



# Normalizing extreme imprisonment

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# NORMALIZING EXTREME IMPRISONMENT: THE CASE OF LIFE WITHOUT PAROLE IN CALIFORNIA (1972-2012)

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Author Accepted Manuscript by Theoretical Criminology<sup>1</sup>

## I. INTRODUCTION

How do extreme forms of imprisonment become normalized? Much has been written about the way life imprisonment has become the new ‘normal’ despite growing evidence of its extreme severity. Hamilton (2016:818) writes, ‘[America’s] hyperbolic use of life sentencing is so routinized that the otherwise extreme penalty is no longer considered extraordinary to the American public.’ Similarly, Hannah-Moffat and Klassen (2015:135) conclude that solitary confinement in Canada has become ‘normalized’ notwithstanding its incredibly punitive nature. Life without parole (LWOP), the focus of this paper, is emblematic of how extreme imprisonment can become a ‘normal’ (Seeds, 2018) and ‘commonplace’ (Gottschalk, 2012:228) feature of the penal landscape. But how exactly has this happened?

To answer this question, we must first clarify what normalization means. Normalization is generally defined as the processes that make a condition seem ‘normal’. Processes do not happen in a vacuum; they are activated and oriented by specific penal actors. The way normalization works either refers to a condition’s prevalence (normal distribution) or to its social acceptability (normative value). This article focuses on the latter understanding of normalization. When describing a punishment’s ‘acceptability’ we are discussing people’s views on its severity. Acceptability illustrates the type of pain and suffering a specific society allows at a given point in time (Garland, 1991). To be clear, normalization as acceptability does not determine whether a penalty is ‘actually’ intolerably severe or not; it points to public *perceptions* of severity.

Some might say that to really know people’s views on LWOP’s severity and to confirm that it is considered an acceptable punishment is really an empirical matter that should be tested with public opinion polls.<sup>2</sup> Scholars have measured public attitudes to punishments with polls (Unnever and

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<sup>1</sup> 1.Vannier M. Normalizing extreme imprisonment: The case of life without parole in California (1972–2012). *Theoretical Criminology*. December 2019. doi:10.1177/1362480619893678

<sup>2</sup> Polls, however, only capture some views (Brown, 2006).

Cullen, 2009; Wozniak, 2014). This approach, however, would only partially inform us of *how* do these things happen? Exploring acceptability might thus call for empirical research but it also has a theoretical component, which is precisely what is described here.

The empirical basis for this paper's theoretical framework is that LWOP has become normal in the public consciousness despite being extremely severe. LWOP's growth<sup>3</sup> is remarkable for the apparent dispassion (Garland, 2012) with which the American public and various criminal justice actors have accepted a practice (Girling, 2016) described as torturous and inhumane by prisoners,<sup>4</sup> recognized as exceptionally severe since at least Beccaria (1807) and deemed morally reprehensible elsewhere in the world today (Van Zyl Smit et al., 2014). Polls suggest that voters prefer LWOP over the death penalty and other forms of extreme sentences (DPIC, 2018). The public's puzzling acceptance of LWOP is further illustrated by how elected representatives have embraced it. Other than with respect to juveniles, legislators have rarely sought to reduce its scope. Instead, laws have continuously expanded LWOP amidst efforts to reduce the prison population (Seeds, 2017:598). Judges, too, regularly hand down LWOP sentences (Nellis, 2017), and, at the time of research (2014), there were few activists challenging the punishment. The question as to how LWOP has become normal, however, remains.

This article builds on a broader literature that explores how reforms can have perverse consequences on the punitive policies they mean to alter (Schoenfeld, 2010; Murakawa, 2014). This scholarship highlights the key part reformers play within the processes of reforming. It underscores how the language they choose, the strategies they privilege, and the solutions they propose can produce negative outcomes. Reforms can inadvertently legitimize punitive policies by either failing to amend them, or by entrenching and encouraging them. Overall, however, this literature underestimates and overlooks how reforms and reformers are the core of normalization processes.

To address this gap and investigate how those who drive reforms can normalize punishments, the paper outlines a new and original normalization framework around three overlapping mechanisms derived from works on social acceptability: visibility, denial and routinization. It then applies the model to the case of LWOP in California in the death penalty context between 1972-2012 to

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<sup>3</sup> There are now over 50,000 LWOP inmates in America (Nellis, 2017).

<sup>4</sup> LWOP denies a number of individuals, including juveniles, the elderly, and the mentally ill, the hope of ever being released (Appleton and Grover, 2007; Hartman, 2013; Leigey and Ryder, 2015). They experience the general pains of prison extended to the very limits of their life (Vannier, 2016; Van Zyl Smit and Appleton 2019).

closely analyze the content, rhetoric and tactics privileged by anti-death-penalty criminal justice actors, and consider their effects on perceptions of LWOP's severity. When studying the ties between death penalty abolitionism and LWOP's normalization, the Californian case is emblematic. The state not only holds the largest death row in the country (DPIC, 2018) due to the success of capital defense litigation that led to an indefinite moratorium (Steiker and Steiker, 2016). It also has the third largest LWOP population and has been the site of relentless anti-death-penalty legislative efforts, culminating in an unprecedented voters-led campaign in 2012 to replace the death penalty with LWOP.

This paper finds that anti-death-penalty reformers who have used LWOP to challenge capital punishment in California have contributed to LWOP's acceptability. This claim illuminates how extreme forms of imprisonment can be normalized when set to replace something perceived to be more severe. It not only complicates empirical knowledge on the ties between LWOP and anti-death penalty activism. It also has theoretical and policy purchase beyond capital punishment, just as the emerging arguments against LWOP might end up normalizing other forms of life sentences. Two qualifications merit consideration: this article does not consider every process by which anti-death-penalty reformers might condition acceptability. It also recognizes that different actors and reforms other than those pertaining to the death penalty might have induced beliefs about LWOP's severity. In what follows, the paper situates the analysis within the broader literature on how reforms can have unintended perverse outcomes. The second section articulates a normalization-as-acceptability model. The framework is then applied to a case study set in California. The conclusion considers some of the broader implications for extreme imprisonment more generally.

## **II. NORMALIZING PUNISHMENT: THE LITERATURE**

There is a broad literature concerned with identifying and understanding how 'good' criminal justice reforms go 'bad' (Schoenfeld, 2010, 2016; Dagan and Teles, 2014; Murakawa, 2014). This literature does not use the terminology of normalization but focuses on how the processes of reforming can have unintended and perverse consequences on the punitive policies they mean to alter. These works crucially illuminate the important part reformers play throughout the processes of changing penal practices. Some scholars explore the language they choose and highlight what is given emphasis and what is excluded. Gottschalk (2014:100) notes that 'concerns about racial justice, morality, or justice writ large' are absent from the current reformist discourse. Aviram

stresses that the financial crisis has promoted ‘a new set of correctional discourses and practices, fuelled by a language of scarcity’ (Aviram, 2010:3).

Other studies shed light on the strategies reformers privilege. To challenge mass incarceration, Gilmore (2015) found that mainstream prison reformers had excluded and simultaneously co-opted grassroots antiracist organisations’ strategies. Austin et al. (2013) underscore how prison reformers promote the views of county prosecutors and sheriffs at the expense of local advocates and justice campaigners. Scholars further analyse the solutions offered and the implications of omitting other alternatives (LaVigne et al., 2014). Gottschalk (2014:81) argues that the “three-R approach” to address mass incarceration (reinvestment, recidivism, and re-entry) disregards the broader political and economic context and is therefore unrealistic given the socioeconomic disadvantage of criminal offenders.

Together, the language, tactics and content of reforms have consequences and produce negative outcomes that may not be intended or foreseeable. They can fail to amend them. Initiatives to downsize the prison population have at best ‘nibbl[ed] at the edges’ of old punitive policies (Tonry 2013:191). Reforms can also inadvertently entrench and legitimate punitive policies. For Pifer (2016), measures that introduce categorical exemptions (limiting the scope of penal practices for particular offenders or crimes) have legitimated rather than reduced extreme punishments such as the death penalty, LWOP and other extreme confinement conditions. Steiker and Steiker (2008) discuss how abolitionists’ focus on innocence (avoiding wrongful convictions) has entrenched the death penalty. Some policies might even exacerbate the very problem they seek to address. Prison conditions litigation encouraged mass incarceration (Schlanger, 1999), and attempts to reduce the prison population aggravated some of the racial and social pathologies that underlie the issue (Gilmore, 2015).

Overall, this scholarship sheds important light on the key part reformers play in orienting and activating reforming processes which, ultimately, may have negative outcomes for the landscape of punishment. In particular, it illustrates how reformers might normalize punishment policies by encouraging and legitimating their use. This literature, however, overlooks how those behind ‘good’ reforms might unintentionally shape perceptions of severity and determine a punishment’s acceptability, i.e. normalize a penal practice in the public consciousness.

A smaller and relatively recent body of legal scholarship attending to LWOP in the death penalty context has begun uncovering how reformers might unintentionally influence public perceptions of severity. Death penalty abolitionists, they claim, have overlooked LWOP's extreme severity (Hamilton 2016:813), downplayed its harshness (HLRA, 2006), and promoted the punishment as a humane alternative to capital sentences (Nellis 2013:448). These representations of severity have limited the public's and the courts' sense of 'how extreme a punishment it is' (Barkow 2009:1191) and 'desensitiz[ed] society to the fact that this, too, is a death sentence' (Nellis 2013:448). LWOP 'has come to be regarded as a benign penalty, thanks in no small part to the "death is different" campaign of opponents of capital punishment.' (Dubber 1995:713). For Steiker and Steiker (2008:175), 'the strategy of death penalty abolitionists to rely on harsh incarceration sanctions as an alternative to the death penalty might lead to lengthy terms of incarceration being viewed as a "lesser" evil instead of as an evil in itself.' This 'near-universal endorsement' (Barkow, 2009:1191) also gives the impression that those who usually challenge the most extreme and inhumane punishments approve of LWOP.

These works are important because they show that specific reformers can shape public views and determine a punishment's acceptability by representing its severity in particular ways. The studies also highlight the effect some reforms might have on other sentencing policies. Our understanding of normalization-as-acceptability, however, remains incomplete and limited for the three following reasons. Firstly, the claim often constitutes a few lines or paragraphs and is barely developed. Because there are very few empirical details on the rhetoric reformers choose, the strategies they privilege and the solutions they propose, these works provide limited empirical grounding and theoretical insight into how these processes might shape perceptions of severity and determine a punishment's acceptability. Secondly, when they draw on empirical data, the analyses tend to concentrate on judicial reforms. Yet, there may be other policies that involve different penal actors that too influence beliefs about severity. Thirdly, the pieces are mostly situated at a nationwide level, missing out on local specific nuances (Lynch, 2011) and at risk of over-generalizing certain aspects (Lacey 2008:26) such as the role of reformers. The concept of normalization-as-acceptability ultimately remains under-researched and under-theorized.

### **III. NORMALIZATION-AS-ACCEPTABILITY: A MODEL**

The aforementioned literature sheds light on the processes of reform (language, tactics, solutions) by which some reformers might produce unforeseen and unintended negative outcomes. We have

yet to know how these mechanisms normalize a punishment by turning it into something acceptable. For this reason, this article has turned to works that explore how people come to tolerate harsh treatments. These works were developed separately and do not constitute, as such, a consistent block on ‘social acceptability’ in the context of penal policies. They nonetheless provide important instances from which to extract and develop three key mechanisms for understanding how people come to accept particularly severe punishments, namely: visibility, denial and routinization. Crucially, the selected studies emphasize the part actors play in activating and orienting each mechanism.

In sum, Best’s (2013) work on the making of ‘social problems’ highlights the importance of visibility which describes how much political attention is afforded to certain conditions. *Visibility*, here, highlights how failing to consider a punishment, collecting and distributing limited information about it, and highlighting some expert knowledge whilst disregarding others, contribute to making it seem acceptable and normal. Cohen’s (2001) work on denial stresses how rhetorical representations of severity are key to understanding why people come to tolerate human rights violation. For the present model, *denial* serves to explore how a punishment might become acceptable when the extent of its severity is distorted or misrepresented. The third mechanism, *routinization*, was developed on the basis of studies by Durkheim (1973), Cohen (2001), Spierenburg (1984) and Elias (1978) on different punitive practices. In the proposed model, *routinization* is a mechanism by which a penal practice is accepted as it becomes a regular and significant part of the sentencing landscape. The normalization-as-acceptability model brings these three mechanisms together and integrates them within the study of penal reform processes. To put it simply, it lays out a new frame for exploring how the rhetoric, tactics and solutions chosen by specific penal actors, produce visibility, denial and routinization, which are mechanisms that shape perceptions of severity and lead to public acceptability.

#### *Normalization through limited visibility*

Works on social problems provide instances of the processes by which some practices become visible, are challenged and eventually removed (Best, 2013). Inversely, treatments that only get limited visibility are unlikely to be seen as problematic; instead, they will be considered acceptable. To persuade voters and legislators that a condition is unacceptable, actors who lobby or campaign for reform first need to prioritize it, and timing and context matter (Jones and Baumgartner 2005:ix). Reformers might grant scant attention to certain sentencing policies because there are other more pressing issues. In a context of economic decline and budget cuts, recommendations

in favor of rehabilitating (Aviram, 2015) lifers find fewer supporters as those more likely to be released may be prioritized (Mauer et al. 2018). As part of their strategy, actors wishing to reform a punitive practice must then collect and distribute information about it (Mauer, in Reiter and Koenig, 2015:xv). Examining the content of their proposition—what is included and what is omitted—becomes key. The less we know about a condition, the more unlikely it will become a social problem. For example, we know relatively little about solitary confinement, which may influence how this practice is perceived and why it has received scarce political attention (Mauer, in Reiter and Koenig, 2015:xv).

Careful consideration to who collects and disseminates information with legislators and voters is equally important when analyzing how reform processes might normalize punitive practices. Policymakers tend to rely on claims brought forward by the most influential groups, those with special authority and legitimacy (Jones and Baumgartner, 2005:5; Best, 2013:19-20). Inversely, when parties with particular power and reputation concede that a condition is not sufficiently problematic to merit their immediate attention and action, it makes us more comfortable with the practice.

The limited attention afforded to a punishment obscures, I argue, the extent of its severity and essentially cast a degree of acceptability through under-exposure. While relevant to understanding normalization, works on visibility fail to provide comprehensive analytical tools to investigate the importance of rhetorical representations of severity which is why I turn to the concept of denial.

#### *Normalization through denial*

The notion of ‘denial’ has been used to describe the different rhetorical devices employed to circumvent explicit mentions of suffering. In his work on human rights atrocities, Cohen (2001) identified three forms of denial. *Literal denial* indicates that nothing has happened (‘there was no massacre here’). Rather than denying the raw facts of a condition, we may instead contest its meaning. *Interpretive denial* does not reject that a condition has occurred but rather challenges how objectionable it is (‘it’s not as bad as you think’). The third form, *implicatory denial*, means the condition is acknowledged but that a set of justifications are offered to minimize its gravity (‘what happened can be justified’).

Cohen’s research is specific to how state representatives legitimize their human rights violations. Normalization techniques, however, can be employed by a broad set of penal actors, not just



human rights violators. Maruna and Copes (2005:285) describe the ‘normality of neutralizations,’ and how such techniques have been patterned amongst social workers and defense attorneys (Matza, 1964:61). Furthermore, the idea that ‘good people’ do not employ forms of denial is unsubstantiated; there are many examples of how people regularly use neutralization techniques, including victims of crime (Ahmed et al., 2001).

Different forms of denial can directly shape understandings of a punishment’s severity as illustrated by the Savings Accountability and Full Enforcement (SAFE) Campaign of 2012 in California ([see Dilts, 2015 and discussion below](#)). Some aspects of LWOP were literally denied (‘prisoners sentenced to life imprisonment do not die behind bars’). Alternatively, the degree of its intensity was denied (‘life imprisonment is not that bad’; ‘prisoners enjoy access to programs for the remainder of their natural lives’). Others claimed the punishment and its particular punitive features are well-deserved (‘these individuals are “the worst of the worst”, they deserve a harsh punishment’). Denying aspects of life imprisonment can skew perceptions of its severity and again, breed some form of contentment with the punitive practice. Such tactic might also facilitate and encourage its use.

#### *Normalization through routinization*

To consider normalization in terms of routinization first evokes issues of quantity. This perspective can be traced back to Emile Durkheim (1973:294) who noted that imprisonment has become a prevalent and normal feature of society. Life sentences no longer seem ‘extraordinary’ because they are routinely handed down (Hamilton, 2016:818). Cohen (2001:189) discusses how people find human rights violations ‘usual’ when they are conducted in large numbers. These works suggest that people are inclined to tolerate things that become ordinary. By contrast, we tend to reject things which are exceptional.

There are two reasons why people might accept punishments which are carried out in large quantities. First, quantity tends to distract rather than retain our attention. It is easier to grasp the harshness of something which is rare. For instance, executions in America are perceived as exceptionally cruel and retain their shock factor because few are performed each year (Garland, 2012). Second, people might feel comfortable with a practice that is carried out in great numbers because it signals that the rest of society tolerates it as well. The scale of a punishment indeed suggests that elected members responsible for introducing or expanding its scope (legislators and voters) have accepted it. It also implies that criminal justice actors who usually challenge cruel

treatments, allow it. The way routinization works is illustrated by how the US Supreme Court relied on the concept of ‘national consensus’ to find the death penalty unconstitutional (see *Atkins v Virginia*, 2002 and *Roper v Simmons*, 2005) and to consider life without parole for juveniles (see *Graham v Florida*, 2010). National consensus, the Court explains, is based on objective factors, the clearest and most reliable of which are the number of state legislation and practices.

The quantitative use of certain punishments, however, only partially accounts for their normalization. While there are more life sentences than executions, they only represent a fraction<sup>5</sup> of the total prison population. Routinization nonetheless remains a useful mechanism for exploring how people might get distracted from a punishment’s severity and become comfortable with certain punitive practices. In sociology, routinization has been conceived as a process whereby people become habituated to conditions they are regularly and repeatedly exposed to (Bourdieu, 1990). With respect to punitive treatments, Cohen (2001) argued that inhumane and cruel treatments cease to be upsetting when they are routinely carried out. Over time, we lose sight of their harshness. ‘Normalization emerges’, he writes, as ‘facts and images once seen as unusual, unpleasant, or even intolerable eventually become accepted as normal’ (Cohen 2001:188). Habitual exposure to cruel treatments essentially breeds acceptance. The works of Elias (1978) and Spierenburg (1984) on Western societies’ gradual rejection of violent treatments and embrace of new punitive practices offer other relevant instances of normalization-through-habituation. They shed light on how becoming uncomfortable or dis-habituated with one punishment (executions) can breed comfort with the measure set out to replace it (imprisonment).

In sum, sentencing policies that facilitate and expand the use of certain punitive practices may shape perceptions of severity. The routinised use of a punishment signals that it has become a normal feature across the wider society with which people feel comfortable. As it keeps being carried out, we become habituated to its severity. Punitive practices can also be tolerated when set out to replace something that has become unacceptable. Whereas limited visibility and denial shape severity through under- and distorted exposure, it is through over-exposure that routinization eclipses a punishment’s harshness. These mechanisms do not work against each other but together fuel the workings of normalization. Denial and visibility limit how much we know about the penal practice’s cruelty and routinisation furthers the process by regularly exposing us to that truncated understanding of severity. The following section applies the novel normalization-as-acceptability

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<sup>5</sup> Albeit a significant fraction (Van Zyl Smit and Appleton, 2019:99-100).

framework to the case of LWOP in the death penalty context in California to illustrate how specific reforms produce normalizing mechanisms.

#### **IV. NORMALIZATION-AS-ACCEPTABILITY *IN SITU*: LWOP AND ANTI-DEATH-PENALTY REFORMS IN CALIFORNIA (1972-2012)**

I first outline the methods and the main empirical findings, paying close attention to the criminal justice actors involved in the California anti-death-penalty legislative reforms between 1972-2012, the measures they proposed, and how they portrayed LWOP's severity. I then discuss the extent to which the rhetoric, strategies and content of their reforms have normalized LWOP by limiting its political visibility, denying the extent of its harshness, and routinizing its use.

##### *Methods and empirical findings*

Focusing on California enabled a nuanced and thorough exploration of how the processes reforms shape perceptions of severity and normalize extreme forms of imprisonment like LWOP within a specific context (Lynch, 2011). In particular, this state-level approach acknowledges that reforms are driven by a variety of actors, including lobbyists, grassroots organisations, voters and legislators (Gottschalk, 2014), who rely on different strategies and rhetorical framings to shape their definition of a problem. Some have more power than others, and their choices are not made in a vacuum. They are the result of struggles and contestations, and are shaped by the broader social context (Goodman et al., 2015).

The normalization framework and its focus on the role of reformers informed the analysis of the following archival documents. I first worked on newspaper clippings<sup>6</sup> and legislators' and governors' oral histories [1970-1980] (Brown, 1977; Gunterman, 1983; Alarçon, 1988) to obtain a general idea about debates on the death penalty and suggestions around LWOP. Committee reports<sup>7</sup> were used to shed additional light on positions and responses by key actors during this time period. I then explored specific legislative reforms that introduced or challenged the death penalty, using the *California Legislative History* online system, to provide further details on actors, their positions and justifications, and information they shared and assumptions they made about LWOP. Focused attention was given to the 2012 SAFE Campaign,<sup>8</sup> and to documents relating to

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<sup>6</sup> These were found on *WestlawNext* and *ProQuest*.

<sup>7</sup> Identified on *Online Archive of California* and the *California State Assembly-Clerk's Archive*.

<sup>8</sup> Found on the Campaign's own website; details about Proposition 34 were available on the *California Ballot Measures Database*.

two of the most prominent campaigners: the American Civil Liberties Union of Northern California (ACLU-NC) and Death Penalty Focus (DPF).<sup>9</sup> This historical investigation revealed two key periods during which LWOP served to challenge the death penalty: to persuade legislators against reintroducing the death penalty in an extremely punitive climate (1), and then to convince voters to replace it (2). Drawing attention to LWOP's severity was central to both angles of abolitionist efforts.

### 1. Persuading legislators against reintroducing the death penalty (1972-1978)

According to the conventional wisdom, LWOP is the direct and immediate consequence of *Furman v Georgia*<sup>10</sup> (1972), in which the Supreme Court declared the death penalty to be unconstitutional. *Furman* is oft-described as having provoked a legislative precipitation for LWOP as a replacement for the death penalty (HLRA, 2006:1841). Legislators in California did not immediately consider LWOP as an alternative for the death penalty. Riding on the popular punitive drift triggered by the Sirhan-Sirhan, Manson and Zodiac cases, Republican legislators, in particular, were committed to reinstate the death penalty and limit judicial powers to interfere in capital punishment matters (Meltsner, 1973). They reverted to the Initiative system, a voting mechanism whereby a petition signed by a certain minimum of registered voters can be placed as a proposition for voting, and, if successful, be turned into law (Grodin, 1989:102-107). The proposition reinstating the death penalty was approved by 67.5% voters in November 1972. Empowered by this popular support, a mandatory form of death penalty was introduced in 1973 (Proposition 17, 1972).

In an attempt to counter these punitive reforms, anti-death-penalty lobbyists, including the newly-formed Coalition to End the Death Penalty, advocated for LWOP on the grounds that it preserved prisoners' lives and allowed them to be rehabilitated. LWOP was not meant to be permanent as it would otherwise be as irrevocable as the death penalty; some religious experts testifying before the Senate Committee on the Judiciary stressed: '[t]aking a person out of society, and simply confining him or killing him is to abdicate our responsibility to try to rehabilitate him' (1972:110, 111).

In 1976, the US Supreme Court decided that mandatory capital statutes, such as that reinstated in California, violated the Eighth Amendment (*Woodson v. North Carolina* (1976)). The California Supreme Court confirmed in *Rockwell v Superior Court* (1976) that California's law was unconstitutional. The legislature's approach to LWOP in California radically changed as the

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<sup>9</sup> ACLU-NC documents were found online and at *The California Historical Society* in San Francisco. DPF made available their annual reports, flyers and pamphlets.

<sup>10</sup> The California Supreme Court reached a similar decision (*In People v Anderson* (1972)).

punishment became central to supporters of the death penalty as well. As capital sentences could no longer be mandatory, determining the alternative sentence to the death penalty became crucial. Proponents of the death penalty could either revert to traditional life sentences or introduce an enhanced type of life sentence that reduced prisoners' opportunities of release. In 1977, the majority of legislators supported a new death penalty law that introduced LWOP as the alternative sanction for capital murders.

LWOP also held a more visible place in Californian abolitionists' agenda after the 1976 court cases for two main reasons. Governor Jerry Brown, a strong opponent of the death penalty, had officially embraced LWOP as an acceptable and humane alternative (Skelton, 1977a). He had even offered to relinquish his own pardoning and commutation powers for prisoners serving life sentences (Skelton, 1977b). Abolitionist legislators like Senator Milton Marks no longer 'promised' to introduce LWOP; they proposed bills to replace the death penalty with LWOP for all capital crimes and to limit the governor's power to commute these sentences (Senate Committee on Judiciary, 1977). The purpose was to prevent 'the release from prison of a person receiving that penalty during his lifetime' (Senate Committee on Judiciary, 1977:1).

Some experts who opposed the death penalty tried in vain to draw congressmen's attention to the pitfalls of LWOP. In 1977, the ACLU-NC emphasized that under California law, the state was required to provide prisoners a hope of release (The ACLU-NC, 1977:3). The Friends Committee on Legislation sent a letter to the Chairman of the Senate Judiciary Committee, stressing that limiting gubernatorial powers would remove 'an important check and balance' and raised 'serious constitutional questions involving cruel and unusual punishment' (FCL, 1977).

## 2. Convincing voters to replace the death penalty (1978-2012)

The first twenty years following the reinstatement of the death penalty were marked by a very pro-death-penalty and highly punitive political climate. Proposition 7 (1978) repealed the 1977 law which was deemed too 'weak' (Gillam, 1977). The 1978 law sparked the beginning of a 'tough on crime' era in California. A number of punitive, voter-initiated, reforms increased the number of special circumstances for which 'first-degree' murder could be elevated to 'capital' murder, and thereby become eligible for death or LWOP (Proposition 114, 1990). Since its introduction and up until the 2012 SAFE Campaign, the number of LWOP sentences significantly increased (Nellis, 2014).

This particularly punitive environment hindered legislative attempts to repeal the death penalty. Along with the ACLU-NC, DPF (Todd, 1988) focused on correcting misconceptions about the death penalty, on developing grass-root projects and on building ties with other opponents to capital punishment. The organizations also reoriented their efforts to highlight LWOP's availability. While public opinion generally sided with punitive policies (Brazil, 1987), abolitionist groups discovered that voters' support for the death penalty could shift when informed about alternatives like LWOP. In 1989, the ACLU-NC, DPF and other abolitionist organizations co-sponsored a polling study (Haney and Hurtado, 1989) which found that 67% of Californian voters preferred LWOP coupled with restitution to the victim's family. A nationwide study conducted in 1993, *Sentencing for Life: Americans Embrace Alternatives to the Death Penalty*, similarly concluded that when offered LWOP with restitution as an alternative, the public's support for the death penalty significantly dropped (Dieter, 1993).

The 1989 and 1993 polling studies oddly revealed that Californians and Americans did not believe LWOP was permanent. Most (64%) Californians thought prisoners would be released (Haney and Hurtado, 1989) and only 4% of Americans assumed that LWOP prisoners were incarcerated for the remainder of their lives (Dieter, 1993:10). For Dieter (1993:10), perceptions about LWOP were 'far off the mark.' In California, for instance, no prisoners serving LWOP had been released in 25 years (Editorial, 1990, citing a governor's study covering all commutations of death and LWOP sentences).

To educate voters and shift their opinion on the death penalty, redressing misconceptions about LWOP thus became essential. In a letter to its local affiliates, the nationwide ACLU argued that, to change public opinion, abolitionists had to reassure voters that criminals would not be released into society if sentenced to life imprisonment (Rust-Tierney, 1993). DPF reached similar conclusions: '[w]e need to do a much better job of educating the public that there really is an available alternative to the death penalty that will both punish the offender and protect society.' (Anonymous, 1989). The DPF Board sought to clarify the meaning of LWOP, in particular its duration, stressing that since 1977 no prisoner sentenced to LWOP had been released (DPF, 1996). To further rectify some of the 'myths' about the death penalty (costs, lack of fairness, racial bias), DPF's widely-distributed brochure underscored LWOP's procedural swiftness, and its capacity to ensure public safety and reduce costs (DPF, 1992:2). DPF also portrayed LWOP as a less inhumane sentence than the death penalty; its inhumanity was tied to prison conditions, which could be improved (DPF, 1989).

While they strived to clarify what LWOP entailed, neither the DPF nor the ACLU-NC actively promoted the punishment in the 1990s and early 2000s. This principled antagonism for the punishment was mirrored at national level (Haines, 1996:139). In a 1994 interview, Dieter recounted that his 1993 nationwide report had caused considerable turmoil. He had been urged ‘to tone down the parts about life-without-parole’ for fear that it ‘would come across as the sentence of choice.’ (Dieter, in Haines 1996:138).

LWOP only really became an essential and regular abolitionist tool in California in the late 2000s, culminating with the 2012 SAFE Campaign. Due to the legislature’s inertia a broad coalition of criminal justice advocates launched a voter-initiated campaign (McGreevy, 2011). In November 2012, 49.84% of voters voted in favor of Proposition 34, missing by a small margin the required majority to repeal the 1978 capital statute. The SAFE Campaign’s novelty lies in its attempt to rally ‘unlikely allies’, including those traditionally in favor of the death penalty such as victims’ relatives, law enforcement community members, and key Republican figures (Oliveira 2006:4). To achieve this, campaigners voiced specific penal actors’ knowledge and experience. DPF appointed Jeanne Woodford in 2010—the former warden of San Quentin State Prison and Director of the California Department of Corrections and Rehabilitation—as its president and main spokesperson to address law enforcement officials. Furthermore, campaigners drew attention to how law enforcement agents and victims’ relatives were changing their views on capital punishment because of its fiscal repercussions (The ACLU-NC, 2008; DPF, 2009). The financial crisis justified replacing the death penalty with LWOP ‘not just [because of] values,’ but also due to money (The ACLU-NC, 2010:14). The reform would ensure public safety through the reallocation of accumulated savings to law enforcement (SafeCalifornia, 2012). Proposition 34 was a ‘bargain of security through savings’ (Dilts, 2015:109).

The focus on fiscal issues and emphasis on law officials’ experience influenced how LWOP’s severity was portrayed to voters. With police lights flashing, sirens wailing and piles of \$100 bills floating in the background, Woodford explained in a video how LWOP would achieve ‘justice for everyone’ (SafeCalifornia, 2012). As a cost-efficient punishment, LWOP would help solve cold rape and murder cases, and ensure the permanent removal of thousands of dangerous criminals from society (The ACLU-NC, 2011a:8). Campaigners also ensured that choosing LWOP was not being ‘soft on crime’ (Woodford, 2008). The punishment was described as a death sentence, albeit a ‘less inhumane’ one than state-executions (The ACLU, n.d.). Woodford emphasized ‘We are

spending millions and billions of dollars on a handful of inmates, when we could give them a sentence of [LWOP], which would ensure that they would die in prison' (Woodford, in SafeCalifornia 2012). Both DPF and the ACLU-NC repeated that prisoners would not be afforded the procedural privileges available, in theory, to inmates on death row (The ACLU-NC, 2011b). The bill itself stressed that the cruelest prisoners deserved to die in prison: '34 makes killers who commit horrible crimes spend the rest of their lives in prison with NO HOPE OF EVER GETTING OUT' (Proposition 34, 2012:96). The SAFE Act even offered to aggravate LWOP's features: prisoners would be housed in 'high-security prisons' and forced to work for the duration of their sentence (Proposition 34, 2012:96).

The rhetoric and tactics used to present LWOP's severity and the content of the 2012 measure—death-in-prison, harsh conditions, ineligibility to procedural privileges, and forced labor—were based on opinion-measuring techniques. The choice of words had been extensively researched, tested in the field and further refined. Polls indicated that, when adjusting the framing of LWOP's severity, most voters finally believed that prisoners would not be released (The ACLU-NC, 2011a; DiCamillo and Field, 2012).

While successfully rallying many different supporters, Proposition 34 raised internal tensions among abolitionists. The Campaign to End the Death Penalty (CEDP) in particular strongly opposed Proposition 34. Whilst the organization had previously supported bills offering to substitute the death penalty with LWOP, the SAFE Act used particularly 'conservative' language that the CEDP refused to stand by and be associated with (CEDP, 2012). Long-term abolitionists also felt uncomfortable working with individuals who had previously supported the death penalty and opposed the allocation of funds to law enforcement agents in case it reinforced racial discriminations (CEDP 2012).

### *Discussion*

In applying the normalization-as-acceptability *in situ*, the paper can now discuss the extent to which the rhetoric, tactics and content of these reforms have curtailed LWOP's visibility, misrepresented and distorted the extent of its cruelty, and encouraged the use of the punishment, together shaping beliefs about the punishment's severity and influencing its acceptability.

#### 1. Normalizing LWOP's severity



The attention afforded to LWOP and its exceptional severity has evolved. Lobbyists and legislators who challenged the death penalty in Congress in the late 1970s did not systematically rely on LWOP. The punishment gained heightened visibility in the 1990s and only really became central to abolitionists' endeavors in the 2000s. The type of actors bringing LWOP under the spotlight also changed and expanded over time. To lend legitimacy to the claim that LWOP was not a lenient trade-off, campaigners strategically emphasised the knowledge and experience of law enforcement agents and victims' families. They not only successfully enlarged the pool of 'abolitionists'; they also expanded the group of 'LWOP supporters'. Concurrently, the SAFE Campaign relied on renowned and influential humanitarian organizations such as the ACLU-NC. When groups who are traditionally committed to challenge cruel and harsh treatments promote a particular sanction, they lend it an aura of humanitarian legitimacy. In conceding that the punishment is acceptable, these organisations' may have influenced how the public views its severity.

The ways by which reformers portrayed LWOP and the content of their reforms have also shaped perceptions about its harshness. Whilst the 1970s and 2012 legislative measures promised to enhance LWOP's harshness, the ways they described LWOP obscured rather than illuminated the extent of its severity. Lobbyists who challenged the death penalty in the 1970s did not present a coherent representation of LWOP's harshness, at times underscoring its rehabilitative capacity yet raising concerns about its possible irrevocability. By comparison, SAFE campaigners repeatedly underscored that LWOP was not a lenient substitute as prisoners would be incarcerated until death. Still, they limited in-depth considerations of its severity. Most of the information they shared concerned the punishment's costs and procedural benefits rather than its length, the prison conditions, or the treatment prisoners would get behind bars. Some of LWOP's punitive features were also denied through claims that it was not as bad as it seemed, that prisoners' deaths were 'less inhumane' than state executions, or that prolonged mistreatment was justified because offenders sentenced to LWOP were deemed the most dangerous.

The sheer scale and regular use of LWOP sentences since its introduction in 1977 until the 2012 Campaign further influenced public views on the punishment's severity and determined its acceptability. The routinized use of the punishment gives the impression it has become socially and politically acceptable, breeding comfort with the practice and distracting the public's attention from the extent of its severity. However, it is not evident that routinization is solely tied to the

anti-death-penalty reforms discussed above.<sup>11</sup> The case study reveals a different form of routinization. Relying on LWOP to challenge the death penalty has become a prevalent and habitual reformist strategy to challenge the death penalty before voters and legislators. In so doing, anti-death-penalty reformers have contributed to turning LWOP into a ‘death penalty thing’.

## 2. A ‘death penalty thing’

By ‘death penalty thing’ I mean that, rather than stemming from a clear set of goals, LWOP has emerged as the by-product of strategies to abolish or secure the death penalty. Overtime, the punishment has not lacked political salience or been absent from reformers’ agendas. In the Californian death penalty context, however, LWOP has been afforded greater attention in debates about substituting or preserving capital punishment.<sup>12</sup> And when brought to the fore, proponents and opponents of the death penalty alike, systematically compare LWOP to the death penalty.

In helping transform LWOP into a ‘death penalty thing’, abolitionist policies have influenced how much and what people know about the extent of its severity. Promoted as a lesser evil than the death penalty, LWOP has barely been considered as an evil itself. Between 1972-2012, there has been little engagement with whether LWOP was actually an appropriate form of punishment. Abolitionists have also helped shape LWOP into something malleable that could ‘work for everyone’ on the political spectrum. In the 1970s, pro- and anti-death penalty reformers separately drew attention to LWOP and embraced it to serve their respective and opposing penal agendas, emphasizing different aspects of its punitive features. But the SAFE Campaign illustrates something different. Campaigners used LWOP to reconcile opposing political policy concerns, heterogeneous views on criminals, crime and punishment, within a single framework. By orienting how the public perceives the contours of LWOP’s harshness, anti-death-penalty reformers have ultimately contributed to making a wider set of people comfortable with it.

The responsibility of anti-death-penalty actors for normalizing LWOP calls for careful consideration. External factors such as the punitive environment of the late 1970s and the 2008 economic crisis influenced abolitionist strategies. In reverting to the Initiative process in 1978,

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<sup>11</sup> There are other explanations for LWOP’s proliferation in California. In the 1990s, a number of punitive policies expanded LWOP’s scope beyond capital crimes in California and outside the death penalty context. Similarly to what happened in Florida (Seeds, 2018), LWOP may also have expanded as the collateral and unintended result of profound structural changes to penal institutions.

<sup>12</sup> The attention afforded to LWOP in contexts such as the war on drugs or sex offenses should not be understated but is beyond the scope of this article because they are instances that do not concern the unintended effects of reforming the death penalty.

supporters of the death penalty oriented anti-death-penalty reformers' approach to LWOP, forcing them to convince voters rather than legislators. The polls collected in the 2010s indicated that advocating for LWOP at that specific point in time would finally allow removing the death penalty. The case study further shows that not all anti-death-penalty reformers promoted LWOP, and of those who did support LWOP, some may have acted with good intentions at heart, perhaps genuinely believing the sentence was more humane. It would however be a mistake to evaluate a punishment's normalization in light of actors' good intentions as these do not make LWOP any less brutal.

Rather than casting any moral blame on abolitionists, an alternative perspective holds that actors who lobby and campaign for LWOP to challenge the death penalty have become *a part of* normalization processes. They have not steered such mechanisms but have helped maintain and reinforce some of them. Applying normalization-as-acceptability *in situ* essentially reveals that extreme forms of imprisonment become normalized when strategically used to replace something deemed more severe.

As informative as these conclusions might be, the case study only tells one story from one state over a specific time period. It also highlights some of the theoretical model's possible limits or further points of refinements, in particular in terms of the direction of causality. The argument is that people may accept some punishments *because* they are made to seem less severe than they actually are. The dynamic could be reversed. Pre-existing perceptions of severity might drive reforms and determine a punishment's normalization, in terms of visibility, denial and routinization. The Three Strikes Law in California, for instance, was introduced and regularly used because the practice was deemed particularly severe from the outset (Zimring et al. 2001). Penal reforms could thus induce beliefs about severity *and* be the result thereof. This dialectical relationship, however, does not make the first dynamic any less relevant. In fact, more attention could be given to the effect specific reforms might have on perceptions of severity across time and within societies. Those who accepted the Three Strikes Law in the first instance might have become critical of it; younger generations regularly exposed to it may perceive the punishment very differently too. Overall, it would be reductionist to suggest that this paper's notion of acceptability is the whole normalization story. It nonetheless remains an important explanation for public attitudes towards extreme imprisonment and carries important implications for research and policy.

## V. CONCLUSION

This article contributes a new theoretical lens to investigate how reforms and those driving them can end up normalizing, in the sense of making the public view as acceptable, incredibly severe punitive practices. In applying the normalization-as-acceptability model to a state-level case study, this paper reveals that anti-death-penalty reforms in California have obscured perceptions of LWOP's severity and enlarged the group of people comfortable with, and accepting of, the practice. It enriches our understanding of the ties between LWOP and anti-death-penalty activism and illustrates how extreme forms of imprisonment can be normalized when set out to replace something conceived as more severe.

These findings have significant empirical, theoretical, and policy appeal. Within the death penalty context, scholars could test normalization with polls to explore how people perceive LWOP's severity and ascertain if their beliefs have actually been skewed. The model could be used to explore whether other American states have followed similar patterns when challenging the death penalty. Some may have relied on other 'death-in-prison' sentences or involved different types of actors. The normalization model could ultimately be transposed internationally to investigate whether equivalent punishments (whole life orders in the UK) have gone through comparable processes. Normalization-as-acceptability could then be used beyond the death penalty context to research other extreme forms of imprisonment. Policies introducing and expanding solitary confinement may have shaped public perceptions of its harshness (Reiter, 2016). Future projects could investigate controversial social control policies that take place outside prisons. The detainment of asylum seekers in hotels rather than detention centers in France may eclipse the extent to which these are punitive (Diffalah, 2018).

The model also has theoretical appeal for works on mechanisms of penal change across time, place and polity. Bifurcation, for instance, provides important insights into the relation between coexisting hard-end and soft-end penal policies (Seeds, 2017). Reforms produce bifurcated policies by drawing a line at 'violent crime' and 'real' criminals which warrant harsh sanctions. But if hard-end sanctions were to be perceived as unacceptably harsh, they could go against bifurcation processes. Normalization-as-acceptability would enrich explanations of the latter phenomenon. The limited attention granted to the most severe sanctions, the misrepresentation thereof, and the routine expansion of punitive laws, could together normalize tougher penal practices in the public consciousness, and facilitate the contemporaneous production of lower-end penal policies.

The proposed theoretical pathway and its application to the case study, finally, carries important policy implications for life imprisonment more generally. This paper focused on the processes by which LWOP has been normalized in response to the death penalty in California. It might be hard to think of other examples involving a concerted effort to advocate one punishment, which itself is severe, in order to diminish support for another punishment deemed more serious. There are signs, however, that people are starting to use the same logic in the fight against LWOP. Some death penalty opponents have moved away from LWOP and suggest replacing capital sentences with lengthy sentences that offer a possibility of reintegration (PRI\_2012). Will the various challenges to LWOP displace the normalization problem to other forms of life-long prison sentences? To be clear, this paper is not saying ‘do not advocate lesser penalties in order to mitigate higher penalties.’ However, some advocates might want to avoid normalizing severe punishments when campaigning around another punitive practices. In presenting a model and a case study for realizing the dangers of normalization and *how* extreme forms of imprisonment can be normalized, this paper is essentially offering a roadmap for how to avoid it.

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