

Life Without The Possibility of Parole (LWOPP) and The Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment

By

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Life without the possibility of parole (LWOPP), both as a general practice and through the specific methods of implementation and other surrounding circumstances, can amount to cruel, inhuman and degrading treatment (CIDT) a clear violation of International **Covenants**/Treaties of The United Nations. Article 7 of the Covenant, expressly prohibits the use of torture or cruel, inhuman, or degrading treatment or punishment. Under Article 1.1 of the Convention Against Torture (CAT), torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.

U.S. Supreme Court Justice William J. Brennan argued that it is a moral principle that "the state, even as it punishes, must treat its citizens in a manner consistent with their intrinsic worth as human beings—a punishment must not be so severe as to be degrading to human dignity".

Life without the possibility of parole disproportionately affects African American males which more than suggests that LWOPP violates The Convention on the Elimination of All Forms of Racial Discrimination (CERD).

"The death row/LWOPP phenomenon" is a relatively new concept that has emerged within the context of the implementation of the death penalty/LWOPP and the prohibition of torture and CIDT. The phenomenon refers to a combination of circumstances that produce severe mental trauma and physical suffering in prisoners serving death row/LWOPP sentences, including prolonged periods waiting for uncertain outcomes, solitary confinement or restricted programming, poor prison conditions (e.g., medical and mental health) which for example have resulted in major class-action lawsuits being filed and won ultimately resulting in the United States Supreme Court intervening on behalf of California prisoners. Prison conditions particularly in California, together with the anxiety and psychological suffering caused by prolonged periods on death row/LWOPP, constitute a violation of the prohibition of torture and CIDT.

We believe it is necessary for the international community to discuss this issue and for states to consider whether life without the possibility of parole (LWOPP) per se fails to respect the inherent dignity of the human person and violates the prohibition of torture or CIDT.

As a Nation that prides itself as being "Democratic" and largely "Christian" and/or religious we must push for a moratorium on all prison construction,abolition of the death penalty,and the abolition of the mandatory sentence of life without the possibility of parole (LWOPP). It is tempting to separate abolition of the death penalty from penal abolition,but because the death penalty is the centerpiece of our punishment system,work to abolish it must be understood within the context of the penal system as a whole. Often groups that work exclusively on the death penalty advocate life sentences without the possibility of parole (LWOPP), without recognizing the longterm consequences of such a position. Seeing the issues as integrated parts of a whole is crucial. The criminal "justice" system as we know it is highly dysfunctional. In addition,policymakers who advocate mandatory life sentences to replace the death penalty are settling for "death by incarceration".

LWOPP HISTORY:

LWOPP has a long history that stretches back to early 20th century America,but modern arguments for LWOPP purport its purpose as for serial killers and those so mentally deranged (psychopaths) deranged that rehabilitation is physiologically impossible.Much like California's Three Strikes law,the initial objective of the law widened as the law manifested. LWOPP has become a common sentence for crimes that,arguably are less heinous than some of those sentenced to 25 years to life, but for some technical trigger,the special circumstance is applied,elevating the sentence to LWOPP. In the poignant, critical words of Patricia J. Williams (The Nation Magazine),on mandatory sentencing such as LWOPP: "~~The thought of reducing all guilt or innocence,all probation or prison into a soulless system of automation has been thought of as unjust for centuries. To convict or sentence or execute someone based on resolutely mechanistic determinants is the very definition of unconscionable. Indeed, a system based on the word of law alone doesn't really need judges~~".

ARGUMENTS:

One of many problems with LWOPP is that it completely prohibits a prisoner sentenced under its tentacles from being reviewed. The sentence of LWOPP implies that the prisoner is incorrigible,yet any objective study on this class of prisoners will show the opposite. In fact, a recent study conducted by the University of California (UC) and UC Berkeley found that prisoners sentenced to LWOPP were systematically being housed in maximum-security prisons, unnecessarily, wasting millions of dollars,when their long-observed behavior was consistent with lower custody designations. As a result of the study, all eligible LWOPP prisoners were reclassified for the more cost-effective, lower custody designations. In rather interesting language,relevant to the terminal sentence in question here, the statisticians were very critical of the "mandatory minimums" used by the California Department of Corrections and Rehabilitation (CDCR) for the purpose of classification (Expert Panel Study of the Inmate Classification Score System, Office of Research,Research and Evaluation Branch, December 2011 (CDCR)).

Charles Manson, convicted, arguably, of the worst case in California history, is frequently reviewed by the Board of Parole Hearings (BPH); though conventional wisdom dictates that he will never be paroled (Associated Press, "Manson Denied Parole," April 12, 2012). Yet any fair-minded observer would find it curious that, no one sentenced to LWOPP is privileged to approach the BPH, like Manson and his followers. In contrast, Manson's 69-year-old co-defendant, Bruce Davis, convicted of killing two people in that horrific series of "helter-skelter" murders was able to earn a grant of parole, twice, by experts on the BPH. Though Davis' rehabilitation efforts for 42 years, after 27 hearings, he did, in fact, prove he was rehabilitated (Deutsch, Linda, "Gov. Brown: No Parole For Killer," Fresno Bee, March 2, 2013, p. A9). Davis' parole grants were subsequently reversed by Governors Arnold Schwarzenegger and Jerry Brown, respectively.

Ironically, LWOPP was originally enacted for such persons as Charles Manson, maniacal, incorrigible by his own mouth, and convicted of serial killing. A study, such as the one proposed here, would also reveal that in many crimes committed by the lifer with parole, the act(s) were worse than the act(s) committed by those sentenced to LWOPP. In addition, many of those lifers with parole, and convicted of more egregious cases than those sentenced to LWOPP, enter the prison system and continue to commit violent acts, and yet, as they age, mature and rehabilitate (which is consistent with developmentalists' findings), they are then found suitable by the BPH for parole and subsequently released.

This writer would proffer that to effectively deny and prohibit a class of people from even attempting to show rehabilitative effort contravenes every standard of decency and humanity, and grossly offends our American ideals of justice, self-determination and the potential for human reformation/restorative justice.

PRACTICALITY:

A 2008 study by The Sentencing Project found that during the 1990s, a period of historic declines in the crime rate nationwide, "there was no discernable correlation between incarceration rates and criminal offending". Between 1991 and 1998, "states with above increases in the rate of incarceration experienced a 13 percent decrease in crime rates. States with below average increases in incarceration rates, however, experienced a greater decline (17 percent) in crime rates.

Moreover, during the aforementioned period, tough-on-crime Texas saw a 144 percent increase in incarceration rates and a 35 percent decrease in its crime rate. Yet New York experienced a crime rate decline of 43 percent, despite an incarceration rate of only 24 percent.

The Sentencing Project report also stated that, "While imprisonment may work at some level to reduce crime through deterrence and incapacitation, there is little evidence supporting deterrent effect of increasing longer prison sentences".

Eternal sentences mean that rehabilitated men and women, who are specifically prohibited from showing they have changed every bit as much as other lifers, will not leave prison except in a cold, lifeless body bag.

California has the highest proportion of life sentences in the nation, relative to the population (20 percent), with 1 in 6 prisoners serving life sentences. Among California's 34,000 life sentences, nearly 11 percent are LWOPP. Is LWOPP practical? Is LWOPP necessary?

CALIFORNIA/NATIONAL COMPARISON:

With nearly 50,000 prisoners sentenced to LWOPP across the nation, America stands unique in its penchant for eternally locking up its citizens. Other countries such as Japan, Mexico, Italy and Peru find the practice unconscionable (USA Today, "Van der Sloot Disclosure Reverberates," June 9, 2010). Norway, Canada and a host of other countries limit incarceration to thirty years. Oregon has a provision that allows persons convicted of aggravated murder, the state's most serious offense, to be reviewed after 20 years, for what is called a "rehabilitation hearing". The purpose of the hearing is to determine if the prisoner is on a path to rehabilitation and if so, the prisoner may work toward release. Otherwise, they remain incarcerated. Not only is this approach more pragmatic, but the simple fact that LWOPP prisoners are eventually reviewed adds an element of humanity to the equation.

California prisoners sentenced to LWOPP can request a review through the executive level, for instance by commutation to the governor's office, but not until the 30th year of incarceration, and there is no provision mandating a response. Given the shallow reasoning governors Schwarzenegger and Brown used to reverse the grants of parole in Bruce Davis' case, many observers believe the process at the governor's level is so entrenched in politics, commutation is not a realistic option.

This writer believes the sentence of LWOPP is completely unnecessary, because like Manson and others, any life sentence with the possibility of parole can be stretched into a perpetual term. The humanity in this approach is the individual is reviewed at some point, and consistently thereafter.

Otherwise how does society really know if one is incorrigible? Apparently, they got it wrong with Bruce Davis, according to the experts that granted him parole (not the politicians who reversed his grants). Until 1982, California allowed prisoners sentenced to LWOPP to be reviewed by the BPH after 12 years. The practice was discontinued through an administrative rule change. In 1992 the administrative rule change was codified through Assembly Bill 97, amendments 44 and 45, which eliminated any review by the BPH for those sentenced to LWOPP.

Nothing could be more unjust than to be eternally labeled incorrigible, and then wholly prohibited from showing otherwise. Marc Mauer of the Sentencing Project said it best, "Society must question whether the broadscale imposition of such penalties has resulted in the use of life imprisonment in ways that too often represent ineffective and inhumane public policy". Shreveport, Louisiana, representative Patrick Williams, similarly said: "releasing offenders who are deemed to be no longer a threat to society is not being soft on crime, it is being responsible with taxpayers' dollars". Do we really need LWOPP in California or in America in general? Does the theory of incorrigibility conflict with proven science.

THE POLITICAL AND SPECIAL INTERESTS OF LWOPP:

Crime Victims United (CVU), funded almost entirely by the California Correctional Peace Officers Association (CCPOA), helped sponsor the expansion of California's special circumstance laws in 1990 (New York Times, "Justice Kennedy on Prisons", February 16, 2010). In addition, such special interests have considerable political clout within the halls of government, especially through their trade associations (for instance, the American Correctional Association). A right-wing political organization called the American Legislative Exchange Council has committees responsible for writing and disseminating "model criminal justice legislation". Again, the California Correctional Peace Officers Association and guards organizations in most other states now fund a number of retributive crime-victims' groups that join the guards in lobbying for longer sentences, harsher prison conditions (i.e., super max housing units-SHU), and expansion of the death penalty (i.e., life without the possibility of parole also known as "The Other Death Penalty"-LWOPP. What better prisoner to in these slave factories than prisoners with LWOPP as there are no turnover rates to worry about. You can literally work prisoners to death!

During a February 2010 address in Los Angeles, California, U.S. Supreme Court Justice Anthony M. Kennedy expressed his disgust of the politicizing of prisons in California, stating that U.S. sentencing is eight times longer than in European courts. A few days later, in New York, Justice Kennedy was more specific in his criticisms of the co-mingling of California politics and justice, calling the tactics of the CCPOA in pushing controversial laws like three strikes, "sick". Do politics and special interests have too much sway in California justice?

SENTENCING DISPARITIES:

The problem with politics and justice beholden to special interests is that justice gets so obviously tainted that, like three strikes, which the CCPOA also helped fund into enactment, sentencing becomes a nonsensical mishmash of results that, to the prisoner, end up more of a luck of the draw than any consistent formula that behavioralists recommend to sustain any reasonable deterrent effect, no matter how slight.

Like three strikes, for which common thieves were being sentenced to more time than those convicted of murder, the current LWOPP laws in California offer the same type of admix of injustice. For example, Sarah Dutra was convicted of poisoning her boss with a tranquilizer, and was sentenced to 25 years (Smith, Scott, "Sarah Dutra, "The Stockton Record, August 2011).

(Taxin,Amy, "Omaima Nelson," Orange County Register, 2011).

Mark Jernigan stabbed the mother of his girlfriend 78 times in 1986 and was sentenced to life with the possibility of parole (USA Today, "Mark Jernigan", October 12,2011, p. 3). Veronica Paz plead guilty to luring her ex-boyfriend to his death and was also sentenced with the opportunity to rehabilitate (KABC-7, "Veronica Paz," February 11,2011).

Then,there's the case of Raymond E Godlewski, who hired Gene Flack to kill his father, Flack subsequently hired Michael Brown to assist with the murder plot by driving Flack to the victim's residence. Flack knocked on the door,and when the victime answered, Flack shot him in the head. Incredibly, Flack was not charged with lying-in-wait, a special circumstance, nor for hiring Brown; only with murder for financial gain in the first degree. A jury found Flack guilty of second-degree murder,along with the financial gain allegation, Second-degree murder carries 15 years to life with the possibility of parole (People v. Raymond E Godlewski, et al., 21 Cal. 8ptr. 2d 796 (1993)).

In light of these facts, is there a wide and unjust series of discrepancies of LWOPP in California as well as across the country? Some would argue for LWOPP in wistful, theoretical terms-it ought to be possible to administer such a punishment equitably. The whole history of LWOPP argues to the contrary: its many flaws are not incidental, as LWOPP arises from a fundamental misconception- you cannot do a wrong thing in a right way. Life without the possibility of parole (LWOPP-"The Other Death Penalty") is the ultimate form of injustice carried out in the name of justice and is an offense to human decency and is in fact a blatant human rights violation bordering on genocide against African American men.

It should also be noted that a people already invisible can be easily made to disappear as this is the primary fuction of ghettos and prisons in America!

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