

An Unfixable Problem: The Death Penalty



California voters approved Proposition 66, in 2016, in an effort to speed up the calendar for death penalty appeals.

This rush to execute mood isn't California's alone. Florida adopted its own speed-up legislation five years ago. And around the country, pro-death penalty advocates argue that the condemned take advantage of the appeals process to delay their executions.

Federal statistics for 2013, the last year available, show an average of 15 1/2 years between sentence and execution for people on death row in the U.S. At least 365 people have been on California's death row for 20 years or more.

Moving more quickly to execute convicted death row inmates increases the likelihood that due process will be given short shrift and the innocent will be put to death.

Since the Supreme Court revived the death penalty in 1976, more than 150 people have been exonerated of the murders for which they were condemned (in most cases that also meant the real killers got away with it), with an average of more than 11 years between sentence and exoneration.

A 2014 study published in the Proceedings of the National Academy of Sciences estimated that at

least 4% of the people sitting on America's death rows are probably innocent. With a national death row population of 2,700 people, that means more than 100 people currently under death sentences probably are innocent — about 30 of them in California. A rush to execution will only increase the chances that state governments will execute the innocent in the name of the people.

A Kern County Superior Court judge last month ordered that a 68-year-old former farmworker, Vicente Benavides Figueroa, be released from San Quentin's death row after the local district attorney declared she would not retry him. Benavides had been in prison for more than 25 years. Convicting Benavides was an egregious miscarriage of justice; he spent a quarter-century on death row for a crime he apparently did not commit. His exoneration serves as a reminder of what ought to be abundantly clear by now: that despite jury trials, appellate reconsideration and years of motions and counter-motions, the justice system is not infallible, and it is possible (or perhaps inevitable) that innocent people will end up facing execution at the hands of the state. Not all of them will be saved, as Benavides was.

Let us suppose that Figueroa was the only remaining innocent prisoner on California's death row. Let us further suppose that the notion that

lethal injection is no less egregious an exercise of state violence than crucifixion or immolation is modern day hyperbole.

Let us then suppose that the least heinous act committed by a death row inmate is fouler than the most heinous act committed by anyone in the general prison population and that the backgrounds and ethnicities of death row inmates and their victims is representative of the state's broader population. And let us also grant that there are many ways to explain why death sentences are issued at a far greater rate that at which they are carried out and that all would be killers are rational actors who recognize an inevitable execution awaits them should they act on the advice of the worse demons of their nature.

That is, what if those on death row arrived there on the basis of an infallible conviction process coupled with a sentencing process that precisely, wisely, and fairly determined punishment providing both the deterrent and protection law abiding citizens deserve and that executed prisoners felt no pain and that the process debased neither the correctional officers directly involved nor the citizens in whose name they acted.

What we'd be left with is numbers. In California there are 745 death row inmates. If we were to use the time honored process of using the results of a past project to predict the outcome of a future project, we could turn to Texas. That state's most active decade of executions was the first decade of the 21st century when it executed 248 prisoners, a rate of about 2 a month.

Now consider how long it would take California to execute 745 inmates if it were to match Texas's most active rate? The answer is about 30 years. Even the most visionary and humanitarian of projects with unambiguous goals undertaken by government, industries, universities, or institutions could hardly be expected to come up with 30 year plans even with unlimited funding. As a practical matter of project planning the death penalty can no longer remain an active part of the criminal justice system.

The unfixable problem with the death penalty is that mistakes get made, witnesses lie, confessions get coerced — all factors that can lead to false convictions. It is abjectly immoral to speed things up by limiting due process. The better solution is to get rid of the death penalty altogether.

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Change in the Air?

California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, Massachusetts, Pennsylvania, Virginia and the District of Columbia have filed suit in the U.S. Circuit Court of Appeals for the District of Columbia. over the Trump administration plans to scrap standards on vehicle greenhouse gas emissions, which help set gas mileage rules.

The suit takes aim at a plan by the Environmental Protection Agency to roll back and revise emissions standards for vehicles manufactured between 2022 and 2025. Those standards would have translated to vehicles getting 36 miles of real-world driving per gallon by 2025, about 10 miles over the existing standard.

"Pollutants coming out of vehicle, out of tail pipes, does permanent lung damage to children living well-traveled roads and freeways. The only way we're going to overcome that is by reducing emissions," California Gov. Jerry Brown said as he announced the lawsuit alongside state Attorney General Xavier Becerra.

EPA administrator Scott Pruitt has said the standards are not appropriate and need revision. They were set in 2012



when California and the Obama administration agreed to single nationwide fuel economy standard.

Pruitt argued assumptions about gas prices and vehicle technology used by the Obama administration to set the standards were too optimistic. The standards, he said, would hurt automakers and consumers who can't afford or don't want to buy more fuel-efficient vehicles.

California officials say the standards are achievable and the EPA's effort to roll them back is not based on any new research. They argue the plan violates the Clean Air Act and didn't follow the agency's own regulations.

California has a unique waiver that allows it to set its own tailpipe emissions standards for vehicles, which it has used to combat smog and more recently global warming. Thirteen other states and the District of Columbia have adopted the California standards as their own.

Automakers have argued that the current requirements would have cost the industry billions of dollars and raised vehicle prices due to the cost of developing the necessary technology.

California has now sued the Trump administration more than 30 times on topics including immigration and health care policy.

Brown stated the case clearly: **"If we follow the Pruitt-Trump path, we follow our way off the path to disaster,"**