

Death without killing: The inhumanity of life without parole

by [Steve Thorngate](#) in the [August 19, 2015](#) issue



Photo © Stockbyte

In May, a federal jury sentenced the surviving Boston Marathon bomber to death. Dzhokhar Tsarnaev's lawyers had acknowledged his guilt and focused on humanizing him in hopes of avoiding a death sentence and getting instead a life sentence without the possibility of parole. The jury went the other way—a decision that met a lukewarm response on the streets of Boston. “They ought to demonstrate a little humanity,” one man told the *New York Times*.

Later that month, Nebraska's legislature abolished the death penalty and, like many states before, replaced it with life without parole (LWOP). State senator Ernie Chambers called the vote a chance to bring Nebraska “into the light of civilization and humane justice.”

It's a familiar theme: executions are barbaric; LWOP is the humane alternative. For 40 years, this idea has dominated the rhetoric and policy making of death-penalty opponents in the United States. So last fall when Pope Francis censured LWOP as a “hidden death sentence,” he was going pretty sharply off the script. We're

accustomed to contrasting the two punishments. The pope equated them, denouncing both.

He has a strong case. There are many persuasive arguments against the death penalty; most apply as well to LWOP. It's incredibly expensive. There are alarming racial and economic disparities in how it's applied. The bias in applying it to people with mental illness is worse than cases of the death penalty, since the Supreme Court has afforded them some protection against the latter. A defendant's chances of avoiding an LWOP sentence are easily ruined by bad lawyering. Older, longtime inmates don't actually present a high risk of re-offending once paroled; nor is there much evidence that ruling out parole makes a life sentence more of a deterrent to crime.

Like the death penalty, LWOP sometimes ensnares the innocent. For many people, this points to LWOP's most compelling argument: it's reversible. While you need 100 percent certainty to put someone to death, 99 percent might be enough to lock someone up and throw away the key—worst-case scenario, you have to cut a new key.

But it's more complicated than that. People with death sentences have enhanced legal protections, including access to court-appointed lawyers to pursue habeas corpus petitions, a second round of appeals that can be more favorable to defendants than direct appeals are. Those sentenced to life in prison have to secure their own counsel, which many can't do. Meanwhile, inmates on death row attract far more attention from activists, journalists, and celebrities. In short, a sentence is reversible only insofar as someone is able and willing to take on the project of getting it reversed—and being sentenced for life often means being forgotten.

Death-row inmates know this—and they've been far from unanimous in their enthusiasm for the LWOP alternative. A 1991 survey in Tennessee found that half of that state's death-row inmates viewed LWOP as a harsher sentence. In 2012, surveys were sent to 200 prisoners on California's death row to gauge their opinions on a ballot initiative that would have replaced the death penalty with LWOP. Fifty responded—only three of them in favor.

Absent a reversal on appeal, the death penalty and LWOP share something fundamental: a hopeless finality. Both take as given that certain people are simply beyond redemption. This goes starkly against Christian teaching, which is one

reason Christians have been involved in efforts to abolish the death penalty. But the success of such efforts has come at a considerable price: far more people imprisoned with no hope of release.

LWOP was rare until the 1970s, when a pair of Supreme Court decisions halted and then reaffirmed capital punishment. Amid the legal turmoil, LWOP emerged as a clear alternative for prosecutors—and soon death-penalty abolitionists began promoting it as such, too. Sixteen states adopted the practice by the 1990s, and 49 states by 2012.

Today there are six states, along with the federal courts, in which every life sentence excludes the possibility of parole. Over three decades, the U.S. incarceration rate has tripled, and LWOP has gone up even faster. Much of this increase can be traced to the end of the death penalty in various states—because abolition efforts often lead with the idea that LWOP can keep the public just as safe.

The pope's statement against LWOP might be seen as confronting abolitionists with an inconvenient truth. A number of church bodies in the United States have official social statements opposing the death penalty, some of which identify LWOP as a better alternative. Others don't mention it one way or the other—the general approach of the U.S. Conference of Catholic Bishops, which has mined Francis's 2014 statement for its strong words against the death penalty itself but has tended to end the quote before the bit about the other death penalty, the hidden one.

Meanwhile, USCCB and multiple mainline bodies are part of a coalition to end LWOP for minors. Others are opposing the sentence as a penalty for nonviolent offenses. The fact that the U.S. justice system imposes such an extreme sentence on children and nonviolent offenders may make the prospect of ending LWOP generally—even for hardened killers—seem pretty remote. But from a moral perspective, it's not clear why the objections to giving up on a teenager don't apply as well to a young adult, or why the hope for a drug dealer's reform doesn't extend to a murderer. So why not join the European Court of Human Rights in asserting that LWOP is not a solution but is itself a violation of human rights?

One big reason is simply the pragmatism of political change. Support for the death penalty is going down, but slowly; 60 percent of Americans still affirm it when responding to a yes-no question. But ask instead which penalty they'd prefer to impose—death or LWOP—and support for the death penalty falls below half. While

ethically the two may look pretty similar, politically the one is the clearest path to ending the other.

In politics, the perfect is forever squaring off with the good. One abiding question is whether accomplishing the good makes progress toward the perfect or instead makes it yet harder to achieve. But LWOP is even more fraught than this, because ending it isn't just a lofty goal that death-penalty abolitionists are putting off for another day. They've actively pushed LWOP, dramatically expanding its reach. Fewer people making appeals from death row has meant more people locked up forever. And often the only thing harder than getting a policy change done is getting it undone later.

The National Coalition to Abolish the Death Penalty doesn't take an official position on LWOP. "We state the facts about what the alternatives are in a state," explains executive director Diann Rust-Tierney, "but we don't advocate for them." Rust-Tierney stresses that the death penalty is simply wrong on the merits: it's all cost and no benefit. So abolitionists shouldn't bear the burden of presenting an alternative punishment. "It's not about [exchanging] one policy for another," she says. With any public policy, the question is, "Does it do what it's supposed to do? Is it fair? Is it consistent with our values?" The death penalty fails on all counts.

Trouble is, so does LWOP—and when the abolition movement wins in a state and the governor commutes death-row sentences, she has to commute them to something. That's in addition to the fact that even getting to this point often relies on assuring the public that dangerous criminals will never, ever be released.

The 2012 California survey, in which death-row prisoners opposed a shift to LWOP, was done by the Campaign to End the Death Penalty, a group notable for its work directly with inmates. For years, CEDP put out a list of "Five Reasons to Oppose the Death Penalty." In 2013 it added a sixth: "The death penalty fails to recognize that guilty people have the potential to change, denying them the opportunity to ever rejoin society."

Announcing this point in CEDP's journal, national director Marlene Martin went on to extend this critique to LWOP sentences, calling them "horrible, abusive, inhumane sentences in themselves. While we may have to accept these sentences when they replace death sentences for commuted death-row prisoners, we should do so while raising our objections to them, not justifying them."

Likewise, People of Faith Against the Death Penalty has for years been officially opposed to LWOP as a simple replacement for the death penalty. But the interfaith group doesn't exactly lead with this position. It's not highlighted on its website. Executive director Stephen Dear recalls an organizing campaign during which someone noticed that "the basic template that we used said 'replace the death penalty with life in prison without parole,' which is in violation of our own policy." They got a new template.

Dear characterizes PFADP as an organization rooted in restorative justice, a framework for opposition to the death penalty and LWOP alike. He sees the pope's statement against LWOP as something to celebrate.

"Social movements don't happen in a neat, linear fashion," Dear points out. "Different things happen at the same time, with people going in all different directions." Here this amounts to "a general movement toward restorative justice and away from retributive justice."

Yet according to Dear there are "very sincere divisions on this issue in the abolition movement." Some see LWOP as an acceptable price for abolishing the death penalty. Others actually support it on the merits. "I know abolition leaders who are fine with it," says Dear. "I'm not."

Given this lack of consensus, it's understandable that a broad-based coalition like NCADP would decline to state a position. The narrow focus of a coalition is a big part of what enables it to do forceful advocacy work, and taking on LWOP would jeopardize this.

After all, plenty of Americans lack confidence in the parole process's ability to determine when a person no longer poses a threat. In reality, parole boards have tended to resist leniency, and in any case one wonders why such a healthy suspicion of the state's judgment isn't applied as readily to its pursuit of life sentences in the first place. Still, the underlying fear is a reasonable one: some violent criminals prove resistant to rehabilitation, and it isn't heartless or vengeful to maintain that society needs to be permanently protected from them.

The problem is that LWOP gives up on rehabilitation without trying. In imposing the sentence, society waives the very opportunity to determine whether or not someone has changed. And while not everyone does change, anyone can. The recent advocacy on behalf of death-row inmate Kelly Gissendaner has rightly focused on

the clear evidence of change in her life. But it's crucial to resist the conclusion that she must be an exception to the rule. A killer's reform isn't proof that she's not like the monsters on death row. It's proof that even killers aren't monsters but rather broken humans who bear the image of God.

If we believe this, then there's little place for any sentence that denies the possibility of change. To embrace such a sentence suggests that God's grace is limited, if not in its object, then in its scope: sure, God forgives you, but that doesn't mean there's the slightest chance we'll ever let you rejoin society. That's a pretty circumscribed vision. Grace doesn't just make people right with God; it has the power to restore them to life in community—and no one is beyond its reach.

Dear believes it's just a matter of time before death-penalty opponents extend this lens to LWOP. Death sentences will end, he says, and when they do we'll start to see advocacy groups with names like "People of Faith Against Life Without Parole." Anti-LWOP work is already under way, of course—mostly on a separate track from death-penalty abolition. Yet Rust-Tierney of the NCADP notes that the two efforts share a fundamental goal: a criminal justice system that can "hold people accountable in a way that doesn't undermine their humanity—and ours."

We don't presently have such a system, and the death penalty is just the tip of the iceberg. "The death penalty is a horrible failure," says Dear, "and its problems are endemic of the criminal justice system. Once we deal with the death penalty, we'll find that the problems are still there."

The pope may have been off message last fall, but he wasn't wrong. There is an urgent need to end the practice of killing prisoners who, however dangerous, have already been disarmed and subdued. But the hidden death penalty that's grown in its place embodies the same disregard for human dignity, the same belief that some people are too broken for even God to fix. Sooner or later, it too needs to go.