Life Imprisonment as a Penal Policy

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Artikulu honek biziarteko kartzela-zigorraren politika aztertzen du, nazioarteko ikuspegian oinarrituta. Batetik, Europako eta AEBko biziarteko kartzela-zigorraren politikak berraztertzen ditu, eta bestetik, giza eskubideen eta biziarteko kartzela-zigorraren ikuspegi orokorra eskaintzen du. Proportzionaltasuna erabiltzen du zigor-filosofia gisa, politika kriminal gisa biziarteko kartzela-zigorra azpimarratuta. Azkenik, adin txikikoen egoera berezia aztertzen da.

Giltza-Hitzak: Biziarteko kartzela-zigorra. Giza eskubideak. Proportzionaltasuna. Politika kriminala alderatua.

Este artículo analiza la política de la cadena perpetua desde una perspectiva internacional. Se revisan las políticas de la cadena perpetua de las naciones europeas y Estados Unidos. Se presenta una visión general de los derechos humanos y la cadena perpetua. Se utiliza la proporcionalidad como filosofía de castigo recalcando la cadena perpetua como política criminal. También se trata la situación especial de los menores.

Palabras Clave: Cadena perpetua. Derechos humanos. Proporcionalidad. Política criminal comparada.

Cet article analyse la politique de réclusion criminelle à perpétuité dans une perspective internationale. Il passe en revue les politiques de la réclusion à perpétuité au sein des nations européennes et aux États-Unis. Il offre une vision générale des droits de l'homme et de la réclusion criminelle à perpétuité. Avec l'utilisation de la proportionnalité comme philosophie du châtiment et la réclusion à perpétuité comme politique criminelle. Et en abordant tout spécialement la situation des mineurs.

Mots Clé : Réclusion à perpétuité. Droits de l'Homme. Proportionnalité. Politique criminelle comparée.

INTRODUCTION

The objective of this article is to analyze the penal policy of life imprisonment from an international perspective. Generally speaking, the sentence of life imprisonment has received more attention in Western Europe then it has in the U.S.A. (see van Zyl Smit, 2002). Exceptions which have received notice in the U.S.A. are the life imprisonment of juveniles (see Fagan, 2007; Feld, 2008), three-strikes laws (see King and Mauer, 2001), and to a lesser extent the Rockefeller drug laws in New York State which mandated life sentences for certain drug offenses.

Although the label "life imprisonment" is used in many nations, the actual sentences involve varying sanctions in different jurisdictions. That is, in the U.S.A. and Western European nations a sentence of life imprisonment often has a maximum number of years that may be served in prison (e.g., 20 years). However, life imprisonment without parole (LWOP) in the U.S.A. requires that the inmate will serve the remainder of their natural life in prison.

In this article we provide a brief overview of sentences of life imprisonment in European nations and in the U.S.A. Following these descriptions of the various life sentence policies, we examine the applicable sections of the major international instruments which apply to the sentence of life in prison. We then examine the major philosophical differences on life imprisonment between the U.S.A. and European nations. In the concluding section, we discuss life imprisonment as a penal policy.

1. LIFE SENTENCES IN EUROPE

In the vast majority of European nations life imprisonment does not imply imprisonment for the entirety of one's natural life. With very few exceptions, European nations provide a time at which a prisoner is entitled to a parole hearing. However, some reserve the right to impose full life terms for particularly 'heinous' crimes. In this section, we outline the general policies of European nations with respect to life sentences paying particular attention to noted exceptions. We begin with the least punitive policies and progress to the most punitive sentencing policies.

Life sentences in Belgium and Sweden may be the least punitive in Europe. In both countries persons serving life sentences (i.e., lifers) are entitled to a parole hearing after serving 10 years. While Belgium increases the length of time until parole to 16 years for recidivists, neither country uses life without the possibility of parole (Snacken, 2001; von Hofer and Marvin, 2001). In Italy after serving 10 years (8 years in the case of good behavior), prisoners may be granted the right to work outside the prison and the right to spend up to 45 days a year at home (van Zyl Smit, 2002). However, a prisoner sentenced to life is not eligible for full parole until he/she has served at least 26 years. While generally less punitive, Italy reserves the right to detain uncooperative Mafia affiliates and

terrorists for the entirety of their natural lives. Both Denmark and Finland guarantee a parole hearing for those sentenced to life after 12 years served, with lifers in Denmark serving an average of 16 years (Storgaard, 2001).

Life sentences in Germany, Switzerland, Austria, England, Wales, and France impose slightly longer waits for a parole hearing. In Germany, persons serving life sentences are entitled to a parole hearing after 15 years. This waiting period is increased to 18 years for grave offences and 26 years in the case of a terrorism conviction. Germany does not utilize life without possibility of parole on the basis of human rights (van Zyl Smit, 1992). Each of the other countries listed above reserves the right to sentence a prisoner to natural life in some cases. In England and Wales a prisoner sentenced to life is provided an opportunity for parole after 15 years (Morgan, 2001). However, prisoners convicted of multiple murders are subject to different limits. In the case of racially motivated multiple murders or those specifically targeting law enforcement officers, the wait for a parole hearing is increased to 30 years. Life without possibility of parole can be given to perpetrators of multiple murders that involve sexual abuse, pre-planning, abduction, or terrorism. Similarly, Austria and Switzerland guarantee parole hearings after 15 years, but reserve the right to enforce life without parole in "exceptional" cases (Austria) or violent offenders and untreatable sex offenders (Switzerland) (Baechtold, 2001).

Finally, France requires that 18 years are served before a parole hearing for most life sentences (22 years for recidivists) (Combessie, 2001; van Zyl Smit, 2002). In the case of child murder the time to first parole hearing is extended to 30 years and may be eliminated all together. France has recently enacted a law providing for life without parole (Mauer, et al., 2004).

In general, Eastern European countries appear to impose a longer wait until the first parole hearing for life sentences. Both Latvia and Romania require a prisoner to serve 20 years of his/her life sentence prior to a parole hearing. Poland requires a minimum of 25 years served before a parole hearing, but reserves the right to extend this mandatory waiting period (Stando-Kawecka, 2001). Hungary requires between 20 and 30 years to be served before the first parole hearing depending on the severity of the offense (Nagy, 2001). In Hungary the right to impose a sentence of life without parole exists in extreme cases.

Many European nations have established maximum sentences, effectively eliminating any notion of life without parole. At the least punitive end of the spectrum, Norway has established a maximum sentence of 21 years (Newcomen, 2005). In addition, all prisoners are eligible for spending weekends at home after serving one third of their sentence (maximum 7 years). Greece and Portugal have both limited sentences to a maximum of 25 years (Newcomen, 2005). Greece also guarantees a parole hearing after serving 16 years. In Spain the general upper limit for a prison sentence is 20 years. However, in 2003 the length of the "highest prison punishment" was increased from 30 to 40 years in those cases in which the offender had been convicted of at least two terrorist offenses and one of these offenses carries a prison sentence exceeding 20 years (de la Cuesta, 2007). As part of this change in the law, any sentences imposed in other nations are taken into account for the purpose of assessing international terrorist recidivism (de la Cuesta, 2007).

It appears Eastern European nations also tend to have longer maximum sentences than their Western European counterparts. Bosnia Herzegovina and Croatia both limit sentences to 40 years (Newcomen, 2005).

Finally, at the extreme end of the spectrum are three European nations that allow broader application of life without parole: Ireland, Estonia, and the Netherlands. Ireland is perhaps the most flexible of the three. Offenders convicted of murder or treason in Ireland are automatically eligible for life sentences with a minimum of 40 years served in prison (Appleton and Grover, 2007). While technically for the full duration of one's natural life, the entire sentence is not served within the confines of prison walls. The Netherlands is broadly perceived as one of the most liberal nations on earth. However, they, along with Estonia (for recidivists), enforce natural life when handing down life sentences. In the Netherlands it is theoretically possible to obtain a royal pardon, but in practice this is increasingly rare as life sentences have become far more common (Penal Reform International, 2007). Non-recidivists in Estonia may apply for release after serving 30 years (Sootak, Antsmae, and Israel, 2001).

With the review of European life sentences complete, we will move on to an exploration of the variation in life sentences within the United States before exploring the implications of human rights on life sentences.

2. LIFE SENTENCES IN THE U.S.A.

The United States of America has the highest rate of incarceration per 100,000 residents in the post-industrial world. This is not surprising considering the questioning of rehabilitative strategies and the return to retribution, incapacitation, and deterrence as justifications for punishment in the United States which began in the Nixon era of the mid-1970s and expanded substantially during the Reagan and George H. W. Bush presidencies in the 1980s and early 1990s. These rationales have fueled the movement from indeterminate to determinate, "get- tough" sentencing policies at both the federal and state levels (Dobbs, 2003; Griset, 1996; Reitz, 1998; Tonry, 1996).

To ensure that convicted offenders serve the majority of the sentence imposed, the United States Congress passed the Violent Crime and Law Enforcement Act of 1994 which authorized funding for the construction of additional prison and jail facilities as well as the appending/renovation of existing facilities to state and local jurisdictions that implemented "truth-in-sentencing" (TIS) laws. Theoretically speaking, TIS laws served to eliminate "good-time" credit (i.e., early, unsupervised release for good behavior), as well as limit, if not completely eliminate, discretionary parole release. Furthermore, TIS served to increase sentencing uniformity, public assurance of time to be served, and the incapacitation function of imprisonment; as well as reduce the discrepancy between the time imposed and time served (Ditton & Wilson, 1999).

There are two types of life terms currently imposed in the United States: (1) life imprisonment with the possibility of parole, and (2) life imprisonment without the possibility of parole or "natural life." It is important to remember that many states may have both types of sentences as part of their state sentencing statutes.

Life imprisonment with the possibility of parole is part of an indeterminate sentencing structure in which sentences range from a given number of years (depending on the nature of the offense and/or the offender's background) to "natural" life. For example, a state that has life imprisonment with parole may impose the minimum sentence of 15 years for murder, or the state may choose to allow judges the freedom to impose a minimum sentence depending on the offender's crime as well as other legal and socio-legal factors. Furthermore, the parole board is charged with determining if the inmate is deserving of release based on rehabilitative progress and/or behavior while incarcerated. After the minimum number of years called for by the sentence has been served, the offender can have his or her case heard by the parole board. This sentencing structure predominated from the end of the American Revolution until the 1970s (Blomberg & Lucken, 2000). However, in recent years, the correctional enterprise the United States has seen a shift to a "get-tough" philosophy, and life imprisonment without the possibility of parole has been embraced as a sentencing option by more states (Dobbs, 2003).

Given the two methods of life imprisonment in the United States, as well as variations concerning life with the possibility of parole, there is currently much differentiation among states and the federal government as to how life imprisonment is defined and implemented as a penal policy. In 1987, the federal government, upon recommendation of the United States Sentencing Commission, implemented the federal sentencing guidelines, which are still utilized today. These guidelines put into place a punishment of life without the possibility of parole for certain crimes and certain offenders at the federal level, and states were encouraged to follow suit. Illinois, Iowa, Louisiana, Maine, Pennsylvania, and South Dakota all define all sentences of life imprisonment as "natural life." Louisiana has stringent guidelines for clemency. Offenders must wait 15 years before applying for clemency, and if it is denied by the Pardon Board, the offender must wait another six years before reapplying (Berrigan, 2001). Pennsylvania was the first of these states to impose "natural life"; however, it is important to note that for many years, governors of the state would commute many of these sentences, and many of these offenders would not serve sentences longer than 20 years. However, since the mid-1990s, only one offender has had his sentence commuted. Thus, Pennsylvania is in agreement with the "get-tough" approach that is currently driving the theories behind sentencing and corrections in the United States (Mauer et al., 2004).

In 2003, 17 states each had a prison population composed of 0-1% offenders serving a term of "natural life." Sixteen states (including California) each

had between 1.1% and 3% of their offender populations as "natural lifers." Lastly, between 3.1% and 11% of the prison populations in 12 states and the federal system is comprised of "natural lifers" (including Iowa, Louisiana, Pennsylvania, and South Dakota). Louisiana has the highest percentage at 10.6%, while Kentucky and New York both have the lowest percentages at 0.1%. When considering all states and the federal system together, the "natural life" offender population grew from 12, 453 in 1992 to 33,633 in 2003 or a 170% increase. It is important to note that Alaska, Kansas, New Mexico, and Texas do not have statutes providing for life imprisonment (Mauer et al., 2004).

Life sentences with the possibility of parole, or some other form of early release (i.e., good-time credit) is utilized in many states; yet, many of these states have become more stringent with their release policies, which is also in accordance with the "get-tough" approach to sentencing. These states include Michigan, New Mexico, and Tennessee. Michigan and New Mexico have recommended a reduction in the use of early release for offenders sentenced to life imprisonment, while Tennessee requires that offenders serve 51 years before a parole board hearing is scheduled. While these policies are available for use in Alaska, Kansas, New Mexico, and Texas, these states currently do not have any inmates sentenced under this framework (Mauer et al., 2004).

As of 2003, 13 states as well as the federal government had prison populations comprised of 0-5% offenders sentenced to life with the possibility of parole/early release. Twenty-four states (including Texas) each had prison populations made up of 5.1-10% offenders sentenced to life with the possibility of parole/early release. Six states each had a prison population composed of 10.1-15% lifers eligible for parole/early release, while Alabama, California, Massachusetts, Nevada, New York, and West Virginia have the largest percentage of these inmates at 15.1-20%. Nevada has the highest percentage at 18.6%, while Indiana has the lowest percentage at 0.9%. When considering all states and the federal system together, this offender population has grown from 34, 000 in 1984 to 127, 677 in 2003 or an increase of 276% (Mauer et al., 2004).

Irrespective of how individual states define "life in prison," the amount of time that individual lifers served increased about 10 years during the 1990s. By 1997, the estimated amount of time served by individuals serving a life term (either with parole provisions or without parole provisions) was 29 years (Mauer et al., 2004). Due at least in part to increasing pressures on state correctional system budgets, some states, such as Connecticut, Indiana, and North Dakota have reintroduced parole to alleviate strain in the correctional system. Other states have implemented release after a certain period of time has been served. Examples include Florida requiring 85% of the sentence to be served and Mississippi requiring 25% of the sentence to be served (Butterfield, 2001).

Currently, 26 states have laws that call for "three strikes and you are out" – a sentencing policy in which offenders convicted of a third felony offense are sentenced to one of the two variations of life sentences, depending on the state. Most of these states enacted these laws between 1993 and 1995 (Clark,

Austin, & Henry, 1997). Although over half of the states have "three strikes" laws, only California, Washington, Georgia, South Carolina, Nevada, and Florida have utilized the policy with measurable frequency. California is widely known for its implementation and use of "three strikes and you are out," most likely because of the media attention the policy has received since its implementation in the 1990s. In California, after two prior convictions for drug or violent offenses, offenders convicted of a third felony, no matter how serious the offense is, are sentenced to life terms with the possibility of parole after the completion of a 25-year sentence. Washington's three strikes law is quite different from California's in that the third strike must be for a violent or drug offense, and it results in a sentence of life without the possibility of parole (King & Mauer, 2001).

The majority of individuals serving life sentences in the United States are incarcerated for a violent offense such as murder, rape, and armed robbery (90% in 1997). However, close to 5,000 offenders have been sentenced to life for drug offenses, with 2,000 of these offenders convicted at the federal level. California exercises three strikes policies for drug and property offenses, which calls for indeterminate life sentences (typically 25 years to life) when the third felony is a drug charge. Michigan's drug laws are similar, as life imprisonment is called for when the offender is convicted of selling 650 grams of cocaine or heroin (Mauer et al., 2004).

All states have laws that facilitate juvenile waiver from the juvenile court to the adult criminal court (in the United States, a separate justice system exists for juveniles); this occurs primarily in cases of violence or drugs and for offenders over the age of 14, as called for in each state's statute. The waiver process increases the likelihood of juveniles receiving life terms (Mauer et al., 2004). After the child is waived, prosecuted and if found guilty, sentenced, he or she may receive a life term, and this term will be in accordance with what is prescribed in each respective state statute – whether it is life without parole, or life with the possibility of parole. While the majority of juveniles waived to adult court receive sentences that are similar to the dispositions they would receive if they were retained in the juvenile system (Snyder & Sickmund, 1999), as of 2005 there were 9,700 persons serving life terms in America's prisons who committed their offense as a juvenile, and approximately one-fifth of these offenders are serving "natural life" terms (Liptak, 2005). The U.S. Supreme Court has recently agreed to review two cases of juveniles being sentenced to life without the possibility of parole for non-homicide offenses, however (see also *In re Nuñez,* 93 Cal.Rptr.3d.242).

Thus, life sentences take a number of forms in the U.S.A. These sentences are applied to a wider range of offenses and to a greater number of individuals than in Western European nations. In a comparative study of the U.S.A., England and Wales, and Germany utilizing 1999 data, it was found that 10.7% of U.S. prisoners were serving life sentences, whereas the respective proportions were 8.4% in England and Wales, and 3.1% in Germany (see Mauer, et al., 2004). In addition, life without parole is used much more often in the U.S.A. than in European countries. In England, for example, 0.005% of the lifers are serving life without the possibility of parole while the comparable proportion in the U.S.A. is approximately 20% (see Mauer, et al., 2004).

3. HUMAN RIGHTS ISSUES AND LIFE IMPRISONMENT

Much of the analysis of criminal penalties with respect to human rights has focused on the death penalty (Schabas, 2000; van Zyl Smit, 1999). We briefly review these arguments before proceeding to a discussion of the arguments for and against life imprisonment in light of growing concern over human rights. Finally, we will note the development of human rights arguments against special circumstances that extend life imprisonment in some countries, most notably for terrorism.

Most modern commentators on the 'evolution' of punishment in the era of International Human Rights begin with a discussion of the war crimes trials following the Second World War (Schabas 2000; van Zyl Smit, 1999). As a result of the Nuremberg trials in 1946, several high level Nazis convicted of war crimes were sentenced to death. This would mark the last time the death penalty was used as a punishment in the International Criminal Court. In the years that followed, the international community debated the suitability of the death penalty as a punishment for war crimes and crimes against humanity (Schabas, 2000). While many nations opposed the death penalty on the basis of human rights, others voiced heated opinions to retain the ultimate penalty. The opposition largely based its arguments on the availability of the death penalty as a punishment in their countries for arguably lesser offenses. If the International Criminal Court were to do away with the death penalty, lesser actors in crimes against humanity

(for example the genocide in Rwanda) would face harsher penalties in their home countries than would the masterminds tried at the International Criminal Court (Schabas, 2000). Representatives from Muslim nations also argued for the inclusion of the death penalty in extenuating circumstances based on Shari'a law. While no clear consensus was reached, ultimately the death penalty was eliminated as a possible penalty in the International Criminal Court (Schabas 2000; van Zyl Smit, 1999).

Given the abolition of the death penalty in the International Criminal Court, life imprisonment became the de facto ultimate penalty. Life imprisonment is currently facing similar, though less extensive, debate as to its suitability with regards to human rights issues. Those who oppose life imprisonment argue that such sentences infringe on human rights to some extent even when the opportunity for parole is available (van Zyl Smit, 1999). These arguments rely upon the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights as the two most prominent instruments of international human rights. One of the major arguments against life imprisonment, particularly without parole, revolves around a section of the International Covenant on Civil and Political Rights. Article 10(3) states that the goal of imprisonment must be the reformation and rehabilitation of the prisoner with the goal of rejoining society. During the International Law Commission meeting in 1991, several South American delegations cited this article in their opposition to life imprisonment as a punishment in the International Criminal Court (van Zyl Smit, 1999). Along with delegates from the German Democratic Republic, Spain and Kenya, the South American delegates argued that full life imprisonment and even substantially long determinate sentences violated the requirement that the goal of imprisonment be rehabilitation and ultimately rejoining society. These delegates believed that the right to be rehabilitated and the right to rejoin society constituted fundamental human rights (van Zyl Smit, 1999). In lieu of life imprisonment, they recommended a minimum sentence of 10 years and a maximum sentence of 25 years for war crimes and crimes against humanity.

Not all arguments against life imprisonment focus on the assumed right to rehabilitation. Portugal, among other nations, argued that life imprisonment essentially gave the state too much power over its citizens, violating many constitutional documents outlining the extent of government powers granted from its citizenry (van Zyl Smit, 1999).

Others base their arguments on the research of social scientists concerning the effects of long-term imprisonment. Most notably, Goffman (1961) coined the term 'institutionalization' to refer to the dehumanizing effects of long-term confinement to an institution such as a mental hospital or prison. Murphy (1979) used this general finding to argue that long-term incarceration essentially amounts to torture as the prisoner is forced to endure the long and painful death of one's self through the process of institutionalization. If life imprisonment is akin to torture, it follows that life imprisonment as punishment is already outlawed by international law.

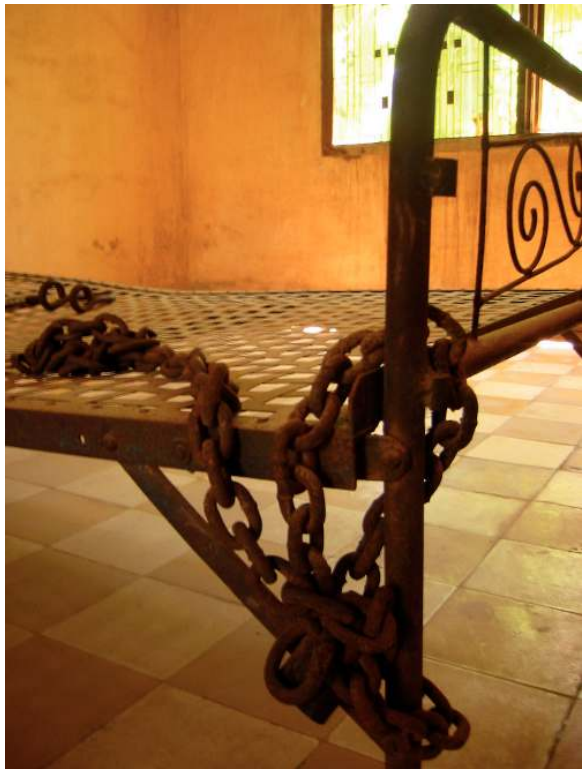
Although some scholars have concluded that the empirical evidence concerning the effects of long-term incarceration is mixed (van Zyl Smit, 1999), a recent comprehensive review of the literature by Haney (2006) found that long-term incarceration has harmful effects, particularly for young offenders. This review of the research found the problem of institutionalization to be a common result of long-term incarceration.

Arguments in support of life imprisonment have also taken on various forms in the international debate. During the 1991 International Law Commission meeting it was broadly argued that life sentences, in absence of capital punishment, served three general purposes: retribution, general deterrence, and incapacitation (van Zyl Smit, 1999). Ironically, many of those forming arguments in support of life imprisonment also drew upon the human rights concept. Panama argued that life imprisonment was almost required as the ultimate punishment for crimes against humanity and war crimes given the particularly grievous nature of the offenses. These harsh penalties, so argued Panama, would serve as a deterrent to those considering similar actions. Italy forged a similar argument on the basis of incapacitation. Moreover, they both argued that the International Criminal Court had a duty to protect the human rights of potential future *victims* by incarcerating these most heinous offenders for the entirety of their natural lives (van Zyl Smit, 1999).

In addition to arguments in the international law arena in support of life imprisonment, a number of scholars have examined the implications of life imprisonment in venues where the death penalty is still a viable option, most notably in the United States. Lane (1993) researched the importance of life without parole in jury decisions for capital offenses. Ultimately, Lane found that in the absence of a guarantee that the offender would spend the entirety of his/her life in prison, juries opted for the death penalty. Similarly, Verelst (2003) examined the number of jury inquiries into the likelihood of parole being granted during deliberations and the decision to impose or not impose the death penalty. Not surprisingly, when the jury was not given any information on the likelihood of

parole being granted they were more likely to opt for the death penalty. This is particularly problematic given that some U.S. states with the death penalty explicitly forbid the judge from making any statements to the jury concerning the possibility of parole (Verelst, 2003).

While some scholars have characterized the changing viewpoints on punishment as an 'evolution' in global thought with respect to human rights, in our view it remains unclear whether this is indeed an 'evolution' or simply the result of long-term oscillations in penal philosophy. Far from being unique to the late 20th and early 21st centuries, many of the arguments against life imprisonment and the death penalty can be traced back to the 18th century Enlightenment (Beccaria, 1996). Indeed, late 18th and early 19th century France provides additional evidence of the oscillating nature of attitudes toward life imprisonment. Case in point, while the French Penal Code of 1791 eliminated life imprisonment during a particularly optimistic period, life imprisonment was then reintroduced less than 20 years later in the Napoleonic Code of 1810 (van Zyl Smit, 1999). Characterizing the current global viewpoints on life imprisonment as 'evolving' toward the elimination of this policy runs the risk of being short-sighted and overly optimistic.



If, however, one accepts that the doctrine of human rights is influencing global perspectives on punishment, there are some glaring inconsistencies in this applicability within Europe. Many of the countries that espouse opposition to life imprisonment on the basis of human rights appear to have a notion of variable levels of human rights depending on the offense in question. This is most notable in countries that allow for much longer maximum sentences in the case of 'terrorism'. Kessing (2007) argues that the vague and variable definition of terrorism means that these harsher penalties can be applied whenever it suits the political purposes of the state. In the absence of a singular and unambiguous definition of terrorism, the application of the label 'terrorist' or 'freedom fighter' depends wholly upon who is doing the labeling. In this era of the global 'war on terror' there is increasing debate over whether human rights or fighting terrorism should take priority (Kessing, 2007). It is likely that both sides will employ the language of 'human rights' in the discussion of extending sentences for terrorists. The opposition will focus on the illogical nature of 'terrorists' having different 'human rights' than non-terrorists. Those in defense of such extended sentencing will focus on protecting the human rights of potential victims, as was the case in the debate over maximum sentencing in the International Criminal Court. These same diametrical arguments can be extended to other classes of prisoners that currently face different maximum sentences across Europe, namely 'untreatable' child molesters, recidivists, and violent criminals.

4. DIFFERENCES IN THE AMERICAN AND EUROPEAN PERSPECITVES ON LIFE IMPRISONMENT

Although the pendulum of penal philosophy has swung over time in the U.S.A., with few exceptions American penal philosophy has consistently been based on a punitive core ideal. Discussing rehabilitative prison reforms in the U.S. from 1865 through 1965, Rotman (1995: 170) stated "Most of the experiments that constitute the history of prison reform were isolated, pioneering undertakings at odds with a prevailing repressive system of punishment."

The historical exceptions to these shifts in penal philosophy and practice were prisons in Southern states. Rotman (1995: 176) observed "these institutions, in which blacks made up more than 75 percent of the inmates, took their inspiration from slavery. The result was a ruthless exploitation with a total disregard for prisoners' dignity and lives."

Historically, the rehabilitative philosophy was most influential in the U.S.A. during the progressive 1960s and up to the mid-1970s. Rehabilitation was intended to reduce crime by preparing offenders to be law abiding, conventional individuals when they left prison. Rehabilitative efforts centered on educational opportunities, limited vocational training programs, and counseling – both individual and group-based approaches. Some prisons instituted inmate governments as a rehabilitative reform. Since the knowledge of evidence-based practices for adult inmates was almost absent at the time, some of these programs appeared to have been less than successful.

Political support and funding for rehabilitative programming decreased following the mid-1970s. As a result, the penal philosophies of retribution, incapacitation, and deterrence have predominated institutional correctional agendas in the United States since the Nixon administration.

Retribution is a penal philosophy based on the assumption that offenders should be punished as a form of revenge for the wrongs that they have committed against others. Punishment "removes the underserved benefit by imposing a penalty that in some sense balances the harm inflicted by the offense" (Cragg, 1992: 15). Criminal punishment is the offender's "just deserts". Because of this, penal measures based on the retributive philosophy are not intended to reduce crime – they are intended to serve as punishment only. While early penal practices developed in tribal societies were vengeful and thus retributive in nature, the practice of retribution today is more controlled, and offenders should know what to expect in terms of punishment whereas the vengeful tactics of the past were often unpredictable (Blomberg & Lucken, 2000).

Incapacitation is a penal philosophy based on the idea that crime will decrease when it is impossible for offenders to commit more crime in civilian society. Thus, incarceration in a prison facility is incapacitative. Two critical problems have been discussed with the penal philosophy of incapacitation. The first is the accuracy of predicting future behavior of offenders. This is specifically important to consider because the practice of selectively incapacitating serious offenders has been widely implemented in the U.S.A. since the 1980s. The second problem often discussed concerning incapacitation is the ethical question raised when we consider punishing offenders for anticipated future criminal behavior.

Deterrence is a penal philosophy based on the idea that crime rates will decrease when current and potential offenders' sensitivities to punishment are heightened. General deterrence is the belief that punishment inflicted on one offender will deter others in the general population from committing a similar offense. Specific deterrence is the belief that punishment of individual offenders reduces crime among those punished. Problems mentioned with the deterrence philosophy include the assumption that all people are rational thinkers and the low probably of offenders being apprehended.

Emerging from the incarceration explosion of the past 25 years in the United States have been a new experiments with rehabilitation, however. This movement began in certain prisons and some state departments of correction (see Wexler, DeLeon, Thomas, Kressel, and Peters, 1999; Aos, Miller, and Drake, 2006). Correctional administrators and frontline staff became increasingly aware of the need for substance abuse treatment and other forms of correctional programming based in part on the huge upsurge in offenders incarcerated for drug and drug-related crimes. Thus, programs such as in-prison therapeutic community and cognitive-behavioral programs have become much more common in American prisons since the mid-1990s (see MacKenzie, 2002). Unfortunately, we do not have a nationwide study of recently instituted rehabilitative programs which would show the extent of these innovations.

European penal philosophy has a distinctly different orientation than does American penal philosophy. The abolition of the death penalty is one of the most obvious differences between the two philosophies, but a general retention of the commitment to rehabilitation is perhaps the most notable distinction of European penal philosophy. This commitment to providing treatment of all varieties to prisoners during their incarceration likely stems from the centrality of human rights conventions to European penal philosophy (Warner, 1998). Many countries around the world espouse the concept of human rights, but Europe is the only region of the world with a supra-national inspection team for ensuring that prisoners' human rights are respected during incarceration (Stern, 2002).

In this age of increasing globalization some have speculated that penal philosophies would converge, creating a globalized penal philosophy (Cavadino and Dignan, 2006). Indeed, global imprisonment rates suggest that approximately 75% of all countries have increased incarceration rates recently, indicating a definite lean towards Americanized penal philosophy (Cavadino and Dignan, 2006). While there are some indications of increasingly rapid adoption of American philosophies in Europe (e.g., increasingly lengthy sentences), European penal philosophy appears to be maintaining a distinctly different tone than American penal philosophy (Coyle, 2002).

Cavadino and Dignan (2006) have illustrated a possible link between a nation's political economy and penal philosophy. They argue that neo-liberal countries (politically conservative), such as the United States, England, and

Wales, focus on individuals and limit state-supported welfare (Cavadino and Dignan, 2006). This individualism tends to create large income differentials and also engenders the idea that each individual is personally responsible for both their failure in the marketplace and their failure to abide by the law. This personal responsibility for behavior, in turn creates an atmosphere conducive to harsher penal policies (Cavadino and Dignan, 2006). Conservative corporatist countries, such as Germany, France, Italy, and the Netherlands, offer more social welfare benefits than do neo-liberal countries. They are oriented towards integrating all citizens within the country and as such produce lower levels of income disparity than neo-liberal countries. Overall, these countries focus on

reciprocal obligations between the state and citizens. This focus on the collective, as opposed to the individual, is associated with rehabilitation efforts in penal policy. The offender is not seen as an individual who must be rejected from society, but is instead viewed as a member of the collective that must be retrained to fulfill their obligation to society (Cavadino and Dignan, 2006; see also Braithwaite, 1989). The final form of political economy is social democratic corporatism (politically liberal), as found in Sweden, Denmark, Norway, and Finland. Social democratic corporatism has higher levels of social welfare and much lower levels of economic disparity than either of the other two forms. Levels of incarceration are lower and there is a strong focus on rehabilitation and shared sense of communal responsibility for the criminal failings of a citizen (Cavadino and Dignan, 2006).

While these patterns of political economy and penal philosophy imply that continental Europe has thoroughly embraced less harsh and more rehabilitative penal ideas, recent trends in European politics suggest some countries may be moderating that stance. In the 1990's and early years of the new millennium several European countries, including the Netherlands, Germany, Denmark, and Sweden, saw a rise in more conservative politics. Each of these countries, in turn, pursued an increasingly harsh stance on crime and criminals (Coyle, 2002; Cavadino and Dignan, 2006). Despite these relative increases, European countries, as opposed to the U.S.A., continue to embrace the idea that prisoners, regardless of prison term length, should be afforded the opportunity to improve themselves while imprisoned (work, education, etc.) and return to civilian society in most cases (Coyle, 2002).

5. LIFE IMPRISONMENT AS A PENAL POLICY

All nations reviewed in this article have some form of life imprisonment. Of course, the content of these policies varies by jurisdiction. Some nations are much more punitive in the use of life imprisonment (i.e., the U.S.A.) and other nations are less punitive (e.g., Norway). This should be expected since the determinants of penal policy are many. These determinants of penal policy include the nation's cultural ideologies, the political economy of the nation, the characteristics of mass media in the jurisdiction and the degree of its influence on the political process, and the extent to which criminal justice experts are involved in the policy making process, among others (see Cavadino and Dignan, 2006; Tonry, 2007).

The theoretical or philosophical positions often utilized to justify sentences of life in prison are retribution, incapacitation, general deterrence and specific deterrence. Arguments often used in an effort to eliminate life sentences are the reformative and rehabilitative objectives of imprisonment. That is, since imprisonment has the goal of rehabilitating the offender, they should be released to have an opportunity to life a normal life. Some commentators have also noted that life in prison is a form of torture and, thus, should not be allowed.

We will simplify the debate by advocating that proportionality should be the primary philosophy which underlies the existence of life sentences. That is, the criminal sanction should be in proportion to the harm caused by the offense; assuming that the individual is fully culpable. It can be argued that a sentence of life in prison without the possibility of parole is proportional to the harm caused by certain extreme offenses such as multiple, premeditated murders and terrorist actions which result in multiple deaths.

Proportionality can serve as the basis for life sentences in all nations. Of course, jurisdictions will continue to set different minimum and maximum numbers of years in a life sentence with the possibility of parole and eventually release prisoners back into civilian society within a timeframe based on their legal and social cultures. Despite the continued use of this sanction, we support life in prison only for the most egregious offenses.

Furthermore, human rights protections should be provided for persons convicted of all types of offenses. That is, persons convicted of certain categories of offenses such as terrorism or sex offenses should not be excluded from human rights protections. The severity of the crime should be the basis of the sentence; not the statutory classification of the offense.

Given the philosophy of proportionality as the basis for life sentences, the "three strikes and you are out" sentences in the U.S.A. should be abolished. Again, the person's criminal sanction should be based on the gravity of the instant offense for which they have been convicted.

Although some advocates want to eliminate life sentences, life without the possibility of parole is an alternative to capital punishment in the United States. Thirty-five states, the federal government, and the military have the death penalty. Studies show that Americans will often choose life without parole in place of a death sentence when the option is known to them (see Vogel, 2003). Unfortunately, right-wing mass media commentators and conservative politicians have succeeded in convincing many Americans that the criminal justice system is very lenient and that life without parole does not exist. The data presented earlier contradict this claim. Until the U.S.A. has reached a higher level of adherence to human rights principles by abolishing the death penalty, life without parole can offer an alternative sentence for the gravest offenses.

In nations without capital punishment the sentence of life in prison without the possibility of parole may be considered undesirable. Once the offender has reached an advanced age they are very unlikely to repeat their crimes. In addition, based on the International Covenant on Civil and Political Rights, many Europeans argue that the convicted individual deserves an opportunity to rehabilitate and to rejoin the civilian society. This notion is in agreement with the reintegrative shaming theory of Braithwaite (1989). This theory states that "communitarian" societies are characterized by interdependencies in which persons are "densely enmeshed" and "which have the special qualities of mutual help and trust" (Braithwaite, 1989: 100). Shaming is reintegrative in communitarian societies. That is, the shaming process is part of the sanction for harming society but the offending individual is forgiven once their criminal sanction is completed and they are allowed to return to society without the negative stigma of being a convicted criminal and without experiencing marginality. "... disapproval is dispensed without eliciting a rejection of the disapproved" (Braithwaite, 1989: 102). According to this theory, reintegrative shaming is related to low rates of criminal behavior in a society and thus it enhances public safety.

Of course, an individual would be in need of intensive re-entry services following a long prison sentence to facilitate their reintegration into civilian society (see Haney, 2006). Furloughs or home-visits such as those which are commonly used in Norway would be expected to be of assistance in the reintegration process also.

Given the developmental immaturity of children and adolescents, their related inability to be criminally culpable, and in agreement with the Convention on

the Rights of the Child, persons who committed their offense(s) prior to a specified age of adulthood should not be eligible for a sentence of life in prison. Extensive research on the psycho-social development of youth finds that

> [...] even though adolescents by age sixteen exhibit intellectual and cognitive abilities comparable with adults, they do not develop the psycho-social maturity, ability to exercise self-control, and competence to make adult-quality decisions until their early-twenties (Feld, 2008: 32),

this "Immaturity Gap" is the basis of the reduced criminal responsibility of youths.

Of course, the age of legal adulthood for purposes of criminal responsibility varies by nation. While seemingly all European nations and the U.S.A. have established 18 years as the age of legal majority, the range in ages of criminal responsibility in Europe and among U.S. states ranges from 14 to 18 years of age (see Dünkel in Jensen and Jepsen, 2006: 3). The Convention on the Rights of the Child states that life imprisonment without possibility of release shall not be imposed for offenses committed by persons below 18 years of age.

Given the wealth of recent research on the development of youth and criminal culpability, law makers in many nations and U.S. states should consider increasing the age of criminal responsibility (see The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice at http://www.adjj.org/content/page.php?cat_id=2). This recommendation is also in agreement with the basic principles of the Convention on the Rights of the Child.

Thus, life in prison is a reasonable sanction for the gravest criminal offenses. In addition, life imprisonment without the possibility of parole is an alternative to capital punishment in the U.S.A. However, these long sentences must be in proportion to the severity of the offenses. Unfortunately, in the U.S.A. the principle of the proportionality of criminal sanctions has frequently been ignored with the establishment of the neo-conservative "get tough" policies since the early 1980s.

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