
Life Without Parole, America's Other Death Penalty

Notes on Life Under Sentence of Death by Incarceration

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Life without parole is examined as a form of death penalty, namely, death by incarceration as distinct from death by execution. Original interviews with a sample of prisoners (condemned prisoners and life-without-parole prisoners) and prison officers are used to develop a picture of the experience of life under sentence of death by incarceration. It is argued that offenders sentenced to death by incarceration do not pose a special danger to others in the prison world or in the free world and that the suffering they experience is comparable to the suffering endured by condemned prisoners. Life without parole thus emerges as a viable alternative to capital punishment.

Keywords: *prison adjustment; life without parole; death by incarceration; death penalty; capital punishment; supermax*

Life without parole is sometimes called a “true life sentence” because offenders are sentenced to spend the remainder of their natural lives in prison. A better term for this sentence might be *death by incarceration*, as these persons are, in effect, sentenced to die in prison. Indeed, it is argued here that the sentence of life in prison without the possibility of parole can be equally as painful as the death penalty, albeit in different ways. The sentence can thus be thought of as “our other death penalty.”

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Offenders sentenced to death by incarceration suffer a “civil death.” Their freedom—the essential feature of our civil society—has come to a permanent end. These prisoners are physically alive, of course, but they live only in prison. It might be better to say they “exist” in prison, as prison life is but a pale shadow of life in the free world. Their lives are steeped in suffering. The prison is their cemetery, a cell their tomb. If we as a society were to limit life without parole to aggravated murders, as we try to do with capital punishment, it could be argued that lifers¹ give their civil lives in return for the natural lives they have taken (see Johnson, 1984, 1998). Under this formulation, use of life sentences for crimes short of capital murder would be excessive and unjust. By the same token, capital punishment would be entirely unnecessary, as capital murder would be adequately punished by “our other death penalty,” death by incarceration.²

Objections to replacing death by execution with death by incarceration relate to public safety (e.g., are lifers a danger to others in prison or the outside world?) and adequacy of punishment (e.g., is a life sentence sufficient punishment for capital murder?). As we shall see, life without parole does not pose a special risk to public safety and is a sanction of great severity, arguably comparable to the death sentence in the suffering it entails. Moreover, it is worth noting that one of the unique features of death by incarceration is that it allows a large window of time—much larger than that afforded by the death penalty—for evidence of innocence to emerge and thus permits the release and perhaps compensation of persons wrongly sentenced to prison for life.

A Note on Method

In portions of this article, we draw heavily on McGunigall-Smith’s unpublished doctoral research conducted at Utah State Prison from 1997 to 2002. McGunigall-Smith conducted structured, tape-recorded interviews with 7 of the 11 men on Utah State Prison’s death row (4 inmates refused to speak with her) as well as with an opportunity sample of 22 prisoners serving life without parole and an opportunity sample of 34 staff members assigned to supervise condemned prisoners and prisoners serving life without possibility of parole. Given the limits of sampling (a small death row group and nonrandom samples of life sentence prisoners and correctional staff), we use quotations from interviews for two main exploratory purposes: (1) to illustrate themes widely shared by McGunigall-Smith’s participants and (2) to shed further light on themes firmly established in the ethnographic literature on prison life and adjustment. For more details on method, consult McGunigall-Smith (2004a, pp. 89-107).

Public Safety

Lifers in Prison

Are prisoners sentenced to life without the possibility of parole a special danger to others in the prison, the setting in which they are slated to die? Executed prisoners are dead; dead prisoners pose no threats, whereas lifers are at least potential dangers to others in the prison. Some proponents of the death penalty warn us that lifers have nothing to lose and therefore will be uncontrollably violent, injuring or killing officers and inmates at will. In the absence of the death penalty, the speculation goes, "What more can we do to deter them from violence?"

As plausible as this scenario may seem, it is dead wrong. In fact, the opposite is true. A substantial body of empirical research supports the claim that lifers are less likely, often much less likely, than the average inmate to break prison rules, including prison rules prohibiting violence. Experience in both state and federal prisons reveals that the vast majority of lifers are manageable prisoners. McGunigall-Smith's (2004a) interviews with a sample of 22 life-without-parole prisoners in Utah State Prison did not turn up a single inmate who posed a serious disciplinary problem for staff or had a violent confrontation with staff. No inmates reported ever having been assaulted by staff (save one, whose allegation was dismissed by staff and other inmates). Similarly, McGunigall-Smith's (2004a) interviews with a sample of 34 correctional officers at the Utah State Prison did not turn up a single instance in which lifers were seen by officers as any more of a threat than other inmates.

Typical of the officers' observations in McGunigall-Smith's (2004b) research is this comment: "I'm as comfortable with them as with any inmate. An inmate is an inmate to me. I view them all as the same level" (p. 1). Officers, as a rule, told McGunigall-Smith that they knew the prisoners as inmates, not as offenders; it was the inmates' prison behavior that mattered to the officers, not their crimes and not their sentences. The general wisdom was that any inmate could pose a threat at any time. The prison behavior of lifers, however, led the officers to view them as no more of a threat, and often much less of a threat, than other prisoners. As one officer who worked in a building that housed lifers related to McGunigall-Smith (2004b), "the ones in this building I'm pretty comfortable with. I know them and know what they are capable of. I know what my rapport is with the inmates in this building. I feel pretty comfortable" (p. 2).

Lifers are sometimes said to have "nothing to lose" because they can never gain release from prison, but the small rewards of prison life are of

considerable value to them (see Johnson & Dobrzanska, 2005; see also Leigey, 2007). Prison is their involuntary home for life. Accordingly, lifers strive to make the most of the life that is available to them behind bars. Most lifers begin their prison sentence in maximum, and very often supermaximum, facilities; the very bleakest of prison existence. This experience often proves to be a profoundly painful immersion into the “belly of the beast” that dramatically highlights how much lifers have to lose and how hard prison life can be if they get into trouble. As a general matter, then, self-interest guides lifers to avoid trouble because trouble jeopardizes the few privileges they can secure in the prison world and, moreover, can land them in very grim living environments. “They cope probably better,” one officer at Utah State Prison told McGunigall-Smith (2004b), because unlike short termers, “they learn how to work the system. They have the best jobs and they know how to get what they want. Their disciplinary records are smaller. The longer they are here the better they cope with the system” (p. 3).

In all but 1 of the 38 states that have the death penalty (New Mexico), capital murderers can be sentenced to death or to life without parole. Many death sentences are overturned on appeal,³ with the offender typically released into the prison population with a life term (with or without parole eligibility). Significantly, research reveals that “former death row and life-sentenced capital inmates were disproportionately less likely to commit acts of serious violence in prison than non-capital offenders” (Cunningham, Reidy, & Sorensen, 2005, p. 308). Studies supporting these observations have been conducted in Texas, Missouri, Indiana, and Arizona (see Cunningham et al., 2005; Reidy, Cunningham, & Sorensen, 2001; Sorensen & Marquart, 2003; Sorensen & Wrinkle, 1998).

The premier study on the putative dangerousness of lifers was conducted in Missouri and covered an 11-year period (Cunningham et al., 2005). For our purposes, the populations under study included inmates serving sentences of life without parole for first-degree murder ($N = 1,054$) and inmates serving parole-eligible sentences ($N = 2,199$). All inmates were housed in maximum security, the level just below “supermax” prisons. Lifers were significantly less likely than parole-eligible inmates to be involved in violent misconduct (Cunningham et al., 2005, pp. 313-314). Only 1 of the 1,054 life-without-parole prisoners committed a homicide in prison. Moreover, prisoners eligible for parole were much more dangerous than life-without-parole prisoners. Indeed, parole-eligible prisoners were almost twice as likely to commit acts of violence as were life-without-parole prisoners and almost 4 times as likely to commit major assaults.

Nor are life prisoners a danger to citizens in the free world. The only means of egress from prison for these offenders, other than death, is by commutation or pardon. (Escapes from high-security prisons—by any prisoners, let alone lifers—are so rare as to pose a negligible threat to public safety.) As a practical reality, life-without-parole prisoners would only be pardoned if they were found to be innocent, in which case their release is entirely appropriate. Commutations are rare events for persons sentenced to prison, let alone a prison term of life without parole, as commutations are generally met with considerable political resistance. In the state of California alone, more than 2,500 offenders have been sentenced to life without parole since 1978; not a single one of these offenders has had his sentence commuted (Sundby, 2005, p. 38).⁴ It is interesting that most lifers fully expect to die in prison. They may hope for release, but the dominant sentiment is defeat: “My sentence is natural without. . . . I don’t *ever* expect to go out the front door. There is no possible way in all reality.” Said another lifer, “I’ll die here, hopefully soon” (McGunigall-Smith, 2004b, p. 4).

As a practical matter, it is life without parole that is the sure and swift sentence, not the death penalty. Moreover, life without parole is increasingly popular with the public—more popular in recent years than the death penalty (Death Penalty Information Center, 2006). Support for the death penalty drops dramatically when the sanction of life without parole is an option. The popularity of life without parole appears to reflect the belief that this sanction may be a better deterrent than the death penalty (because it is more certain) and, moreover, that life without parole is a penalty that spares us the risk of executing an innocent man or women. There is also the belief held by many that a life sentence without the possibility of parole guarantees that the offender will suffer greatly for the remaining days of his or her life.⁵

Life in Prison as Punishment

Life sentence inmates are manageable prisoners, some are even model prisoners, but their decent adjustment does not change the fact that their lives are marked by suffering and privation. Lifers do not adjust well because prison life is easy; they adjust well because self-interest moves them to make the most of a very difficult situation—a life confined to the barren, demeaning, and often dangerous world of the prison.

Some of us fail to appreciate the rigors of a life in prison because we do not believe prison is punishment. Prisoners are given a roof over their heads, three meals a day, and basic amenities like showers, recreation periods, and

even ready access to television. Some prisons are air-conditioned. Because prisoners do not have to work to be fed, clothed, and housed, it may appear—even to the inmates themselves—that they are being coddled. But the deeper reality is emotional, not physical, and it is the emotional aspects of prison life that inmates find enormously stressful. As one inmate told McGunigall-Smith (2004b):

It may sound weird but the actual physical part of being here is really easy. It almost makes you feel like you're a baby because you're fed, all your bills are taken care of. You don't have to do anything. You don't have to get out of bed in the morning if you don't want to. . . . Everything is provided. But, the emotional is hard. I hate this place with a passion. I cannot stand it. Sometimes I wake up and start looking around me and then I just lay there with my eyes closed because I just don't want to look at it. I don't want to see the concrete. I don't want to remember that I'm here. (p. 5)

One source of evidence on the extent of pain associated with a life sentence is provided by condemned prisoners who tell us point blank that a life sentence is worse than a death sentence. These are not just empty words. A remarkable 123 prisoners—11% of the 1,099 executions carried out at the time of this writing—have dropped their appeals and allowed themselves to be killed (Death Penalty Information Center, 2008). Some of these “volunteers,” as they are sometimes called, lived on death rows that afforded more liberties and comforts than many maximum-security prisons. In Utah, for example, death row inmates with clean disciplinary records (which is true for the majority of condemned prisoners) have up to 6 hours out of the cell, during which time they can mingle with one another freely. They may have televisions (if they can afford to pay for them) in their air-conditioned cells. When Joseph Parsons, a Utah prisoner, dropped his appeals and was executed in 1999, his aim was not to get away from oppressive death row conditions. He wanted to get away from prison entirely, not just death row. Parsons made it quite clear that he preferred death in the execution chamber to life in prison: “I think it takes more courage to go on.” In his view, “dying is easy . . . it takes guts to keep plodding along” (McGunigall-Smith, 2004a, p. 150).

In prison, Parsons made clear, “plodding along” means living an empty, futile existence. Visibly weary of life in prison, Parsons observed:

There has to be something better than this. Nothing could be worse than this. I'm not a religious person—I'm not into God and all that and the Devil and all that stuff. But if you want to use a good analogy this has got to be hell right here. There can't be anything worse than this. What they say is hell, the fire

burning, the torture and everything else, well at least you're doing something! Here . . . it doesn't make any sense to me. (McGunigall-Smith, 2004a, p. 135)

Six hours before he was executed, Parsons was asked about his feelings about his impending execution. He replied, "I'm not scared about the time between now and my execution. It's easy. The hard part is living every day here" (McGunigall-Smith, 2004a, p. 138). Asked if he had second thoughts, he replied emphatically, "Have I had second thoughts? No. I'm tired of being here" (McGunigall-Smith, 2004a, p. 153). Remarkably, Parsons was eager to face execution:

I'm looking forward to this. The situation I'm in now is horrible. To me, I can't think of anything worse than this . . . to me, in my situation that I am in right now, this is the worst it could possibly be so it's a relief to know that I'm not going to be here no more . . . the next journey has got to be better than this one. All my bad karma came and hit me hard in this lifetime. I believe in good karma and bad karma. I got to figure in the next one I'm going to have a chance to do a little bit of good. (McGunigall-Smith, 2004a, p. 139)

Parsons never maintained that the physical conditions of his confinement were what drove him to drop his appeals. As he told McGunigall-Smith (2004a), "we've got three meals a day. We got a TV and a radio. We got air conditioning in summer (sometimes)" (p. 158). His life was hell in part because of the other people around him. Like Sartre (1949), he found hell in the fact that there was "no exit" from the company of people he held in contempt, some of whom (both inmates and guards) he characterized as "idiots." More important, Parsons stressed that he was never treated as a person, which is to say, shown respect and concern during incarceration. His degrading treatment was vividly brought home to him when he was sent to a civilian hospital for emergency surgery. His treatment there was in sharp contrast to his treatment as a death row prisoner:

The hospital staff were good to me, and their attitude was that I was a regular patient. They were pretty nice to me actually. Being able to get up and walk around was what made me feel real good. They were talking and bull-shitting with me and making me laugh . . . I was walking around the halls talking to people. It kind of felt like I was a human being. I almost felt like I was normal. (McGunigall-Smith, 2004a, p. 134)

It should be noted that Parsons was under very close supervision by prison staff during his stay at the hospital. The freedom he experienced was

psychological, not physical. Because he was treated like a person, he felt free of the prison and therefore felt like a normal human being, not a captive. Back in prison, Parsons felt once again as he had always felt—that he was not seen as normal, not treated as a human being.

Parsons reports that he was always attuned to the various indignities and slights of prison life, which he claims were forcefully brought home to him by inconsistencies in the implementation of prison rules and procedures. These inconsistencies, in turn, interfered with his personal daily routine, disrupting his life and highlighting his sharply limited autonomy. Parsons stressed that he was “tired to death” of inconsistency. He was disturbed by schedules that changed in small ways but nevertheless in ways he could not anticipate and plan for; he resented promises by staff that were not kept or were left pending for longer than he could bear, leaving him on edge. To survive, Parsons needed a firm daily routine in which to lose himself. What he found on death row were small but repeated departures from routine that left him anxious and uncertain.

For Parsons, life on death row was a precarious and exhausting battle to establish and maintain a routine with which he could live. More specifically, he sought a routine in which he could lose himself and not have to think about the indignity of a life lived in a place where he would never be a full-fledged human being, where he would never be treated as truly normal. Eventually, he simply ran out of energy. “I guess you have to deal with whoever and whatever comes in here,” Parsons told McGunigall-Smith (2004a), “[but] I’m not dealing with it any more. I’m tired of dealing with it” (p. 153). The sheer effort of trying to forge a routine strong enough to allow him to live by habit, free from painful introspection, was too much for him. “Even if it did change drastically,” Parsons observed, “I wouldn’t change my mind. I’m already dead” (McGunigall-Smith, 2004b, p. 6). Death in the execution chamber looked better, much better, than life in prison as Parsons had come to know it.

Lifers, like Parsons and other execution volunteers, see many parallels between life sentences and death sentences. The lifers interviewed by McGunigall-Smith were asked which sentence they would prefer, a death sentence or a life sentence without the possibility of parole. The lifers were divided—eight chose the death penalty, eight chose life without parole (their current sentence), and six were ambivalent, sometimes preferring execution, at other times preferring life in prison. Typical of those who would choose death is the sentiment that life in prison is an exercise in futility. “Despite my best efforts,” observed one lifer, “I lead a pointless, monastic existence with no end in sight . . . I live in hell” (McGunigall-Smith, 2004a, p. 214).

Note that this concern for a pointless, empty life, a kind of living hell from an existential point of view, is exactly what motivated Parsons to drop his appeals and hasten his execution.

Prisoners who chose life sentences did so, to paraphrase a common view, because where there is life, there is hope—for release. Nothing about prison life offered any intrinsic appeal; the goal of choosing life in prison was to achieve the extrinsic goal of release from prison. Prisoners who expressed ambivalence about which was worse, life in prison or death in the execution chamber, framed the choice as a struggle with two more or less equally unappealing options. Said one prisoner, “there are times when I think I would be better off [executed] just because we’re not doing nothing at all [here in prison]” (McGunigall-Smith, 2004b, p. 7). Another man described an emotional journey in which an original preference for execution gave way to a grudging embrace of life in prison because prison life offered more pain, not less:

In the beginning I did [want the death penalty]. I was feeling sorry for myself because I got caught. The death penalty, in my mind at that time, would have erased everything. I would have ceased to exist. The pain would cease. As time went by I grew to enjoy that pain. That pain woke me up. To me the death penalty is the easy way out. (McGunigall-Smith, 2004b, p. 8)

To call the death penalty “the easy way out” does not, in our view, minimize the pains of life under sentence of death by execution. Life on death row may well be a kind of psychological torture, as suggested by Parsons and supported in some research (see Johnson, 1998, 2003), but death row prisoners like Parsons have the legally valid choice to end that torturous existence by dropping their appeals and submitting to the judgment of the court.⁶ Lifers have no comparable choice; the life sentence offers prisoners no legal way to end their suffering. Life in prison had been chosen for them and indeed imposed on them by the courts, and in this sense, their life sentences render them less autonomous than condemned prisoners.

Living in Prison for Life

Pains of Life Imprisonment

The pains of imprisonment—for inmates in general and lifers in particular—are not obvious to outsiders because they are not visible. As one life sentence prisoner insightfully observed, “prison can be compared with

the microwave oven in my kitchen at home—it destroys you on the inside long before it effects are evident on the outside” (Johnson & Toch, 2000, p. 138; see also Johnson & Toch, 1988). Outsiders find it hard to put themselves in the shoes of prisoners; the prison world is alien to most citizens, so removed from our daily life that prisons might as well exist on another planet. To fully appreciate the pains of life imprisonment, one has to look at the prison as it is experienced by the inmates who must live each and every day of their lives in confinement.

A central fact of life imprisonment from the inmate’s point of view is a life of unremitting loneliness. The prisoner is permanently separated from his family and other loved ones, and with this separation comes a profound and growing sense of loss. Loss of family shows itself in ways big and small. Some inmates, for example, talk about the little things they miss greatly because they are separated from family. Not being around for the daily events that make up family life hits many prisoners hard. One man missed “the opportunity to go to a park with my nephews and nieces and spend time with them” (McGunigall-Smith, 2004b, p. 9). Said another, “my children will grow up and I won’t get to enjoy them—high school, getting married, starting families” (McGunigall-Smith, 2004a, p. 207). Lifers know that they cannot be parents in the sense most of us understand the term, which is to say, they cannot guide and support their children: “I’m not there to say ‘Honey, he wouldn’t be good for you . . .’ I’m not there to pat them on the back and I’m not there to pick them up when they fall. And that’s the hardest part” (McGunigall-Smith, 2004a, p. 207; see also Johnson & McGunigall-Smith, 2006).

Lifers know that family ties are apt to wither over time and that family members, notably their parents, are likely to die while they are still alive in prison. Loss of a parent can be a terrible blow. “My father passed away last month,” observed one lifer, “and I wasn’t able to attend his funeral. That’s probably the hardest thing I’ve had to deal with” (McGunigall-Smith, 2004a, p. 207). Said another prisoner, when asked to describe the greatest hardship he faced as he served his life sentence, “knowing my family is dying out there and moving away and I can’t keep in touch with them” (McGunigall-Smith, 2004b, p. 10). The life sentence inmate must face the painful fact that one day he may be entirely alone, bereft of outside support or concern. “I don’t have any contact with anybody on the streets,” said one prisoner, “I don’t know anybody . . . I don’t have anybody to talk to, to connect with. This is my world now. This is all I know—the inside of these walls” (McGunigall-Smith, 2004b, p. 11; see also Jewkes, 2005).

Daily life on “the inside of these [prison] walls” is lonely as well. Inmates are often in the company of others but feel very much alone because they are surrounded by strangers who are indifferent, if not hostile, to their welfare. As one inmate put it:

prison is coldness . . . no one in prison really cares about you, not like those at home do. It’s a chilling feeling to realize that no one’s life here would be significantly changed if I were to die tomorrow. Loneliness breeds and thrives in the belly of the monster known as prison. It strikes constantly and insidiously and it never goes away. (Johnson & Toch, 2000, p. 139)

When asked what was the most difficult thing about serving a life sentence, one inmate interviewed by McGunigall-Smith (2004b) said this, “No love. Nobody to grab hold of me and hug me. I mean real love. I’ll never feel that emotion again” (p. 12). At the conclusion of another interview, a prisoner told McGunigall-Smith (2004a), “You’re probably the first person I’ve talked to in fifteen years about stuff like my health—physical and mental. I never talk to anybody about anything” (p. 210).

Prison often is a debilitating place in which to live. A key feature of prison life is repetition. Each day in prison is essentially the same. The result is a lifetime of endless boredom, which prisoners tell us—and which we can readily imagine—is a terrible thing to endure. As one inmate observed,

I awaken with a feeling of dread. A day in prison offers nothing to look forward to. It is an existence of endless repetition, restriction, and regimentation. . . . Prison is sameness, day after day, week after week, year after year. It is total confinement of body and spirit and total separation from everything real and important. (Johnson & Toch, 2000, pp. 138, 140)

Part and parcel of a repetitive routine is loss of choice. “The thing I miss most,” said one lifer interviewed by McGunigall-Smith (2004b), “is the right to choose. I no longer have any choice—when I shower, where I go, what I do” (p. 13). Each day brings mortifications that remind prisoners of their helplessness and the sheer loss of dignity they suffer in a world in which no one recognizes their inherent worth as human beings (see Todorov, 1996, p. 59). A mundane but telling example offered by one inmate: “Having to ask a guard for toilet paper. You could ask ten times in a period of three to four hours for such an item. Things like this amount to cruel punishment” (McGunigall-Smith, 2004b, p. 14). Lifers are perhaps especially sensitive to such slights because they are experiencing the cumulative effects of lack of autonomy. Their dignity as self-determining human beings has been taken

from them, and they, unlike other inmates, cannot look forward to a time when they will leave prison and perhaps regain their status as full-fledged human beings.

Prisons are experienced by inmates as settings of deprivation. Locking people up means locking them away from the free world with its variety and opportunity that is now replaced with a deadening routine of lock-ins and lock-outs, of group feedings and group movements; it means locking people away from loved ones who are now replaced by strangers and keepers, few of whom even know their names let alone care about them; it means locking prisoners away from the many simple things we all enjoy, like good food eaten in good company and moments of treasured privacy. The life of the lifer is made up of many small losses, which cumulate and leave the prisoner with a sense that he (or she) has no dignity or worth as an individual.

At the core of the prison experience, of course, is the loss of freedom. In a sense, loss of freedom is experienced as the sum of the various deprivations and hurts inherent in confinement. As one inmate observed, prisoners ultimately have no choice other than to submit to the prison:

For the prisoners, the loss of freedom is devastating. Everything they have taken for granted is gone. They have no control over their lives, no choices. Others decide when and where they eat, work, and sleep. . . . Their lives are fastened to rules and regulations that discourage and disregard normal impulses. They accept the rules and adjust to them, just as they do to the overcrowded conditions, body odors, lack of privacy, standing in lines, and the like. They have no choice. (Johnson & Toch, 2000, p. 141)

Adjusting to a Life of Prison

All prisoners, not only lifers, are held in a kind of suspended animation, the social equivalent of a coma, while the rest of the world changes and evolves. The free world is dynamic, the prison world static. By its very nature, the free world offers hope for change. Prison, by its very nature, isolates the offender and holds hope hostage until the offender is released. Lifers, unlike regular prisoners, will never be released, so life as they know it ends at the prison gate. For them, a life sentence is a death sentence. "Being given a life sentence," observed one prisoner, "is like being told by a doctor that you're going to die, you know, like you've got a terminal illness. You feel as if your life's effectively over" (Jewkes, 2005, p. 366). A life of prison may also be like being told by your doctor that you must be put into a coma, never to return to normal consciousness and normal human interaction. It is

interesting that most people in the free world rank a coma as worse than death (Dinger, 2005; Mold, Looney, Viviani, & Quiggins, 1994).

An overarching concern of lifers is whether they will be able to make it through their sentence and at what cost to them as human beings. One's life in the free world is "effectively over," but one's life as an inmate has only just begun. In one inmate's words:

I don't know how I'm going to [make it]. There's a man who lives next door to me. He's about seventy years old and his crime was multiple murders back in the sixties. He has been in here ever since. . . . Sometimes I wonder if and how I'm going to manage living in here that long. I think when you come to prison you stop developing which is why he is also very childish. He got arrested at a very young age like me and I wonder. I think it's pretty obvious that I stopped developing the minute I was arrested. You don't develop in here. That stops and you are basically stuck at whatever age you were when you were arrested. So, I see this seventy year old man with the mentality of a twenty-three year old and I was arrested when I was nineteen. (McGunigall-Smith, 2004b, p. 15)

Some correctional officers are keenly aware of the travails of lifers and in fact consider a life sentence to be worse than a death sentence. Said one officer:

I think that's [LWOP] harder to face than the death penalty in the sense that they know they are going to live the rest of their life in this kind of an environment. They are not going to get out and be able to be with their families and loved ones again. I think that's a little harder—they just go on day after day wondering when they are going to die. It's a sorry situation to be in for that long. (McGunigall-Smith, 2004b, p. 16)

The time-honored approach to coping with adversity, including prison adversity, entails taking things one day at a time, focusing on the present (over which one has some control) and ignoring the past and future, over which one has no control and, in all likelihood, apprehensions or regrets (Cohen & Taylor, 1972; Johnson, 2002; Toch, 1975). Typical comments recorded by McGunigall-Smith (2004b) included "one day at a time, only way to do it" or "just like I've been doing—one day at a time" (p. 17). The simplicity of such statements hides an underlying complexity. Probing reveals that there are conditions—like personal flexibility and environmental stability—under which the simple "keep your head down and stay in the present" approach may depend.

"One day at a time and hope to remain flexible enough to find one more thing to keep me going," said one man, when asked how he coped with his

life sentence (McGunigall-Smith, 2004b, p. 18). Elaborating on his adjustment strategy, he observed, "I tend to pick projects that at least last a year so that I don't have to think of this 'fate worse than death' for at least a whole year." The "enormity of the amount of time they have handed me," he continued, "becomes overwhelming, at least for me to manage emotionally. I would like to think I would be able to do it just as I'm doing it right now—a positive outlook, a limited hopeful outlook." Upon further questioning, we learn that this "limited, hopeful outlook," in turn, is contingent on environmental conditions that

could change within the next year if the trend keeps going the way it goes with privileges and lockdowns and the violence and stuff like that. It's hard to maintain any type of positive character traits after you've been exposed to this for so long. (McGunigall-Smith, 2004b, p. 18)

If things are bad enough for long enough, coping efforts fail and, in his words, "you kind of succumb to the environment." A year or so after this interview, the prisoner violated a rule and was moved to a more restrictive environment, which presumably interfered with his adjustment projects and brought home the "enormity of the amount of time they have handed me." Soon thereafter, he took his own life.

The better adjusted prisoners, and especially the lifers, work with the prison's routine. For them, the larger routine—the counts and mealtimes, the out-of-cell times and lights-out times—is like an anesthetic. The rhythm of the prison day dulls the pains of loss and regret. This daily routine makes for a repetitive, empty existence, as we have noted, but for most, it is a bearable one. Prisoners put themselves on automatic pilot and try not to think about their lives. Within the structure, lifers typically forge more personal routines that give some meaning to their days. Here are two typical comments drawn from McGunigall-Smith's (2004b) interviews:

I try to change my routine or vary it a bit. I have my mainstays but I change a few things now and then just to get a little bit of variety. But a routine keeps my sanity. (p. 19)

It allows me to divide time up into parts that I can manage and it gives my life a cadence and consistency and predictability and offers the illusion of control. (p. 20)

When prison conditions deteriorate—when there are "lockdowns and the violence and stuff like that"—daily life becomes unstable or oppressive.

Under these conditions, the helpful “bit of variety” and the comforting “illusion of control” found in one’s personal prison routine are lost and prisoners suffer great stress. McGunigall-Smith (2004a) called this stress the “pains of inconsistency,” which are reflected in the following interview excerpts:

Days start getting real long if you break your routine. The way they do things here they move you around so much—change rules and stuff every day. That gets to you. (McGunigall-Smith, 2004b, p. 21)

Since the lockdown they have been doing a lot of shakedowns—every day. The fight took place in another building but we are suffering. . . . Shakedowns are very upsetting to our routine. It’s hard to relax. I have seen an inmate, who has had enough of this, start banging his head on the wall—that’s what’s going to happen. (McGunigall-Smith, 2004b, p. 22)

Routine provides stability and predictability for prisoners. Lifers want to live life on the surface of things, by habit and rote. Below the surface calm, they know from experience, lies a deep well of loss and discontent.

Punishment, Ruined Lives, and the Limits of Retribution

Prisoners, and especially lifers, have made a tragic mess of their lives; if they dwelled on this sad fact, they’d drive themselves to distraction. The battle to maintain workable routines, discussed earlier, is a battle to keep these ugly thoughts at bay. At times, however, prison life is utterly and completely superseded by events from the outside world—loved ones come to you with a problem and you cannot help; a visit is missed and you wonder why; you do not get mail and you wonder why. In situations such as these, prisoners are shaken from their personal routines as well as from the routine structure of daily life behind bars. As a result, they are painfully reminded that they are prisoners, that they got themselves into this mess, and that the future is bleak. As one prisoner observed:

You’re coping pretty well when you get one of those painful reminders of your situation. One of three events occurs or recurs. You learn of a family problem that demands your presence to handle, and you understand the meaning of being helpless. The problem would be nothing if you were not in prison, but now it seems enormous because you can’t deal with it. It makes you brood, feel the shame of what you are doing to your loved ones and appreciate the fact that you are a pretty disgusting person. The other two events are visiting hours without a visitor and mail being delivered without a letter for you, which is the definition of loneliness. It makes you think a lot

about home, loved ones, friends, the world outside. You remember little things you did before this; they were unimportant then, but now you realize they were very important. (Johnson & Toch, 2000, p. 142)

It is at these junctures—when the free world intrudes into the prison, awakening prisoners from their prison-induced comas—that the most fundamental pain of imprisonment is revealed, for it is at these times that prisoners look at themselves and at their lives. Almost invariably, they are deeply distressed by what they see:

Like it or not, you are being exposed to who you really are way down deep inside. It becomes increasingly difficult to hide from yourself. Often you find yourself lost in the darkest crevices of your being and not too happy with what you are finding. You are hesitant to continue but you do, hoping for the best, finding the worst. Constantly you are thinking, thinking, and thinking. It happens while you are working, pacing your cell floor, waiting for a letter or a visit, while you are mopping floors or performing some other robot work you've been assigned, or as you lie awake at night wishing for the escape of sleep. The layers of your character are getting peeled away like the skin of an onion, and don't expect flower buds to be hidden at the core. (Johnson & Toch, 2000, p. 142)

This inmate's reference to the pains of reflection when you pace your cell or lie awake at night is quite significant. Anytime an inmate's mind breaks from the prison routine and drifts to the past, there is the palpable risk that "the demons of the past will chase you and you re-run the scenarios of the past, you think of what you could have done, what you could have been" (McGunigall-Smith, 2004a, p. 207). The catalog of regrets provided by McGunigall-Smith's respondents ranges from people one has let down and hurt to opportunities missed to live decently or indeed to have a life at all:

Not being there for my daughter. I once vowed that I would be there for her always. I kick myself that I can't. (McGunigall-Smith, 2004b, p. 23)

Seeing my mom get all upset. . . . Not being able to hold her or touch her. Not being able to live my life. . . . Not being able to have a life. (McGunigall-Smith, 2004b, p. 24)

Just thinking about your time, what you did, remembering how stupid you were when you were out [in the free world]. (McGunigall-Smith, 2004b, p. 25)

Out there I just lived for drugs and the rush, and all that—it was stupid. The worst part is that I won't have a chance to get it right. (McGunigall-Smith, 2004b, p. 26; see also Johnson & McGunigall-Smith, 2006)

The most basic hurt inflicted by life without parole is this: a lifetime of boredom, doubt, and anxiety punctuated by piercing moments of insight into one's failings as a human being. As one inmate told McGunigall-Smith (2004b), "my life is ruined for life; there is no redemption, and to some that is a fate worse than death" (p. 27). This miserable existence only ends when the prisoner dies—alone, unmourned, a disgrace in the person's own eyes as well as in the eyes of society (Aday, 2003).

If our goal is to make prisoners suffer greatly for the rest of their lives, life imprisonment without the possibility of parole offers itself as perhaps the ultimate punishment we can inflict. If our goal is justice, the bedrock principle of proportionality in punishment requires that we reserve this ultimate punishment for the ultimate crime: capital murder. Once we accept death by incarceration as our ultimate legal sanction, moreover, we should provide to all defendants facing this sanction the same legal safeguards and appellate procedures presently afforded to capital defendants. The oft-heard refrain that "death is different" explains the special attention to procedure in capital trials and subsequent appellate review. Death by incarceration is different as well. Our research leads us to conclude that death by incarceration is just as final, just as painful, and just as worthy of the careful scrutiny to which we subject traditional capital sentences.

Notes

1. For the purposes of this article, we variously refer to those serving life without the possibility of parole as "life sentence prisoners," "LWOP prisoners," or simply "lifers."

2. We limited our research to offenders sentenced to life without parole. Persons sentenced to prison terms that exceed the human lifespan also suffer death by incarceration. Prisoners who get a sentence measured in hundreds of years, for example, serve what Villaume (2005) has called "virtual" death sentences. Following our analysis, such offenders are undergoing death by incarceration—our other death penalty—and should only be sentenced to such terms for capital murder. A more difficult category of cases noted by Villaume includes offenders sentenced to prison terms that, though not longer than the human lifespan, exceed the amount of time those offenders likely have left to live. A 70-year-old offender who gets a 20-year sentence, for example, is likely to die in prison. This area of sentencing bears further analysis. Our thinking at this point is that such sentences are not intended as death sentences even if death in prison is the likely result. The elderly offender's death before he completes a 20-year sentence, for example, is a by-product of the sentence, not its goal or expected outcome. The same would be true of a very ill offender; he or she might die during the prison term, even a short prison term, but the sentence was not meted out as a death sentence. With sentences of death by execution, life without parole, and 100-plus-year sentences, on the other hand, death behind bars is the intended result of the sentence.

3. Just under one third of all those condemned to die subsequently have their sentence or conviction overturned, and 2% have their sentence commuted. More than 120 prisoners have

been exonerated and subsequently released from death row since 1973 (Death Penalty Information Center, 2004).

4. Many, if not most, of these sentences were meted out for crimes short of murder and are, in our view, excessively harsh and therefore unjust (see Mauer, King, & Young, 2004). Regrettably, life without parole was originally created to offer capital juries an alternative to the death penalty in the sentencing phase. Juries are in fact less inclined to impose capital punishment when life without parole is an option, but life without parole has, as it were, taken on a life of its own as a penalty for noncapital crimes (see Appleton & Grover, 2007; Note, 2006).

5. "I'm glad he's not going to breathe another free breath," said one prosecutor. "He'll spend the rest of his life in prison, and he'll lead a miserable existence" (Mudd, 2006, p. A1).

6. This choice may be ethically suspect, but the prisoners who decide to drop their appeals, like Parsons, describe the decision as empowering.

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