



Life Sentence or Death Penalty? The Normative Case for Letting Criminals Pick their Poison

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Abstract

While most philosophers and legal systems now regard capital punishment as impermissible, life imprisonment without parole (LWOP) has remained comparatively unchallenged and is often treated as the harshest permissible penalty. This article challenges the assumption that LWOP should function as the default maximal punishment by proposing a two-option system in which offenders sentenced to LWOP may instead choose the death penalty. It argues that such a system would better uphold widely shared societal values—particularly individual autonomy and the efficient use of societal resources—without undermining offenders’ rights to life, a fair trial, or rehabilitation, or values such as moral desert, deterrence, and legal equality. The argument is grounded in broadly endorsed societal principles rather than any single theory of punishment. Finally, the article addresses two issues concerning framing and scope: the expressive significance of framing the alternative to life behind bars as capital punishment rather than assisted suicide, and the strategic limitation of the proposal to LWOP, even though similar considerations could, in principle, apply to milder sentences.

Keywords Death penalty · Life imprisonment · Autonomy · Justice · Punishment

Introduction

Most philosophers today reject the death penalty as immoral. In a 2020 PhilPapers survey, 75.13% of professional philosophers deemed it impermissible, with variations across regions, though opponents formed a wide majority everywhere (Bourget

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and Chalmers 2023, para. 3.2).¹ Public opinion is more divided: in Western Europe, opposition had surpassed 60% by 2000 (Death Penalty Information Center 2025), but worldwide attitudes vary. Even in the US, backing for the death penalty has declined: Gallup's most recent polls show 53% favour it for murder, down from 80% in 1994 (Gallup n.d.).

In contrast, life imprisonment without parole (LWOP) has not faced similar criticism. Academic consensus is unclear: some highlight its human rights shortcomings (Van Zyl Smit and Appleton 2019), while others accept it as proportionate for the worst crimes despite deterrence concerns (Bagaric and Svilar 2022). Broader society tends to endorse harsh punishments more readily than academia, especially LWOP, which remains largely unchallenged and has gained popularity relative to the death penalty. In 2019, for the first time, more Americans deemed life imprisonment the most appropriate punishment for murder (60%) than the death penalty (36%) (Jones 2019).

This divergence is reflected in legal practice. As of 2023, 144 countries are abolitionist in law or practice (Amnesty International 2023). International organisations overwhelmingly reject the death penalty: the EU Charter of Fundamental Rights states, “No one shall be condemned to the death penalty, or executed” (European Union 2012, art. 2), and ten UN General Assembly resolutions since 2007 called for a global moratorium. Conversely, only a few countries have banned life imprisonment. Portugal abolished it as early as 1884, with former Minister of Justice Francisca Van Dunem denouncing it as “a violation of the human dignity protected by the [Portuguese] Constitution” (qtd in 2021Portugal.eu 2021). Yet this remains an exception—only a handful of countries, including Croatia, Bosnia and Herzegovina, and Norway, have followed suit.

In sum, there is broad consensus that LWOP is the harshest permissible punishment. But what if the death penalty could be compatible with the values that make LWOP permissible according to many? If so, should it not also be offered as an option? Philosophical discussions of this idea are rare. Kant imagines two captured rebels given a choice between death and convict labour, suggesting the honourable man would choose death, while the scoundrel would prefer to live in shame (Kant 1991, p. 142).² A similar dynamic appears in Plato's *Crito*: Socrates refuses escape and accepts death, framing the choice as a matter of integrity rather than harshness (Plato 1997, 46b–54e).

By contrast, this article focuses not on individual moral worth, but on whether institutional mechanisms allowing offenders to select their punishment better serve societal values. Specifically, it argues that allowing offenders sentenced to LWOP to voluntarily choose death at conviction could uphold core societal principles without

¹ Opposition to the death penalty among respondents in the target group ranges from 65.52% in the non-Western world to 88.18% in Continental Europe. The target group is described as follows: “(1) In Australia, Canada, Ireland, New Zealand, the UK, and the US: all regular faculty members (tenure-track or permanent) in BA-granting philosophy departments with four or more members (according to the Phil-People database); and (2) in all other countries: English-publishing philosophers in BA-granting philosophy departments with four or more English-publishing faculty members” (Bourget and Chalmers 2023, para. 2.01).

² For a contemporary appraisal of Kant's defence of the death penalty, see Yost (2010).

amounting to state murder.³ The article thus challenges the assumption that LWOP should be the default harshest punishment.

The argument can be summarised as follows:

- [1] If: (a) institutional arrangement S1 promotes some core societal values better than institutional arrangement S2, and (b) institutional arrangement S1 does not undermine any core societal values more than institutional arrangement S2, then S1 ought to be preferred to S2.
- [2] A criminal justice system that allows convicted criminals sentenced to LWOP to choose the death penalty (S1) promotes some core societal values better than a system that offers only life imprisonment without the death penalty (S2).
- [3] S1 does not undermine any core societal values more than S2.
- [4] S1 promotes some core societal values better and does not undermine any core societal values more than S2 (conjunction: [2] and [3]).
- [5] S1 ought to be preferred to S2 (*modus ponens*: [1]; [4]).

Note that the argument is comparative: whether an institutional arrangement eliminating both life imprisonment and the death penalty is morally superior to S1 or S2 lies outside the scope of this article. It also considers systems in the abstract, though it may appear more persuasive when imagining subpar, realistic versions of S2. As noted, Van Zyl Smit and Appleton (2019) criticise the widespread disregard for human rights standards in actual LWOP systems. While real-world life imprisonment can be morally problematic for contingent reasons, S1 remains preferable even under a steel-manned S2—an idealised system in which LWOP inmates have access to the fullest range of opportunities compatible with incarceration. Even comprehensive prison reform would not alter the preference for S1.

The article proceeds as follows. I first defend [1] by explaining why the argument is based on widely endorsed societal values, rather than a full defence of a particular theory of punishment. This approach allows ecumenical treatment, remaining agnostic towards competing frameworks—desert-, deterrence-, or rehabilitation-based—while focusing on broadly supported values. I then defend [2], showing that S1 promotes key societal values—offender autonomy and efficient use of resources—more effectively than S2, and respond to objections concerning these benefits. Next, I address further objections to defend [3], including offender-oriented concerns—such as the potential imperilment of their rights to life, a fair trial, or rehabilitation—and society-oriented worries, such as the possible weakening of retributive and deterrent functions under S1. Points [4] and [5] follow logically. Finally, I offer expressive

³ Prisoners could, in principle, be allowed to choose capital punishment after a period of imprisonment if they so wished. My focus on the time of conviction does not imply that such a post-conviction choice would be prohibited. However, cases in which prisoners initially opt for life imprisonment and later request to die are better understood as the exercise of a right to assisted suicide or voluntary euthanasia. While the distinction may appear chiefly terminological, it is expressively significant, as discussed in the “Beyond the Argument” section. To avoid conflating these frameworks, I limit my analysis here to choices made at the time of conviction.

reasons for framing the death penalty option in S1 as capital punishment rather than assisted suicide or voluntary euthanasia and briefly consider whether the argument could extend to milder penalties.

Societal Values as a Normative Metric

My argument, at its core, suggests that S1 promotes individual autonomy and an efficient allocation of societal resources more effectively than S2. But even if S1 outperforms S2 on these metrics, one might question whether this has any bearing on normative conclusions regarding institutions of punishment. Should the argument not be grounded in a specific theory of punishment, highlighting specific moral criteria from the outset? I answer negatively, clarifying why my approach is ecumenical in two key ways.

First, I remain agnostic regarding competing theories of punishment. I do not aim to settle the debate between consequentialist and retributivist accounts—assuming the distinction still meaningfully tracks contemporary theories of punishment.⁴ Instead, I focus on demonstrating that S1 performs better than S2 on metrics defined by values widely shared in society. Later, when addressing society-oriented objections to my proposal, I engage with both desert- and deterrence-based concerns, showing how my argument interacts with these values without privileging the theories that give them centre stage.

Second, my approach is ecumenical in that it does not attempt to ground these societal values in a controversial philosophical foundation. Rather, I examine plural values that are widely endorsed and assess which system of punishment aligns more closely with them. Broadly speaking, this is an instrumentalist approach: it identifies which institutional arrangement better serves the predominant moral values without engaging in foundational disputes over the justification of those values. In this respect, it aligns with *modus vivendi* approaches, which do not justify values from first principles but work within the constraints of “whatever moral principles and other values can be effectively mobilised in support of a particular political settlement” (Horton 2018, p. 5).

Of course, if a reader considers a particular value worthless, the argument will carry little normative force for them. Nevertheless, the values I focus on—such as respect for autonomy and attention to the efficient use of societal resources—are widely shared, as attested either by their codification in international law or by empirical research on public attitudes. For readers who recognise these values, a sound argument showing that S1 promotes them more effectively than S2 will carry significant normative weight. In this way, the approach remains both ecumenical and practically relevant: pluralist with respect to values, agnostic with respect to theoretical foundations, yet responsive to broadly accepted societal norms.

⁴ For a critical perspective, see Berman 2011.

Arguments from Autonomy and Efficiency

Autonomy

My first central claim is that S1 promotes individual autonomy more effectively than S2. Gerald Dworkin (1988, pp. 5–6) observed that philosophers use the term “autonomy” very broadly. One might therefore ask *which* conception of autonomy S1 advances. Following Feinberg (1978, p. 28), I accept that autonomy can be variously described as the capacity to govern oneself, the actual condition of self-government, an ideal of autonomous character derived from that conception, or the sovereign authority to govern oneself. To avoid conceptual entanglements, I adopt a fairly uncontroversial definition from the *Stanford Encyclopedia of Philosophy*: autonomy is “the capacity to be one’s own person, to live one’s life according to reasons and motives that are taken as one’s own and not the product of manipulative or distorting external forces, to be in this way independent” (Christman 2020).

Punishment should respect autonomy so understood, insofar as doing so does not undermine its fundamental purpose. This proviso is crucial: letting offenders go free would undoubtedly enhance their autonomy, but even critics of the prison system would not generally endorse this outcome (see Shelby 2022), except possibly for the most radical prison abolitionists (see Davis 2003). Following Callahan (1984), autonomy should be a moral good, not a moral obsession.

Respect for autonomy has long been recognised as central to just punishment. Duff (1986, p. 204) emphasises the “due respect for the criminal’s autonomy”, while Lipkin (1988, p. 87) highlights the need for “proper respect for persons as rational, autonomous agents”. While Duff (1986, p. 192) rejects systems that fail to fully respect autonomy, I treat autonomy as a scalar, the-more-the-merrier kind of property: S1 grants offenders more autonomy than S2, making it *ceteris paribus* preferable. Klein (2022) similarly notes that US death row inmates choosing their preferred execution method exercise autonomy, which, though limited, serves their interests to minimise pain and preserve dignity.

Obviously, the options of death and life imprisonment are far from ideal from the offender’s perspective, and neither fully enables them to live according to their own reasons and motives, as per the definition of autonomy cited above. Nevertheless, allowing them to choose gives them a degree of control over their fate, however limited. This opportunity enhances their agency. By contrast, S2 offers no such choice, making it the more paternalistic of the two systems.

Critics may argue that long-term autonomy is better preserved by preventing offenders from choosing death, as this precludes future autonomous acts. Velleman (1999, p. 625) observes that “to permit oneself the choice of suicide for the sake of one’s autonomy is to treat a single exercise of that autonomy as worth the sacrifice of one’s autonomous self. It’s to treat oneself like a stick of dynamite, which realizes its nature by blowing itself up”. Since the choice of death under S1 resembles suicide to some extent, this objection appears relevant.

In response, I contend that promoting autonomy is not merely a matter of increasing the quantity of choices over time but also concerns the significance and voluntariness of those choices. Undoubtedly, being alive is a precondition for autonomy, and

a prisoner serving LWOP will outlive someone of the same age who opts for death upon conviction. However, if autonomy were measured solely by the number of choices, counterintuitive conclusions would follow: a 100-year-old born into slavery, allowed to choose daily between gruel and bread, could be deemed more autonomous than a lifelong criminal who, after decades of freely shaping their life, is apprehended at 60 and chooses death over LWOP. This appears highly implausible.

But does the slave–criminal parallel support the claim that S1 promotes greater autonomy than S2 regardless of the specificities of S2? Would autonomy still be better promoted under S1 if LWOP were served in a Norwegian-style maximum-security prison with maximal opportunities for work, education, and leisure (see Høidal and Hanssen 2022)? As noted in the Introduction, the argument is most persuasive when considering subpar, realistic versions of S2, such as a US-style prison; yet it is intended to hold under a steel-manned version as well: even if prisoners enjoyed a full range of opportunities compatible with incarceration, S1 would remain preferable. My claim is context-insensitive: adding the option of death cannot plausibly diminish an offender’s autonomy or agency, regardless of the quality of life under LWOP. Even if very few prisoners in an idealised system would choose death, the mere availability of the option enhances agency by granting a meaningful opportunity over their fate absent under S2.

Even under idealised LWOP, a prisoner may rationally conclude that continued existence under such conditions is unbearable. If they are offered a choice between LWOP and a painless death—and they select the latter after careful, informed deliberation—does it truly honour their autonomy to deny that choice because it precludes future decisions? By analogy with the slave–criminal scenario, preventing an individual from acting on a considered decision to die, while compelling them to endure a life of constrained minor choices, constitutes a deeper violation of autonomy than allowing them to end it.⁵

Finally, how could we know that the decision is genuinely considered? A potential objection concerns the conditions under which the choice would be made: what if the offender is mistaken or coerced when selecting between life imprisonment and death? Regarding mistakes, the offender might not fully appreciate the possibility of exoneration through subsequent appeals or retrials. I address this in the upcoming section on the offender’s right to a fair trial, discussing the risk of prematurely executing individuals who might later be exonerated. As for coercion, understood in line with non-moralised accounts as “a person’s use of or threat to use physical force against another person” (Huemer 2013, p. 8), the argument assumes that the choice under S1 is genuinely uncoerced. I discuss implementation of S1 in well-functioning countries where offenders’ decisions are likely to be free from such coercion and ultimately respected by the state. Under these conditions, S1 provides meaningful agency and autonomy relative to S2, which offers no choice at all.

⁵ An alternative interpretation of the autonomy-based argument is that it might support less restrictive anti-suicide policies in prisons more generally, rather than specifically endorsing S1. While related to debates over assisted suicide or euthanasia in custodial settings, this line of reasoning is distinct from the comparison of S1 and S2 considered here.

Efficiency

A second compelling argument for offering convicted individuals a choice between execution and life imprisonment lies in the efficient allocation of societal resources. *Ceteris paribus*, societies prioritise policies that achieve desired outcomes at the lowest possible cost. From a purely economic standpoint, execution at the time of conviction incurs significantly lower expenses than decades of sustained imprisonment. The financial burden of long-term incarceration, particularly for ageing inmates, is substantial, making a system that respects individual autonomy through choice also economically advantageous.

This advantage extends beyond immediate incarceration costs. Fewer life-sentenced prisoners would reduce demand for prison staff, lower facility maintenance expenses, and alleviate overcrowding. In resource-constrained societies, where public funds are critical for healthcare and education, this efficiency gain makes a two-option system a compelling policy choice.

The escalating healthcare needs of ageing inmates further exacerbate financial strain. As the US Department of Justice (2015, p. 51) observes, “aging inmates are more costly to incarcerate than their younger counterparts due to increased medical need”. This is particularly evident in nations with ageing prison populations (see The Osborne Association 2020, pp. 321–322; Vannier and Nellis 2023). As Bor (2022, p. 222) observes, “Canes, walkers, and wheelchairs are now a common sight in prison yards, and older people generate high costs for prison health systems that are ill equipped to care for people with complex health needs who may be nearing the end of their lives”.

These cumulative healthcare costs place a significant burden on public finances. Consequently, providing individuals with the option of execution could free substantial resources for improving prison conditions or addressing other critical societal needs. While saving money is not the primary goal of S1, the cost reduction is a significant by-product. Importantly, autonomy and efficiency are advanced simultaneously rather than placed in tension.

Now, one might reasonably question whether S1 would truly be cheaper than S2. The intuitive assumption that the death penalty saves money—as the state no longer needs to provide services for a convicted person once executed—has been repeatedly proven false: *the modern application of capital punishment is far more expensive than commonly assumed* (see Amnesty International 2023; Death Penalty Information Center n.d.-a; Spangenberg and Walsh 1989).

Empirical studies show that, under current legal frameworks, pursuing the death penalty incurs greater costs than sentencing individuals to LWOP. For example, a 2016 study in Oregon found that costs for aggravated murder cases resulting in death sentences were, on average, \$800,000 to over \$1,000,000 more per case than similar non-death penalty cases (Kaplan et al. 2017, p. iii). Similar findings have emerged in other US states, including Kansas (Kansas Legislative Division of Post Audit 2003), Tennessee (Morgan 2004), and Maryland (Roman et al. 2008).

However, these calculations concern existing death penalty regimes, which are not the subject of my comparison. In the United States and other retentionist countries, most additional costs arise from features unique to those regimes: extended pre-

trial procedures, two-stage trials, mandatory appeals, and long periods on death row (Amnesty International 2023). By design, S1 and S2 are identical through trial and conviction. Both involve the same legal process, sentencing framework, and avenues of appeal. The only divergence is post-conviction in LWOP cases: in S1, the offender may choose execution; in S2, life imprisonment follows automatically.

Under these conditions, the relevant comparison is between the post-conviction costs of execution and decades of incarceration. Execution incurs lower immediate costs than life imprisonment, avoiding expenses for housing, feeding, supervising, and medically supporting prisoners over their lifetimes. The scale of savings depends on uptake, but even modest use would reduce long-term custodial expenditures. If no one chooses death over life imprisonment, the argument still stands on autonomy grounds.

Objections from Other Values

I now consider objections suggesting that S1 might imperil additional key societal values. Some focus on the offender, claiming S1 would: (a) violate their right to life, (b) compromise their right to a fair trial, and (c) frustrate their right to rehabilitation. Others adopt a societal perspective, arguing that S1 would: (d) fail to respect moral desert by offering the offender a choice, (e) weaken deterrence, and (f) violate equal rights formally by granting prisoners a right to assisted suicide unavailable to the general population, or substantially by impacting certain social groups disproportionately. Each objection is addressed in turn.

Right to Life

The first objection holds that allowing offenders to choose death violates the state's duty to protect citizens' *right to life*. Even if a criminal autonomously wishes to die, the state seems to abdicate its role as guardian of life by offering death as an alternative to life imprisonment. This mirrors objections in bioethics to voluntary euthanasia, notably the claim that a right to life provides "no firm philosophical or legal argument for a 'right to die'" (Kass 1993, p. 34; see also Finnis 1998).

However, the state's protective role does not entail forcing individuals to remain alive against their will. A liberal state safeguards citizens from external threats—murder or violence—but does not override autonomous decisions about one's own existence. Fundamental rights often include opt-out provisions: freedom of speech entails the right to remain silent; freedom of movement, the right to stay put; and freedom of religion, the right to renounce one's faith. By analogy, the right to life should encompass the right to relinquish life under certain conditions. Respecting autonomy in life-and-death matters thus affirms, rather than betrays, the state's liberal foundations. This view aligns with some bioethical arguments for voluntary euthanasia:

Just as we have rights to come or go as we choose, to read or not read, to speak or not speak, to worship or not worship, to buy, sell, or sit tight, as we please, so we have a right, within the boundaries of our own autonomy, to live or die,

as we choose. The right to die is simply the other side of the coin of the right to live. (Feinberg 1986, p. 121)

One might counter that recognising a right to die does not entail a claim to assistance from public officials. This concern echoes debates on voluntary euthanasia: liberal jurisdictions do not compel unwilling doctors to participate but allow conscientious objection and assign the relevant tasks to trained and consenting professionals. A similar arrangement could apply under S1. Ordinary prison staff would not be required to carry out executions; indeed, evidence from the US suggests that staff involved in executions often experience distress or feel social pressure to participate (Roemer 2024). Separating execution from daily prison work may be preferable. Moreover, executions chosen autonomously by prisoners might impose a lower psychological burden on executioners than those without alternatives. In any case, these institutional design features do not undermine the central claim of this section: S1 does not violate the offender's right to life.

Right to a Fair Trial

Even if the right to life includes a corresponding right to die, questions arise as to whether conditions for such a choice are met in criminal punishment. Terminally ill patients may choose death because recovery is impossible; this rationale does not extend to convicted criminals. Many sentenced to life or death have later been found innocent. In the US alone, since 1973, 200 former death row inmates were fully exonerated (Death Penalty Information Center n.d.-b). Their release was possible because death sentences are transformed into prolonged incarceration before execution, allowing appeals to yield a more robust truth. By contrast, if an individual sentenced to LWOP under S1 opted for capital punishment, the harm would be irreversible.

This raises a concern that S1 may undermine the offender's *right to a fair trial*—not procedurally, but in the broader sense of ongoing access to appeals, retrials, or discovery of new evidence. Making death immediately available risks abdicating the state's duty to seek justice beyond the initial verdict and could normalise premature deaths of the wrongfully convicted, eroding safeguards present in S2 or even in retentionist death penalty systems.

Perhaps the worry can be framed in terms of what Benjamin Yost calls the *principle of remedy*, which “requires legal institutions to remedy their mistakes and to compensate those who suffer from improper sanctions” (Yost 2019, p. 2). Capital punishment violates this principle because of its irrevocable nature. When offenders choose death under S1, however, they knowingly relinquish the benefits of the state's remedial protections. In this way, while a death sentence imposed without choice contravenes the principle of remedy, a voluntary election of death over life imprisonment does not, because it reflects the offender's preference for death over waiting for acquittal, rather than a failure of the state to provide remedial safeguards.

Moreover, the notion of a fair trial does not inherently require the exhaustion of all appeals. According to the EU Charter of Fundamental Rights, a fair trial entails “a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law”, along with access to legal representation

and, where necessary, legal aid (European Union 2012, art. 47). This standard refers to the initial trial process, not to the obligation to pursue every possible legal avenue thereafter. If that initial trial meets these conditions, then allowing an offender to choose death before exhausting appeals does not constitute a violation of the right to a fair trial.

Finally, one might worry that the argument for S1 could be differently persuasive depending on the wrongful conviction rate. I maintain that the argument works independently of these specifics. Compare State A, with a 0.1% wrongful conviction rate, and State B, with 50%. In State B, it may be reasonable for a wrongfully convicted criminal who dreads life in prison to choose death over lifelong incarceration. By contrast, one might argue that State A is better served under S2, since wrongful convictions are extremely rare. Yet even in State A, a rational prisoner could conceivably prefer death to the small risk of spending life in prison—especially if they know that in their specific case the likelihood of conviction is higher than the average.⁶ While such choices would be rare in low-error systems, this does not justify denying prisoners the option provided under S1, limiting it to high-error penal contexts.⁷

Right to Rehabilitation

A third offender-oriented argument against offering capital punishment as an option is that it may undermine the state's obligation to provide opportunities for rehabilitation, which has historically been viewed as a central aim of criminal justice (see Rotman 1986). Advocates of rehabilitation may argue that even LWOP allows for personal growth, moral reflection, and contributions to society, even if only from within prison. While opportunity for rehabilitation within life sentences is not obvious and remains undertheorised (for a rare exception, see Meijer 2023), its normative significance should not be dismissed. By offering execution as an alternative, the state not only removes this possibility but also absolves itself of the responsibility to ensure rehabilitation.

While it is true that offering capital punishment as an option removes traditional opportunities for rehabilitation for those who choose it, this does not necessarily undermine the value of rehabilitation itself. Rehabilitation is not a universal or compulsory process; its success depends on individual circumstances. Some prisoners may indeed find meaning and personal growth while serving a life sentence, but others may find such a life intolerable and reasonably prefer death.

Just as the right to life is not a duty to keep living, the *right to rehabilitation* does not entail a corresponding obligation for the state to fully pursue it. Under current non-ideal conditions, meaningful rehabilitation remains the exception rather than the rule in both Europe (Maculan et al. 2013) and the US (Bloom and Bradshaw 2022),

⁶ More precisely, what matters for the offender's decision is not the general wrongful conviction rate as such, but the probability that a wrongful sentence will be overturned through appeals or post-conviction review. The discussion here assumes that higher wrongful conviction rates correlate with weaker remedial mechanisms. The argument can, however, be reformulated directly in terms of the likelihood of exoneration without affecting the conclusion.

⁷ To clarify, advocating S1 over S2 for any wrongful conviction rate does not imply that this should be the top priority when improving a penal system, as reducing wrongful convictions remains paramount.

where prisons remain overwhelmingly punitive. Though speculative, the significantly higher suicide rates in prison compared to the general population suggest that many prisoners already prefer death to the life which they are compelled to endure (Fazel et al. 2017). One might thus argue that if rehabilitation were genuinely effective and accessible, more prisoners would choose life over death. Yet, even under ideal conditions—where LWOP inmates could lead a meaningful and fulfilling life behind bars—some individuals might still prefer death to living under conditions of severe constraint and lack of freedom. The argument is thus once again context-insensitive: the mere availability of the choice of death upon conviction does not violate the offender's right to rehabilitation, regardless of the effectiveness of rehabilitative efforts.

Desert

So far I have focused on offender-oriented objections. I now turn to concerns grounded in broader societal values, beginning with *moral desert*. Regardless of ongoing debates about the role of desert in punishment, empirical evidence indicates that public intuitions about criminal justice tend to align with broadly retributivist views (Carlsmith and Darley 2008), and sometimes with more explicitly penal populist attitudes (Jennings et al. 2016). Since my analysis appeals to widely shared convictions rather than to any single theory of punishment and is explicitly comparative, the question is not whether retributivism abstractly favours S1, but whether, relative to S2, S1 fares better—or at least no worse—when evaluated against widely held intuitions about desert.

To structure the concern, consider three possible relationships between LWOP and the death penalty: the death penalty could be harsher, less harsh, or equally harsh. If LWOP were harsher, S1 would allow offenders to choose a softer punishment, and a retributivist could object that this makes S1 worse than S2. If the two punishments were equally harsh, desert-based objections would largely be neutral, since either punishment could be deserved.

However, in most contemporary legal systems, capital punishment is rejected while life imprisonment is retained, typically on the grounds that execution is excessively severe. On this dominant understanding, the death penalty is widely taken to be the harsher sanction. Cholbi (2025) reinforces this point: he reviews several grounds for the so-called Ultimate Thesis—the claim that capital punishment is the harshest punishment which a society may permissibly consider—and defends a relational account in which the distinctive severity of execution lies in the uniquely burdensome condition of awaiting it. Regardless of the merits of his specific account, the Ultimate Thesis is generally accepted. Accordingly, claims that LWOP is harsher than capital punishment are minority views and carry little weight within the methodology of this paper. From this perspective, allowing offenders the option to choose the death penalty does not undermine desert-based reasoning, because it does not permit them to evade the full weight of punishment.

One might object, however, that even if death is harsher, allowing offenders to choose it could be impermissible from a strict retributivist standpoint, because it entails imposing punishment that exceeds what they deserve. Retributivism treats

desert as an exact standard: over-punishment is unjust, even if voluntarily assumed. As Husak (2022) notes, retributivist reasoning can be used to show that some punishments currently imposed are excessive and could justifiably be reduced.

Yet social perceptions of desert differ. Desert can also be understood in a revisionary sense as a minimum threshold to ensure that offenders receive *at least* the punishment they deserve. Empirical evidence suggests that the public often treats over-punishment as far less morally objectionable than under-punishment for serious offences: people are much more concerned with ensuring that offenders are sufficiently punished than with avoiding excesses (Wagstaff and Preece 1997). Within the framework of this paper, which evaluates S1 relative to S2 in terms of societal values rather than abstract theory, offering offenders the option to choose a harsher penalty does not appear to conflict with dominant moral intuitions about desert.

Finally, some retributivist proponents of capital punishment might object that the purpose of execution is to deprive the offender of control over the timing and circumstances of their death, and that allowing offenders to choose death would undermine the retributive meaning of the sanction. However, this objection presupposes a system in which death is imposed as punishment. Since S1 is explicitly contrasted with S2—systems that exclude the death penalty as a non-chosen punishment altogether—my argument does not need to convince proponents of capital punishment. The objection therefore falls outside the scope of the S1–S2 comparison. In short, once the focus is restricted to S1 and S2, there is no evident conflict between S1 and widely shared desert-based intuitions.

Deterrence

Another objection appeals to the value of *deterrence*. Critics may argue that allowing offenders to choose between life imprisonment and death weakens the deterrent effect of the criminal justice system by diluting the threat of punishment. From a deterrence perspective, the certainty and, to a lesser extent, severity of legal penalties are meant to dissuade would-be offenders (Beccaria 2008; Nagin 2013). Introducing an element of choice, however, could undermine this goal. If punishment became partially self-directed, it might lose its ability to convey a credible, unified threat. For example, someone considering committing a serious crime might find the prospect of a quick and painless death preferable to decades in prison with only a likely difficult and painful suicide available, making them more willing to violate the law.

Obviously, I do not claim that a system offering a punishment option in addition to the life imprisonment mandated by S2 would have a stronger deterrent effect—such a claim would contradict the principles of rational choice. I merely suggest that any difference in the success of deterrence between the two systems would be negligible. Under S2, individuals are deterred by the prospect of life imprisonment, which is already considered highly undesirable. To argue that S1 would dilute this deterrent effect, one would have to posit the existence of individuals who would refrain from committing a crime under S2 but would proceed under S1 simply because they could choose death upon conviction. This seems implausible. Even if a considerable number of prisoners do prefer death to life imprisonment, that option already exists in practice under S2. Suicide, while difficult in prison, is not entirely preventable.

Moreover, as Nagin (2013, p. 199) observes, “the evidence in support of the deterrent effect of the certainty of punishment is far more consistent than that for the severity of punishment”. Since S1 is no worse than S2 with respect to the certainty of punishment, its introduction would not meaningfully weaken the deterrent function of punishment.

Equality Before the Law

A further society-oriented objection appeals to *equality before the law*. If offenders sentenced to life imprisonment are allowed to choose death, one might argue that they are effectively granted a form of assisted suicide or voluntary euthanasia—options that, depending on the jurisdiction, are unavailable to members of the general population.⁸ In this light, S1 could be seen as privileging convicted criminals by offering them a legally sanctioned route to a painless death that others lack, thereby violating a basic liberal commitment to equal rights, particularly in matters of bodily autonomy and end-of-life decision-making.

Conceptually, this characterisation is correct. S1 can indeed be framed as granting voluntary euthanasia or assisted suicide to offenders sentenced to LWOP. Following Young (2024, para. 1), voluntary euthanasia refers to cases in which “a clearly competent person makes a voluntary and enduring request to be helped to die”, while physician-assisted suicide involves “forms of assistance which stop short of the physician ‘bringing about the death’ of the patient, for example, those involving means that have to be activated by the patient”. The option to choose capital punishment under S1 can therefore be redescribed as a right to voluntary euthanasia or assisted suicide upon conviction. This becomes clear if we imagine a system in which S2 remains in place, but assisted suicide is available to all competent citizens: prisoners sentenced to LWOP would then have access to a procedure yielding the same outcome—a painless death—as the voluntary death option under S1.

However, it does not follow that equality before the law favours a regime in which no one has such a right over one in which some do. This mirrors the levelling down objection in distributive justice, according to which “it seems implausible to claim that it is in any way better to secure equality, when doing so involves making some people worse off and no one better off” (Holtug 1988, p. 166). The same reasoning plausibly extends to individual rights. The familiar case of same-sex marriage illustrates this point: advocates typically favour extending marriage to same-sex couples rather than abolishing marriage altogether in the name of equality. Even where such extension is unsuccessful, they do not generally prefer an equal system that bans marriage for everyone over an unequal status quo that permits only different-sex marriage. Likewise, offering prisoners sentenced to LWOP an additional option need not generate resentment or envy among the general public—especially given that

⁸ As of December 2025, voluntary euthanasia is legal in Australia, Belgium, Canada, Colombia, Ecuador, Luxembourg, the Netherlands, New Zealand, and Spain. Assisted suicide is legal, under varying conditions, in Australia, Austria, Belgium, Canada, Germany, Luxembourg, the Netherlands, Spain, Switzerland, and ten US states.

the option concerns a choice between two highly undesirable alternatives. For this reason, S1 does not plausibly undermine the principle of equal rights.

A distinct equality-based concern focuses not on formal equality but on substantive equality, namely the risk of disparate impact. For instance, it might be objected that offenders from disadvantaged social or racial groups could be more likely to choose death under S1. Such patterns, however, would not indicate discrimination inherent in the policy itself, but rather reflect pre-existing structural injustices in sentencing practices, prison conditions, or post-conviction prospects. The appropriate response to such disparities is to address those background injustices, not to remove a voluntary option that may be rationally preferred under constrained circumstances. Conversely, if uptake rates of death under S1 were similar across groups, this would carry no independent moral significance. The normative value of S1 does not hinge on proportional outcomes, but on whether the option is genuinely voluntary and informed for all offenders.

Beyond the Argument

Before concluding, I wish to address two concerns that did not have a place in the previous sections because they are not objections to the argument for S1 but relate to its framing and scope.

(a) First, as discussed above, the voluntarily chosen death penalty under S1 is conceptually analogous to assisted suicide or voluntary euthanasia. If so, one might ask why I do not present the argument in those terms—as a defence of a prisoner’s right to die, especially since this question has been discussed in the literature on punishment (see Della Croce [2020](#), [2022](#)).

To further clarify the conceptual analogy, consider S2 alongside an alternative S2*, in which prisoners sentenced to LWOP have a right to assisted suicide or voluntary euthanasia. Under S2, the offender cannot choose assisted death over life imprisonment, whereas under S1 and S2* they can. In this sense, the offender’s right to have someone else end their life is analogous across S1 and S2*. Objections might be raised that assisted suicide or voluntary euthanasia typically enables a person to avoid something unavoidable—such as an incurable illness—while the death penalty, even if offered as one among several punishments, must be justified as an appropriate response to wrongdoing. However, this confuses the grounds for granting a right with the content of the right itself. What I am highlighting here is that the content—the ability to choose death over continued existence under a given condition—is analogous.

At the same time, however, the differences in grounds remain important, particularly for the expressive function of the proposal. Retaining the label “death penalty” carries moral weight and may shape how society views life imprisonment itself. Although I defend S1 as an improvement over S2, I would ultimately favour a further alternative abolishing both life imprisonment and the death penalty. Now, S1 may serve as a transitional step towards that goal. If life imprisonment is typically justified as a more humane alternative to execution, the fact that some offenders would choose capital punishment over it may prompt public reflection on the true permis-

sibility of life sentences. Framing the option as assisted suicide for prisoners might weaken this expressive function, whereas invoking the expression “capital punishment” highlights the moral stakes and draws attention to how bad life in prison must be for offenders to prefer death, potentially catalysing deeper discussion and reform.

(b) A second concern relates to the scope of the proposal. One might ask whether LWOP is the only punishment for which a death alternative should be offered. Should not offenders serving other forms of life sentences with parole—or even shorter prison terms—also have the option of choosing death? In principle, autonomy-based arguments could support such an extension, and efficiency considerations would apply in many cases, especially considering the burdens of life after prison (see Western et al. 2015).

I do not dispute that my argument could, in principle, be extended to lighter sentences. While I am sympathetic to such an extension, there is a need for a proposal specifically tailored to S2 systems, which are prominent in the Western world, to spur moral progress and potentially provoke social change regarding life imprisonment. This is why the focus on LWOP is strategically important: a general right to choose death over any sentence would be difficult to implement—few would see it as appropriate for minor offences, and in most cases of short or moderate sentences, it is unlikely to be exercised. Concerns with feasibility matter because an excessively broad application would dilute attention from the most serious sentences, where the expressive and moral impact of offering the choice is greatest.

A related question arises concerning the reverse scenario: should individuals sentenced to death have the option to choose LWOP instead? While autonomy-based considerations could, in principle, support such an option, the normative force of S1 is asymmetric and system-relative. In this article, I have argued that systems that admit of LWOP but exclude capital punishment should offer offenders sentenced to life imprisonment the option of death. By contrast, systems that retain the death penalty are not my primary target. Capital punishment is already the most heavily scrutinised and institutionally constrained sanction, with extensive abolitionist critique, whereas LWOP remains comparatively under-examined and widely treated as the humane default. The purpose of S1 is to expose the severity and questionable permissibility of LWOP in S2 systems; introducing a reverse “death-to-LWOP” option in systems that retain capital punishment would risk diluting the core moral and expressive impact of the proposal.

Conclusion

In this article, I have argued that a two-option system allowing offenders sentenced to LWOP to choose capital punishment instead is preferable to the status quo in most Western countries that retain LWOP but reject the death penalty. I have defended this claim by appealing to widely shared societal values, including respect for the offender’s autonomy and attention to an efficient use of societal resources, while also addressing concerns that the system might undermine other core values or infringe the rights of offenders. Finally, I have explained why the proposal is framed as a right to choose capital punishment rather than as a right to assisted suicide or voluntary

euthanasia—despite their practical equivalence for offenders sentenced to LWOP—while also clarifying that the argument is deliberately limited to offering death as an alternative to LWOP, and does not extend to the reverse option in retentionist systems or to lesser sentences.

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Declarations

Competing Interests The author reports that there are no competing interests to declare.

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