

## Unilaterally Punitive \*

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The United States is unique in the world for its overzealous love affair with life without parole sentences (LWOP). It is one of the few western countries to have LWOP sentences and the only country in North America to have them. Even the other western countries that do have LWOP sentences reserve them for only the most extreme circumstances (e.g. acts of treason or serial murder). In contrast, the U.S. uses this sentence routinely. As of 2010, there were over 41,095 people serving LWOP, accounting for approximately 30 percent of persons serving life sentences in the USA (Nellis, 2010). More embarrassing is the fact that we are the lone, adamant, upholders of the right to sentence juveniles to die in prison, a practice that the rest of the world views as barbaric (see Goliath, 2003; De la Vega and Keighton, 2008).

There is a near universal consensus in the international community that it is immoral and reprehensible to execute or incarcerate a juvenile for life without parole. The U.S. Supreme Court, acknowledging these views, finally abolished the death penalty for those under 18 in 2005. Unfortunately we are still one of the last nations on earth that currently have juveniles sentenced to die in prison by way of LWOP. According to a study by Human Rights Watch and Amnesty International in October 2005, only 4 countries have juveniles serving LWOP: Tanzania has 1, South Africa has 4, Israel has 7, and the U.S. – the ‘land of the free’ – has over 2,200 (Human Rights Watch / Amnesty International, 2005). Even this number is deceiving though as it fails to take into account the thousands more who have sentences so long that they constitute LWOP (e.g. 100 years at 100 percent).

There are numerous calls to abolish LWOP sentences for juveniles worldwide. The U.S. stands unabashed against them all. In 1989, there was the *United Nation’s Convention on the Rights of the Child*. Article 37(a) of this Convention provides “Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offenses committed by persons below eighteen years of age”, and Article 37(b) states, “detention or imprisonment must be used as a last resort and for the shortest appropriate period”. Throughout history no other human rights treaty has been ratified by so many so quickly. To date 191 out of 193 countries have ratified it. The U.S.

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and that other stalwart protector of human rights, Somalia, are the only two to refuse to do so. In 1992 the United States became a party to the *International Covenant on Civil and Political Rights*. This prohibits LWOP sentences for juveniles. More recently, in 2006, the United States was the lone opposition (176-1) against a resolution in the U.N. General Assembly calling to “abolish by law, as soon as possible, the death penalty and life imprisonment without possibility for release for those under the age of 18 years at the time of the commission of offense” (De la Vega and Leighton, 2006, p. 15).

In a 185 to 1 vote (again U.S. versus the world) in December of 2006 the U.N. again took up a resolution calling to abolish LWOP for juveniles. The U.S. State Department’s defence of this position was that it is mostly a matter of state law and that the juveniles, some as young as 13, were “hardened criminals who had committed gravely serious crimes” (Liptak, 2007). Regardless of the fact that brain research has shown that a person’s brain does not fully mature until the mid-twenties, how hardened of a criminal can a 13 year-old be? What was he doing, sticking his mother up for breast milk as a baby? Maybe robbing the cookie jar as a toddler? The ignorance of the State Department is astounding when you consider that close to 60 percent of these juveniles serving LWOP had no prior convictions.

Approximately 10 percent of the 73 kids age 13 or 14 who were sentenced to die in prison were sentences for crimes where no one even died. In one instance no one was even injured. More than a quarter of juvenile lifers were not the actual perpetrators of the crimes, but were rather found guilty by way of accountability or felony murder statutes, in the classic “getaway driver is just as guilty” reasoning (Equal Justice Initiative, 2007).

Rather than seeing a decline in the use of LWOP sentences we have seen an expansion. LWOP sentences are more prevalent overall and those for juveniles are now used three times more often than 15 years ago. Part of this love affair with LWOP sentences is due to the short-sightedness of the anti-death penalty movement. The death penalty is another issue the U.S. stands steadfast in support of. In their rationalization of the lack of need for a death penalty, they push LWOP as the “perfect alternative” (see Hartman, 2009; Hemmings and Lashuay, 2009). A couple decades ago only a handful of states had LWOP sentences. Now almost all of them do. As has been shown time and again, our criminal justice is broken and more than 100 people have been put on death row for crimes they were later found to be innocent of. In Illinois more people were exonerated from death row than executed

when former Governor Ryan finally had enough and called a moratorium. People sentenced to LWOP – there are over 1,400 in Illinois alone – went through this same broken system, but without the added safeguards afforded to people sentenced with the death penalty. Thus, it is much more difficult for a lifer who was wrongly convicted to get his conviction overturned; ergo many more innocent people are almost definitely serving LWOP sentences than were sentenced to be executed. Especially when considering there are many more people sentenced to LWOP than to death each year.

The courts have amazingly decided that sentencing a juvenile to LWOP does not violate the 8<sup>th</sup> Amendment right against cruel and unusual punishment. The hypocrisy of many LWOP sentencing schemes and court rulings is glaring. Take Illinois as an example again: Article 1, Section 11 of the Illinois Constitution specifically states “All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship”, and part (d) of the purposes of the *Illinois Code of Corrections* is likewise to “restore offenders to useful citizenship”. Nevertheless in 1978 the Illinois legislature passed a law making all life sentences in Illinois LWOP. Prior to this a life sentence allowed for parole eligibility after 11 years. The Illinois Supreme Court has ruled that a LWOP sentence does not violate the Illinois Constitution due to the “fact” that an offender still has a chance – theoretically at least – to get out of prison by way of clemency from the governor (*Roper v. Simmons*, 2005). Unfortunately, this is not realistic in today’s tough-on-crime-rhetoric inflamed fear-mongering, political world. No governor with political aspirations – which is all of them – will risk granting clemency and being painted as a bleeding heart liberal, soft on crime, or even worse, be blamed for letting someone out who reoffends upon release.

Compared to the rest of the world the United States incarcerates more of its citizens per capita than anyone else, and for much longer than any other industrialized country (Mauer, 2007). An entrance requirement to the European Union is that the death penalty be outlawed in that country upon joining the union. Concerning life imprisonment, the Council of Europe in 1995 stated “A crime prevention policy which accepts keeping a prisoner for life even if he is no longer a danger to society would be compatible neither with modern principles on the treatment of prisoners during the execution of their sentence nor with the idea of reintegration of offenders into society” (Mauer *et al.*, 2004, p.1). Both the European Court of Human

Rights, as well as the German Constitutional Court have held that a term of life imprisonment must include the possibility of release. Both Brazil and Portugal have banned LWOP sentences. In Spain, the maximum sentence one can serve is 40 years. While in Slovenia it is 20 years.

The United States cannot continue to demand compliance with human rights principles and norms abroad while it refuses to apply them here at home. We have an obligation to implement humane principals embraced by the rest of the world for our own people if we are going to admonish other nations about the inhumane practices of dictators, despots, and others – many of whom we all too often support.

In a country where the majority of the population describe themselves as Christians, it is astonishing how few seem to believe in forgiveness and redemption, and how many champion punishment and revenge. In the words of the United States Supreme Court Justice Anthony Kennedy: “Our resources are misspent, our punishments too severe, our sentences too long [...] Courts may conclude the legislature is permitted to choose long sentences, but that does not mean long sentences are wise or just [...] [A] people confident in its laws and institutions should not be ashamed of mercy”. Well said, too bad few are listening.

## REFERENCES

- De la Vega, Constance and Michelle T. Leighton (2008) “Sentencing our Children to Die in Prison: Global Law and Practice”, *University of San Francisco Law Review*, 42(4).
- Equal Justice Initiative (2007) *Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison*, Montgomery (AL).
- Goliath, Patricia (2003) “Juveniles and Life Imprisonment”, *The International Child and Youth Care Network*, 55.
- Hartman, Kenneth E. (2009) “The Other Death Penalty”, *Journal of Prisoners on Prisons* 18(1&2): 35-38.
- Hemmings, Annette and Jerry Lashuay (2009) “Throwaway Kid: A Case of Responsibility of, and for, Juvenile Lifers”, *Journal of Prisoners on Prisons*, 18(1&2): 39-58.
- Human Rights Watch / Amnesty International (2005) *For The Rest of Their Lives: Life Without Parole For Child Offenders in the United States*, New York. Retrieved from <<http://www.hrw.org/en/reports/2005/10/11/rest-their-lives>>.
- Liptak, Adam (2007) “Lifers as Teenagers, Now Seeking Second Chance”, *New York Times* – October 17.
- Mauer, Marc (2007) *America Behind Bars: U.S. and International Use of Incarceration, 1995*, Washington (D.C.): The Sentencing Project.

- Mauer, Marc, Ryan S. King and Malcolm C. Young (2004) *The Meaning of 'Life': Long Prison Sentences in Context*, Washington (D.C.): The Sentencing Project.
- Nellis, Ashley (2010) "Throwing Away the Key: Expansion of Life Without Parole Sentences in the United States", *Federal Sentencing Reporter*, 23(1): 27-32.
- Roper v. Simmons, 543 U.S. 551 (2005).
- United Nations General Assembly (1989) *Convention on the Rights of the Child*, United Nations, Treaty Series, 1577: 3. Retrieved from <<http://www.unhcr.org/refworld/docid/3ae6b38f0.html>>.

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*Joseph Dole* is currently serving a life without parole sentence after his first felony conviction upon a theory of accountability – a conviction he continues to fight *pro se*. He has been isolated in Tamms Correctional Center, Illinois' only supermax prison, for almost 9 years. Beginning to write 7 years ago, his first essay was included in the book *Lockdown Prison Heart* (iUniverse Inc., 2004). Since then he has written a number of articles, essays, research papers and proposals, two of which were catalysts for Illinois legislation including a bill and a resolution. This essay won a PEN America Award. He has also been published in *Stateville Speaks Newsletter*, *Grapevine Newsletter*, *The Insider Magazine*, *Prison Legal News* and the *Public I* newspaper. Some of his writings can be viewed at [www.jailhousejournalist.info](http://www.jailhousejournalist.info) which is a slow work-in-progress.