A Paradox of Description and Imposition: The Support, Use, and Regulation of ‘Life’ Imprisonment

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Over 41,000 persons are now serving life without parole across the United States, accounting for more than one in ten inmates in states such as Louisiana. Between 2003 and 2008 the number of individuals serving life without parole increased by 22%, nearly four times the rate of growth of the parole eligible life sentenced population (Nellis & King 2009:3). Life without parole has become so prevalent, and so widely adopted, at least in part, owing to the change in position of death penalty abolitionists and their advocacy for the sentence as an alternative to capital punishment. Whilst the death penalty is increasingly hedged with constitutional restrictions, comparatively, there has been little in the way of constitutional regulation of life without parole, the ‘death penalty alternative’. This note seeks to highlight the paradox presented by life without parole and the support given to it by death penalty abolitionists: the sentence is comparable enough to the death penalty to replace it, but not to elicit anywhere near the same level of regulation, scrutiny, criticism, or control in its usage, particularly now as statistical evidence clearly indicates the expansion of the sentence far beyond the capital offender.

Keywords: United States, life without parole, death penalty

The ideal of, and hope in, rehabilitation was central in the conception of the American prison (Andersen 1982, Wright, Jr. 1990:532) and was long the dominant philosophy in prisoner management. The prison was a site of correction, not a means of permanent exclusion (Mauer et al 2004:1). Rehabilitation underpinned corrections and parole was an achievable goal, even for long term prisoners. In Michigan, for example, before 1992 those serving a life sentence were eligible for parole after ten years and, in practice, most lifers were released within a few years of becoming eligible. Similarly in other states, New Mexico and Louisiana, for example, a life sentence commonly
translated into a ten year prison term (Mauer et al 2004). When a life sentence invited parole possibility after only ten years, rehabilitation of the offender was practically an assumed facet of their incarceration. Of course, rehabilitation could not be guaranteed but efforts towards character reformation would mean a greater probability of early release. Moreover, prisoner regimes were predicated upon the notion of offender rehabilitation.

It was in the 1970s however, when the belief in rehabilitation as a worthwhile and effective endeavour first began to wane. The much cited work of Robert Martinson, published in 1974, ‘What Works in Prison Reform’, an appraisal of over 200 evaluation studies from the mid 1940s to mid 1960s, arrived at the conclusion that efforts to rehabilitate prisoners had largely failed, creating the bedrock for what was to become the enduring slogan in corrections; ‘Nothing Works’. Recidivism rates of released offenders, and the diminishing belief in the utility of rehabilitation were reinforced by rising crime rates into the 1980s, and an even larger increase in the fear of crime, helping to create the punitive policies of the 1980s and early 1990s. Over time the prison became a warehouse, a site of permanent incapacitation, and rehabilitation of the offender was relegated to a minor concern in prisoner management, with regimes becoming based on institutional security and order; the simple segregation of the offender became a primary aim of the prison. Prisoner populations climbed rapidly, and with the consequential effect of prisons filled beyond capacity and resources more thinly spread, incapacitation became more achievable than rehabilitation. At the same time, with the restriction of parole eligibility, and longer sentences being served by those incarcerated, a function which is still dominant today, the American prison became, a ‘waste management’ service, serving the community by segregating those perceived as a danger to it. General policies of ‘correction’ have been eschewed and segregation has taken on a permanency, the prison a means of exile (Garland 2002:178). So powerful has been the spectre of the violent re-offender, the enduring and monstrous silhouette of Willie Horton that not only the prison, but the prospect of release for
long term prisoners has been transformed; parole has been restricted and clemency has become a remote possibility (Gill 2010), an evolution of the increasingly political nature of criminal justice. As an increasingly political issue longer prison sentences have become nearly banal; truth in sentencing, three strikes and you’re out, and life without parole, have all enjoyed well rounded support and the prison has become the symbol of their implementation.

The life without parole sentence, its creation, promotion, availability, and use, is the net result of competing forces in crime control and penal politics going back over thirty five years. When the death penalty, as then administered, was ruled unconstitutional by the United States Supreme Court (Furman v Georgia 1972), life without parole became the most punitive and severe sentence available. Since that time, the death penalty has been increasingly restricted and life without parole has expanded to fill the vacuum. Moreover, it has been allowed to expand relatively unchallenged, fitting well into the increasingly punitive tone of American punishment, a growing lack of deference to parole boards and administrators, the creation of three strikes and you’re out sentencing, and the widespread abandonment of the principles of reformation and rehabilitation by politicians and public alike.

Contemporarily, life without parole is widely embraced, and publicised, because of its credibility as a death penalty ‘alternative’. In practice, life without parole gained ground as an accompaniment to the death penalty but now, as the death penalty is challenged on relatively new grounds of cost and innocence, of course, in conjunction with more traditional arguments of morality, racism, arbitrariness, and brutality, life without parole is offered as a more certain, quick, and cheaper replacement. The politics, culture, and history, of the United States dictate that the death penalty cannot, realistically, be abolished outright without a replacement, a replacement must be offered, a replacement, whilst mimicking what has preceded it, in order to make that replacement tenable is,
in its constituent elements, more compatible with the principles that call for abolition. Seemingly, life without parole is the most ‘acceptable’ alternative now enjoying endorsement by even the most liberal commentators of the criminal justice system (ACLU 2008). In that endorsement an inconsistency is created: repeal of the death penalty is largely sought for humanitarian reasons, yet the corresponding annotation and adjudication of the life without parole alternative is in the severest, most retributive terms. Such a paradox not only demonstrates the unscrupulous betrayal of ideology for the instrumental ‘greater purpose’ of death penalty abolition but, to the detriment of thousands of offenders, demonstrates acceptance, even endorsement of life without parole generally, with no caveat, in practice, as a death penalty replacement but as a sentence compatible with liberal, progressive ideals of American punishment.

Whilst there is a growing body of quantitative data and journalistic inquiry into life without parole, there has been so little from the academic community, both theoretical and empirical, that the inference seems to be that the sentence is subsumed into the voluminous body of research into the prison, and prison life more generally (despite Supreme Court recognition that life without parole is unique, more akin to the death sentence than a simple prison term (Graham v Florida)). That prison literature, which so regularly demonstrates the violent, precarious, and dehumanising nature of the prison, is often forgotten by those who push for the use of the sentence or, in some cases, even exemplified and exaggerated to garner the most widespread support for the sentence to replace capital punishment; that is, to convert those who support the death penalty on retributivist grounds. Whilst there have been a few exceptions to the general academic hands off approach to life without parole, particularly with regard to juveniles, and even some instances where the effect of pushing for death penalty abolition has been noted, if unfortunately not explicitly focused upon, as engendering an increased legitimacy for life without parole, (Steiker & Steiker 2008, 2010), the disproportional number of offenders affected by those abolitionist efforts, the lack of scrutiny given
to the sentence, and the betrayal of abolitionist ideology with inflammatory, retributive rhetoric, has gone without any significant documentation.

Part 1 of this paper examines life without parole as a death penalty alternative with its attendant description, whilst part 2 looks at the scale of implementation that life without parole has achieved as a death penalty replacement where ‘death eligible’ categories have been curtailed. Part 3 documents the lack of scrutiny and regulation of the sentence, before the paper concludes that the ramifications of advocating life without parole should be reconsidered in light of the scale of its current imposition.

PART 1: A Capital Alternative

Death penalty abolition has always been a precarious state. In the twentieth century alone several states, Washington, Delaware, South Dakota, Oregon, Kansas, and Colorado, have abolished the death penalty, some more than once, only to go on to restore it. For a nation in which 33 of the states retain the death penalty (as well as the Federal Government and U.S. Military), death as punishment is deeply embedded in its history and culture, and is so readily perpetuated by its political structures, susceptible as they are to the force of public opinion, to simply abolish capital punishment without a replacement is untenable. The death penalty is not, and has not been, just an instrumental piece of penal policy and, public endorsement, which has reached in excess of 80%, is not solely for the death of individuals. Rather, death is an embodiment and endorsement of action and intolerance, not solely of capital offenders, but crime generally, a state’s most visible measure of condemnation, retribution, and authority (Banner 2002:283). For abolition to succeed, and remain in place, an equal alternative must be offered as a replacement, as close to death as can be accomplished without an execution. If ‘death is different’, so logically the alternative must be
something ‘different’, different and something removed from the other punishments that comprise a state’s penal repertoire. The alternative that is now offered is life without the possibility of parole; permanent incapacitation, a prison term from which the only release is the death of the offender.

Life without parole is now a sentencing option in all death penalty states and when presented as an alternative to capital punishment, death sentences have indeed reduced. Nationally, death sentences are now at their lowest rate since the resumption of the death penalty in the 1970s (Death Penalty Information Center). Whilst other factors are undoubtedly involved in the decline, juries becoming increasingly reluctant to impose a death sentence without DNA evidence (Hogue 2007, Adams 2010), prosecutorial behaviour becoming more cautious in pressing for a capital conviction (Coyne 2009, Millhollen 2009), and highly publicised cases of death row exonerations, the availability of life without parole has still certainly played its part; even the stronghold of Texas has not been immune with annual death sentences dropping into single figures.

As death sentencing rates have declined, so too, certainly according to the abolitionist camp, has confidence in capital punishment. In a 2006 Gallup poll support for the death penalty dropped to 47% when life without parole was offered as an alternative sentence, whilst life without parole gained preference with 48% in favour (Gallup 2006), whilst state opinion polls have offered similar statistics (Egelko 2010). Although the preference has been abstract and modest, so perhaps not convincing evidence of an abandonment of capital punishment, it is undeniable evidence of a belief, and confidence in life without parole. Whilst it is beyond the scope of this paper to fully explore the causes for this preference tentative answers, from across the spectrum of abolitionist and retentionist rhetoric include; a low conversion rate from death sentence to execution, the irrevocability of an execution, a protracted appeals process for death sentences, or a belief that sentencing an offender to life without parole is less, or more, humane than putting them to death.
These are of course just a handful of possible reasons, and the ground is undoubtedly fertile for investigation into these and other causes. Perhaps most damning, however, is the historic arbitrariness of capital convictions: with the prison alternative being claimed as a more certain alternative to capital crimes. Indeed, life without parole has been used as a death penalty alternative in a number of high profile cases, where less culpable killers, imagining that there is an objective means of distinguishing between such offenders, have been sentenced to death. Washington State gives the most prominent example in this respect, after Gary Ridgway, ‘The Green River Killer’, was spared the death penalty and sentenced to life without parole after providing a detailed confession to the torture murders of more than 40 women (Johnson 2006). In fact, following the Ridgway case, the Washington State Supreme Court came within one vote of effectively abolishing the state’s death penalty when it ruled on the case of death row inmate Dayva Cross. Attorneys argued for sparing Cross as killers who had committed worse crimes, specifically Ridgway, had been spared the death penalty (Johnson 2006) an argument that widely publicised the arbitrariness of capital convictions and split the court on the utility, fairness, and reasoning in the continued use of the death penalty. The Ridgway case, however, is not an isolated one, other infamous examples have been highlighted around the country and used to champion life without parole as a fairer, more certain alternative: Terry Nichols, accessory to the Oklahoma City bombing; Lee Boyd Malvo, the “D.C. sniper”; Eric Rudolph, who bombed an abortion clinic; Dennis Rader, the BTK serial killer, all examples of high profile homicides that resulted in life without parole sentences (Dallas Morning News 2007).

“Daniel Thomas Tavares Jr. is a monstrous killer. But Pierce County Prosecutor Gerald Horne played the odds right this week when he traded a possible death sentence for Tavares’ guilty plea. The plea will send Tavares to prison for life without a chance of parole. That’s arguably better than he deserves...but death sentences are usually
illusory, feel-good verdicts...only three such sentences in 100 are actually carried out...Tavares [would be] much more likely to wind up as one of the 97 than as one of the three” (News Tribune Editorial 2008).

Yet, life without parole, despite public support and a widespread use and favour with prosecutors, is not a soft alternative to a capital conviction (Johnson 1984). Those very few accounts authored by life without parole sentenced inmates verify this position and like nearly every other prison memoir, although bearing in mind their targeting of the mass market, report instances of violence, gang activity, rape, sexual assault, and the demise of the ‘former self’ (Hassine 1996, Paluch Jr. 2004). Indeed those characteristics of prison life combine to the extent that capital punishment is remarked as a preferable punishment (Hassine 1996:96).

Within an abolitionist framework however, for those troubled by capital punishment but comparatively untroubled by the gravity of a life without parole sentence, its severity has been claimed as a ‘better’ alternative to the death penalty (ACLU 2008, Johnson 1984), claims of severity that have been underscored by both the popular media and empirical study. In the early 1990s, one academic work documented half of the respondents on Tennessee’s death row as preferring living under their sentence of death than one of life without parole (Wright 1991). Although academic study has been relatively meagre, the severity found by empirical investigation has been continually and repeatedly reinforced with editorial comment and journalistic inquiry (Kifner 1995, Liptak 2005, Blow 2008, Berlow 2007, West 2010).

That severity of life without parole, whilst inherently attractive to those on the political right, has often been emphasised in order to reduce the distance between the death penalty and the prison alternative. Indeed, the severity of life without parole has become the essence of an abolitionist
strategy to coerce retentionists into joining the cause. Death might be different but, seemingly, something similar can be achieved by whole of life incarceration. For some desperate to secure repeal of the death penalty, ‘death by prison’ (Blow 2008) has even been championed as something worse than capital punishment, as an extended and prolonged means of execution, an ‘existence’ ‘etched in suffering’ (Johnson 1984:577).

“People sentenced to LWOP have been condemned to die in prison and that’s what happens: they die in prison of natural causes...spending even a small amount of time in California’s overcrowded, dangerous prisons is not pleasant. Spending thirty years there, growing sick and old, and dying there, is a horrible experience...[they] are not given any special treatment and, in fact, have less access to programs than other prisoners. They are housed in high security facilities with few privileges, far away from relatives, and in crowded group cells” (ACLU 2008)

Once, the abolitionist camp was historically divided over the life without parole alternative, with some opposed to the sanction as being objectionably severe (Marquis 2005:520, Bedau 1997, Appleton & Grover 2007). Indeed, that harshness is well noted and has, with the exception of the UK, prohibited the use of the sentence across Europe (Van Zyl Smit 2010). In the United States the unique severity of life without parole has been noted by politicians (Kifner 1995), correctional officials (Hood 2008:397), journalists (Blow 2008), and inmates themselves (Fraser 2007). However, in the presence of those claims of severity, support for life without parole has become, what is tantamount to, a badge of honour; a means of demonstrating a tough stance on crime, but, crucially, allowing the rejection of the death penalty. Such claims of severity will always attract the attention of retributivists, particularly those disillusioned by low conversion rates, from death sentences to executions, and a protracted capital appeals process, whilst for abolitionists repeal of the death
penalty, at any cost, remains the single minded objective. Indeed, now the risk of executing an innocent person has become so publicised (Steiker & Steiker 2008), that objective has been doggedly pursued regardless of the collateral damage that the cause accrues. Whilst there is undoubtedly a considerable amount of core support coming from the political right, it is notable that the political left that has now become supportive of the sentence, because and in spite of its severity. Whilst the gravity of the sentence may be of little concern, or even an attraction, to those driven by a punitive mentality, and now those driven by a subverted sense of humanitarianism, this uneasy dichotomy of champions, of liberalism and conservatism, arguably promotes a refreshed version of the death penalty that even the capital system has now evolved from; indiscriminate, severe, invisible, and final, a composition of elements that the death penalty has been steered away from over recent years. There is something very familiar here, in this supporting coalition of diametrically opposing forces, harkening back to the 1970s when those same forces came together to attack indeterminate sentencing; the result being the determinate sentencing structures that laid the foundation for what is now the largest penal complex on the planet.

Part 2: Beyond the Capital Offender

“Twenty years of experience with life-without-parole statutes shows that although they have only a small effect on reducing executions, they have doubled and tripled the lengths of sentences for offenders who never would have been sentenced to death or even been eligible for the death penalty. Before death penalty abolitionists continue to push for the expansion of life without parole, they should recognize that their crusade has lifelong ramifications for thousands of noncapital prisoners.” (Harvard Law Review 2006:1839)
Unfortunately this warning, five years on, has gone unheeded: now all states, with the exception of Alaska, provide for life without parole. Whilst the sentence may have garnered recent publicity as a death penalty alternative, the reach of the sentence has not been confined to such offenders, the acceptability of the sentence, helped by its endorsement from all along the political spectrum, has normalised its wider application. Now, offenders who have committed non-lethal offences, the mentally retarded and even juveniles are constituent of this growing prison population, classifications of offence and offender that the death penalty no longer applies to. Life without parole may have replaced the death penalty outright in a handful of cases (Illinois, New Jersey, Connecticut, and New Mexico) but predominantly, it has replaced the death penalty by filling the void left behind by death penalty regulation. By way of an example, Texas, one of the last death penalty states to provide for life without parole, despite strong support and pressure coming from the political left, resisted its provision on the premise that it would negatively affect death sentencing rates. After the Supreme Court decision in *Roper v Simmons*, discussed below, it was then adopted on the basis that prosecutors could increase the maximum punishment available for juvenile offenders (Steiker & Steiker 2008:176). The death penalty was restricted, and arguably bolstered in its legitimacy, constrained to comport with the evolving standards of decency that cultivate its position and use, while, after much support from the abolitionist camp, life without parole was ushered in and untold numbers of juveniles who would very probably never have been executed (the Governor of Texas denied that the state permitted such executions Steiker & Steiker 2009:117), are now exposed to a greater, more certain, and longer punishment.

Looking back over the past ten years, in several areas life without parole has grown beyond the current category of capital offender, accompanying the death penalty, rather than replacing it. In 2002, in *Atkins v Virginia*, the Supreme Court exempted those suffering from mental retardation, sometimes now referred to as intellectual disability, from the remit of the death penalty, ruling the
execution of such persons as a violation of the Eighth Amendment prohibiting cruel and unusual punishment. In 2005, in *Roper v Simmons*, the Supreme Court went on to rule the execution of persons whose crimes were committed whilst under the age of eighteen would also be a violation of the Eighth Amendment. Then, in 2008, in *Kennedy v Louisiana*, the Supreme Court ruled that the death penalty could not be applied to crimes which do not involve the death of the victim, effectively ruling, with only the possible exception of crimes committed against the state, that the death penalty is applicable to homicide cases only. Although the majority of states had amended their practices to be ahead of those decisions, together, the categories of offender and offence that the death penalty can be applied to has not only been reduced, but modern capital punishment ‘stream-lined’. Meanwhile, life without parole can be imposed upon all those categories of offence and offender that the death penalty no longer applies to.

In comparison to the death penalty, the only move towards regulation of life without parole has been the recent decision of the United States Supreme Court which prohibited its imposition upon juveniles convicted of a non-lethal offence (*Graham v Florida*). There were three elements to the Graham case: age, offence, and the sentence itself, and the debate continues about the influence each contributed to the outcome, and how this will affect future non capital litigation\(^1\) whether, for example, the rule excluding juveniles from life without parole could be extended further to include life sentences with parole possibility. It is too early yet to determine the long term effects of the ruling, yet it seems most likely to be a response to the criticisms of life without parole for non-lethal offences specifically in relation to juveniles (Amnesty International & Human Rights Watch 2005, Equal Justice Initiative 2007), rather than an adjudication of the sentence itself. There is, however, a considerable amount of state support for juvenile life without parole; only Alaska, Colorado, Kansas,

\(^1\) For a full consideration of the decision and its consequences, by several authors, see Federal Sentencing Reporter, Vol.23 Issue 1
New Mexico, and Oregon prohibit the sentence for juveniles (Nellis & King 2009:17). Although the decision is a promising step towards regulation, what should be noted, in this departure from the ‘hands off’ doctrine that has so characterised the Supreme Court and non capital sentencing, is that such juvenile offenders can indeed spend the remainder of their lives in prison so long as their case is meaningfully reviewed and parole is achievable. Moreover, any hope of immediate sweeping reform is likely misplaced; the ruling was to affect only 129 offenders (Liptak 2010).

Compared to approximately only a dozen juvenile offenders serving sentences of life without parole in the rest of the world (Amnesty International/Human Rights Watch 2005:2) there are over 2,500 juvenile offenders subject to the sentence across the United States. Florida, Illinois, Nebraska, North Carolina, Pennsylvania, and Washington have sentenced juveniles as young as 13 to life imprisonment without opportunity for parole (Equal Justice Initiative 2007:20). The nation’s leader in the incarceration of juveniles to terms of life without parole, Pennsylvania, did not execute a juvenile before the decision in Roper, yet has a juvenile life without parole population of 345. California, also without a juvenile execution in the contemporary death penalty era, has the second highest population with 239 juveniles serving life without parole (Nellis 2009:17). Indeed, of the ten states with the greatest number of juveniles subject to life without parole, over 1,200 offenders, one, Michigan, has no death penalty statute, and of the remaining nine, only one state had executed a juvenile in the contemporary era, Louisiana, once, in 1990. Such offenders, for the most part, were never, in reality, at risk of being executed for their crimes but have nevertheless, along with thousands of others who would never have been tried under a capital statute, been snared by the death penalty alternative.

Whilst the decision in Kennedy v Louisiana, affirmed the death penalty as applicable to homicide offences only, life without parole enjoys a much wider remit of offence type. The imposition of
‘three strikes and you’re out’ legislation in several states, particularly used and publicised in California, have led to a substantial upsurge in life without parole populations, with some of those strikes for relatively trivial non-violent offences, such as perjury and theft which have, nevertheless, been upheld by the courts (Mauer et al 2004:2): in at least 37 states, life without parole is available for crimes ranging from battery to burglary (Nellis 2010:28). Additionally, in Maine, Louisiana, Pennsylvania, South Dakota, Iowa, and Illinois, as well as in the federal system, all life sentences are imposed without the possibility for parole (Nellis 2010:29). In the current death penalty era, however, only two death sentences have been imposed for non-lethal offences, and no such executions have been carried out. In this regard, life without parole will be imposed upon far more offenders than the death penalty ever realistically would have been.

Part 3: Forgotten Populations

“Life without parole sentences share some characteristics with death sentences that are shared by no other sentences... [both alter] the offender’s life by a forfeiture that is irrevocable.” (Justice Kennedy, Graham v Florida)

One of the most enduring attacks on, and enduring points of its support, is the irrevocability of the death penalty, which some may champion as correct and just, but which causes concern for others in light of a steady stream of death row exonerations since the 1970s. Whilst the debate may rage regarding the actual innocence of those exonerated, as opposed to their legal innocence, a distinction which death penalty advocates take very seriously (Marquis 2005, Ponnuru 2002), life without parole has seemingly allayed any such fears about the ability of sentencing schemes to punish only the guilty or, is lost beneath the primary aim of death penalty repeal. Indeed, statistics
indicate that when a life is threatened by punishment, in the immediate sense, the success rate for reversal, in comparison to non-capital cases, is disproportionately higher,

“[T]he rate of success for appeals from denial of habeas corpus relief in noncapital cases typically is estimated at 7% or less. The comparable rate for capital cases is startlingly different. Between 1976, for example, when the Supreme Court restored the death penalty in Gregg v Georgia, and 1983, the federal courts of appeals – when they reached the merits of the petition on habeas review – had decided, according to one study, more than 73% of the capital cases in favor of the death-sentenced prisoner”. (American Bar Association cited in Harvard 2006:1853).

Whilst capital sentences inherently attract a high level of post conviction review, a level not enjoyed by life without parole convictions, the inference within the innocence framework, has been one of permissibility for error and mistake when execution is not a threat. Those exonerated from death rows across the country have been so after, comparatively, hyperbolic levels of review, not only by the legal system but by legal activists, media actors, and even the general public. Owing to their lower level of review, the innocence rate of non-capital convictions is logically higher, yet the life without parole sentence is repeatedly championed as the catch all solution. Mistakes happen, and the innocent are wrongly convicted, no sentencing system is infallible, yet when the punishment is one of incarceration, rather than death, seemingly, it is not so much of a problem. Of course an execution cannot be undone, but, it is asserted, neither can the harms and suffering wrought by a lengthy period of incarceration, if that mistake is ever uncovered. In reality, offenders are sentenced, and then warehoused in prisons across the nation for the remainder of their lives with little in the way of comparable investigation into an offender’s possible innocence, and little hope for those wrongly convicted. One such example is the case of Walter McMillan, whose sentence of life without parole, imposed by a jury, was overridden by the judge who imposed a death sentence on McMillan.
His sentence of death meant he received legal assistance from the Alabama chapter of the Equal Justice Initiative which was able to prove his innocence. Had the judge accepted the jury’s recommendation for life without parole, McMillan would likely still be in prison today (Mauer et al 2004:20).

Part 4: The Success and Failure of Life without Parole

“Our standards of punishment have evolved over time, from the gallows to firing squads, from the electric chair to lethal injection. Life without parole, essentially death by prison, should be the new standard” (Dallas Morning News 2007)

Whilst life without parole replaced the death penalty in New Jersey, New Mexico, Illinois, and Connecticut, those states that have legislatively abolished the death penalty in the past thirty five years, also states which, discounting Illinois, aside from one voluntary execution carried out in New Mexico, and one voluntary execution in Connecticut, would be described by Amnesty International as abolitionist in practice. In all other death penalty states, however, life without parole is running concurrently with death penalty legislation. By way of an example, in Florida, which leads the nation in the number of inmates serving life without parole, in 2010 - the last year for which data is available - 14 people were sentenced to death. From 2000 to 2010 a total of 164 death sentences were handed out, and between 2000 and 2010 25 people were executed. None of those executed has been a juvenile, mentally retarded, or executed for a non-lethal offence. Life without parole has not replaced the death penalty in Florida, it has merely picked up the offenders that evolving standards of decency have dictated that the death penalty should not be applied to; a scenario that is repeated across the country.
The life sentence has evolved from one of ten years imprisonment, to, in some states, one of life with absolutely no chance of release, a development that has lowered the standard of what is acceptable in punishing offenders. For anyone, particularly for juveniles, the evolution is felt acutely and, with very little impact upon the death penalty. Indeed, that effect has been the opposite of what was intended as abolitionists began to embrace life without parole as the death penalty has arguably, to an extent at least, been affirmed as an increasingly necessary punishment for the ‘worst of the worst’. As recently as 2009, the then Governor of Connecticut, Jodi Rell, vetoed a measure to repeal the death penalty in that state arguing that the death penalty is the only suitable punishment for exceptionally brutal killings (even after its recent abolition the death sentences of the men on Connecticut’s death row remain in place as abolition, like in New Mexico, was not retroactive).

Whether life without parole as ‘the other death penalty’ (Johnson & McGunigall – Smith 2008) is too hyperbolic a description for some (Blecker 2010), it is difficult to disagree that, in simple length, coupled with the absolute denial of hope for ever rejoining society, life without parole is a unique sentence, one that differs from other prison terms where character improvement and reformation contribute to the hope of eventual release (Ristroph 2010:5). Consigned to whole of life imprisonment, these offenders are largely forgotten by society which, for some, is arguably the least they deserve, but for the vast majority, is a sentence to which they would never have been subjected had abolitionists not supported the sentence. Whilst they cannot be held directly culpable for having lost control of the sentence, it cannot be overlooked that their support has lent considerable endorsement to life without parole; in short there are few left who will publicly oppose the sentence, with the irony that neither retributivists are satisfied (Blecker 2010) and the liberal ideology that underpins death penalty abolitionism has been betrayed. Although lacking a tangible execution mechanic, a gas chamber, or an electric chair, something stern and foreboding with which to juxtapose the vulnerability of an offender whose life is about to be taken, life without parole as asserted by the abolitionist camp, is a ‘semantically disguised sentence of death’ (Villaume
2005:266); indeed it is heavily promoted as such, regardless of the consequences for thousands of non capital offenders. The way to reform, however, begins with recognition of the effect of that support. There are more than 3,200 people on death row, yet in the abolitionists fight for their cause, over twelve times that number have been sentenced to life without parole. In terms of numbers, abolitionists may have been better to support the death penalty.

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