by incarceration. A 2016 comprehensive international analysis of life imprisonment found that the number of people serving life sentences in the US is higher than the combined total of 113 other countries. With the highest incarceration rate in the world, America accounts for 40 percent of the world's life sentenced prisoners. ⑥ Canada, Mexico, France, Italy, and Germany don't have LWOP. The international criminal court, which tries dictators and generals for war crimes, genocide, and crimes against humanity, does not impose LWOP. ⑦ The European Court of Human Rights ruled that denying the possibility of parole is "inhumane and degrading treatment"

in violation of the European Convention on Human Rights. ⑧

To give you a more local perspective on how out of touch the American criminal justice system is from the rest of the world, consider this: as of 2016 North Carolina held 1,387 prisoners serving LWOP, 1,858 parole eligible lifers, and 887 virtual lifers. A number that only increases with time, lifers account for roughly 11 percent of NC's prison population. This is nearly 40 times the number of life sentenced prisoners in the United Kingdom. ⑨

If there is a benefit to capital punishment, it's the scrutiny it brings to the legal system and law enforcement. The death penalty is a microcosm of fundamental flaws and prejudices that undermine every conviction and sentence.

For example, even though the law provides defendants with a chance to plead guilty for a crime in return for a reduced sentence, and 95 percent do, in capital cases this means accepting LWOP.

Sometimes prosecutors, like Wake Co. District Attorney Lorrin Freeman, will seek the death penalty despite a defendant's willingness to plead guilty. She did this eight times and juries returned eight life without parole sentences. In defense of her choice, Freeman claimed capital punishment is a "tool" she uses to go after the worst of the worst. Eight juries disagreed. Prosecutors just as often use the threat of execution to leverage guilty pleas out of defendants who may be innocent, or guilty of a lesser crime. Defendants unwittingly accept LWOP,

often at the recommendation of attorneys who help seal their client's fate. Overcharging to leverage a guilty plea, and eliminate a defendant's right to appeal, is a common prosecutorial tactic and major contributing factor to mass incarceration.

If LWOP is replacing executions, then defendants should receive capital defenders and post conviction counsel. You should not be subjected to LWOP as a plea arrangement. The punishment needs to be restricted just like the death penalty. The US Supreme Court seems inclined to agree.

In *Miller v. Alabama* (2012) the Court banned mandatory LWOP for people under 18. In *Montgomery v. Louisiana* (2016) the Court made the ban retroactive, forcing every state to provide juvenile lifers with what are now referred to as "Miller hearings."

Miller hearings determine if the offender meets certain criteria that reduce his or her culpability at the time of the crime, and thereby earn release. In her ruling Justice Elena Kagan outlined such factors as level of maturity, impetuosity, common failure to evaluate risks, home environment, circumstances of the offense that include peer influence and co-defendants, the youth's lack of sophistication relative to an adult, and the possibility for rehabilitation. Miller hearings, like parole hearings, do not guarantee release, merely the opportunity once a prisoner has served a significant amount of time.

