

The Unintended Consequences of Bad Deals

Kenneth E. Hartman

Executions are not pretty. In fact, they are downright ugly spectacles. No one comes away from an execution without blood under their fingernails and, worse still, almost everyone who takes part in the process feels the pang of their conscience.

Executions are bad press, too, and the system already has too much bad press. So, instead of going through all of the grotesque machinations of performing traditional executions, the prison-industrial-complex has embraced a nondescript form of the death penalty, a perfect ruse, life without the possibility of parole. This form of the death penalty allows for mass execution on an unprecedented scale, well out of the limelight and without all the negative attention of lethal injections.

It is a popularity sentence, embraced by the punishment industry. According to the report, “Life Goes On: The Historic Rise in Life Sentences in America”, released by The Sentencing Project in 2013 and based on data collected in 2012, after a 22.2 percent rise since 2008, the number of men and women sentenced to life without the possibility of parole has reached almost 50,000. This number exceeds all the rest of the world’s life without the possibility of parole sentences and not merely by a few – it is orders of magnitude more. As former U.S. Senator Jim Webb of Virginia noted in a Parade Magazine article, with only 5 percent of the world’s population, this country holds 25 percent of the world’s prisoners, a number far out of proportion. Moreover, the United States holds upwards of 95 percent of the world’s life without the possibility of parole sentenced prisoners, a number that defies any rational explanation connected to crime or public safety. It is not merely an aberration, it is an abomination.

I have served more than 34 years of a life without the possibility of parole sentence in the California prison system, home to more than 4,600 other prisoners similarly sentenced. While there is not any adequate way to convey the sense of existential dread and despair that daily accompanies all of us condemned to die slowly in prison, I have tried for years. It is like never waking from a nightmare in which you are falling because the falling never stops. The ground does not come up to meet you until it is in the form of a hole to swallow you. There is nowhere for you to grab a hold to steady your descent because the handles have been deliberately moved out of reach. It is punishment without end, an eternal lashing, a perpetual rack to be stretched out upon. The pain only stops when you cease to exist, after which you cannot know it is over.

A friend, also sentenced to life without the possibility of parole, once described his existence as being held hostage by his stupid, teenaged self. This is yet another aspect of the sentence, the way it firmly encases you in the broken amber of your past. It leaves no room for growth or maturity – it denies the possibility that a human being can ever become better than their worst moment. In this way the sentence is a worse punishment than other forms of the death penalty. It is worse because prisoners sentenced to a slow death by imprisonment are daily reminded that their lives are simply not that important. Their lives are of so little consequence as to be simply tossed into the slag heap of a prison, out of sight and meaningless.

All other prisoners have some sort of destination, a mark to which they can aspire and toward which they can plan. They have that most vital of human necessities – hope. Education, training, self-improvement, all of these serve a purpose. The long, slow turning of the day that characterizes the life of all prisoners can be filled with some degree of industry and direction. For those of us serving life without the possibility of parole, on the other hand, there is not destination home, no mark toward which aspirations can aim. Hope, that essential ingredient necessary to the fullness of any human life, is forever denied to those condemned by the other death penalty to die inside. The limited resources of the state will not be wasted on prisoners without any chance of release, so the classes and programs that help to round off the sharp edges of prison life are denied. The result of these restrictions is the stretching out of time, the distending of each day into a longer torment.

The explosion in the numbers of men and women sentenced to this other death penalty is not the product of a great rise in unrestrained criminality all across the land, nor is it the result of a demand for extreme sanctions voiced by the masses. The truth is that while life without the possibility of parole sentences were increasing by double-digit percentages the rate of serious crimes was decreasing by similar margins, in states that participated in the rise of life without the possibility of parole sentencing and in those states that did not. And the public's attention to the crime issue has diminished over the past decade, due surely in part to that welcome drop in crime rates.

There are now almost 50,000 men and women serving the other death penalty. Death penalty abolitionists campaigned and convinced folks that death by imprisonment is not really death at all. It is, by their reckoning, a "reasonable alternative" to lethal injections. This normalized what was

otherwise an almost unimaginably cruel sentence and accorded to it the imprimatur of recognized civil rights groups. The prison-industrial-complex, as rapacious an entity as ever known, seized on this opening and rammed through legislation and regulations that captured an ever larger slice of the prisoner population into permanent status. It is to this latter reason that the vast bulk of the increase must be attributed.

But the death penalty abolitionists' ill-advised Faustian bargain set the tragedy in motion. In retrospect, it is unclear if it was the fault of ignorance or of willful cynicism. Depending on whom one speaks to in the abolitionist movement either conclusion is possible. Regardless, a sort of army sprang up around the battle against the death penalty replete with celebrities and rogues, heroic stories of exonerations and sad failures that ended in the midnight hours of the various death houses around the country. Well-meaning and well-funded organizations grew into big, sharp-elbowed outfits battling to rid our nation of the stain of state-sponsored killing. It is an atavistic practice, the deliberate taking of life as punishment, relegated to only a few outlier nations not a part of the industrialized West. And, within our own fair country, this throwback to less civilized times had to be ended. At all costs.

The deal struck with the executioners is rooted in the all too human love of the infliction of suffering and shame, and that is how it has been sold. Instead of the messiness and the unwelcome scrutiny of lethal injections, condemn prisoners to forever inside the fences. A "life means life" sentence, trapped between a rock and the hardest of places. Take away freedom, a punishment that will hurt for a lot longer. Then, herd all those so sentenced into the worst prisons and make them to endure the worst conditions. Compel them to live amongst the rest of the prison population, virtually all of whom get out, effectively forcing life without the possibility of parole sentenced prisoners to watch what they will never have. It is a kind of cruelty that should have stayed unusual.

This bargain reached its nadir in the horrifying language of California's thankfully unsuccessful Proposition 34. It was unapologetically defended as a reasonable and clever move by its bevy of celebrity supporters. If passed, it would have mandated in the state's constitution the permanent ill-treatment and perpetual torment of thousands of prisoners. The campaign in favour of Proposition 34 made the direct argument that doing away with lethal injections would save money and that serving life without the possibility of parole sentences was actually a worse form of punishment. Essentially, the

pitch made to the voters was they could save a few bucks and vote in favour of worsening prisoners' conditions. It was a foul and ugly plot, particularly since it was launched by alleged civil rights advocates.

The prison-industrial-complex, never a shirker when it comes to seizing an opportunity to fill more beds for longer periods of time, has gleefully embraced these amoral bait-and-switch tactics. Its bottom-line has always been the filling up of beds. The more of us, the more of them, which should be the motto of the various trade groups and organizations that represent the players inside the prisons – the guards, the teachers, the doctors, and the other workers, who masquerade as acting in the public's interests. Prisoners serving sentences that never end is a kind of dream-come-true for them and it is a dream scenario that was dropped into their laps without much work on their parts.

Somewhere along the way, in some high-powered strategy session of the death penalty abolitionists, chaired by the smartest and the craftiest, the most idealistic, this bad bargain was cooked up. It probably sounded like a sharp idea at the time – offer up the strong support of civil rights groups for permanent imprisonment in a trade for the end of direct executions. Even though the unintended consequences have been horrible for tens of thousands of men and women, they were not the first to underestimate the prison industry's ability to capitalize on reformers good intentions. That is a common theme that runs through the history of prison reform efforts in this country as documented in David Rothman's 1980 book *Conscience and Convenience*.

The abolitionists like to crow about the fewer number of executions in this country and they like to take credit for this even more. However, now that the error of their plan has been revealed by the passage of time and the 50,000 men and women condemned to a slow death in prison, it is time they admit failure. The claim of success is a lie and it is past time to own that fact.

The broader and more accurate truth is there are not fewer executions being conducted in the United States, there are more. Life without the possibility of parole has been normalized – it is now just another kind of prison sentence. This change is merely one of form not function. Just as the method of execution shifted from the punitively barbaric to the ostensibly advanced and scientific to the falsely painless and clinical in the past, it just morphed into a glacial, one-drop-at-time, disappearance version now.

To be perfectly clear, life without the possibility of parole is an execution because the goal and outcome of the sentence, like all the other forms of state-sponsored killing, is the prisoner's death. If the death penalty is morally

wrong then being sentenced to die in prison is no less morally wrong – to argue otherwise is an exercise in self-delusion that has already cost far too many lives to continue to tolerate.

ABOUT THE AUTHOR

Kenneth E. Hartman has served more than 35 years of a life without the possibility of parole sentence. He is the author of the recently reissued, award-winning memoir “Mother California: A Story of Redemption Behind Bars” (The Steering Committee Press, 2015). Ken is also the founder and executive director of *The Other Death Penalty Project*, a grassroots organization of prisoners serving LWOP with the goal of ending all forms of the death penalty. He is the the editor of the award-winning anthology “Too Cruel, Not Unusual Enough” (The Steering Committee Press, 2013). For more information, visit his website at www.kennethhartman.com. He can be reached, indirectly, at kennethhartman@hotmail.com.