

The Sentencing Project

Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/news/a-death-by-any-other-name/>

Public Facing Advocacy Writing

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The American criminal justice system has been getting some much-needed renovations lately: people with nonviolent and low-level convictions are being diverted from receiving harsh sentences, prison populations are declining in many states and policymakers are open to new approaches to addressing crime.

At the deep end of the system we see reforms as well: efforts to eliminate the death penalty are gaining ground and public support for the death penalty is at its lowest point in 40 years. For the first time in Gallups polling history on the question, a majority (60%) of Americans say that life imprisonment with no possibility of parole is a better punishment for murder than the death penalty. Ten of the current Democratic presidential candidates publicly support abolishing the death penalty.

The declining support for the death penalty is indeed a victory and comes about as a result of successful abolition campaigns that bring together unlikely allies.

Exonerations based on new evidence, exorbitant costs and the drawn-out appeals process means far fewer people are being sentenced to death than in the past and executions have become increasingly uncommon. Death row currently comprises 2,500 people, reflecting a steady decline in the size of death row for nearly 20 years. Maintenance of the death penalty has become difficult to justify as concerns about efficacy, deterrence value and morality converge.

But the presence or absence of the death penalty should not be our sole barometer for a proportionate sentencing regime. The sentence of life without parole touted as the humane alternative to death is highly problematic for many of these same reasons, plus additional ones.

The well-documented deficiencies of the death penalty process should raise serious concerns about sentences of life imprisonment, sentences that receive substandard critical review. On this point, Supreme Court Justice Sonia Sotomayor recently expressed her uneasiness with life sentences without parole, writing, A statute that shields itself from judicial scrutiny of sentences of life without the possibility of parole raises serious constitutional concerns.

Capital punishment is routinely set apart from all other sentences in terms of the judiciary's willingness to regulate it, based on the notion that death is different. This has led to a separate, heightened system of review of death-eligible cases.

Take, for example, the fact that attorneys in death penalty cases often receive specialized litigation training. And while procedural errors and substandard representation still occur with these protections in place, there is an established protocol for review when such claims are made. But the heightened standard of review does not take place with life imprisonment, creating an increased likelihood that innocent individuals will be convicted. In the absence of a rigorous review process, one cannot know precisely how widespread the errors in life imprisonment are.

Capital defendants sentenced to death also have a right to state-appointed counsel for appellate reviews, but those sentenced to life imprisonment do not. In addition, appeals are time-barred in all but death penalty cases. Even with stringent regulations around the death penalty, errors are rampant. Just imagine the scale of errors in life imprisonment among the 53,000 people serving their sentence, 21 times the number of people on death row.

The logical inference from the U.S. Supreme Courts categorical finding death is different is that all sentences other than death are not different and can thus be held to a different (lower) level of scrutiny. (The sole instance where this categorical ban has been reconsidered comes from recent rulings disqualifying most juveniles from receiving life without parole on the basis of the categorical ban that children are different.)

In public polling on support for the death penalty, the only alternative punishment offered is life imprisonment with no chance for release. But why must we limit punishment considerations for our most serious crimes to only these two terminal sentences which are, in the end, the same: both result of an individual dying in prison at the hand of the state?

There are many other sentencing options that could be made available. Those that afford regular review and a meaningful opportunity for parole are ideal. Sanctions can accommodate a legitimate desire to punish, but allow for the chance for evaluation at regular intervals.

Though it seems counterintuitive, the science on offending tells us that in most cases, even individuals who commit serious crimes grow beyond their poor judgment and learn to abide by the law. The United States should follow the lead of other Western democracies in abolishing both the death penalty and life without parole.

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Sentencing Policy

Children in the United States has a parent in prison

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