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PERSPECTIVE

Commute them all

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Four years ago these guys argued that California Governor Gavin Newsom's moratorium on executions was a limited and temporary stopgap that raised separation-of-powers issues, exceeded executive power, and undermined the electorate's will. Little has changed since then, with the executive order still in place, capital appeals proceeding apace, and no one being executed. Now we expand on the solution briefly posited in the previous article: the governor can and should seek judicial approval to commute all death sentences to life without parole.

The capital punishment quagmire needs a big idea and bold action to break the stalemate. Californians in 2016 rejected a proposal to abolish the death penalty by converting all capital sentences to life without parole. The voters instead wanted Proposition 66 to expedite the execution process — but it has not. The California Supreme Court held in *Briggs v. Brown* (2017) 3 Cal.5th 808 that the deadline to complete merits appeals was not mandatory, and since then zero executions have happened. In fact, only 13 executions have occurred since 1978, with the last in January 2006; meanwhile 143 death-row inmates have died from other causes.

The result is that California does execute people — just very slowly. As former Chief Justice Ronald George once said, the leading cause of death on death row is old age. California constitution article VI, section 11(a) causes much of the delay by forcing capital appeals directly to the California Supreme Court, creating a bottleneck. A recent gubernatorial commission unanimously concluded that the current situation is "beyond repair" and that "California should abolish the death penalty and death row should be dismantled." It's ineffective: Amnesty International found in 2009 that the death penalty has no deterrent effect. All this at great taxpayer expense: $5 billion since 1978. No one is getting what they want here.

The governor should commute all capital sentences to life without parole. California constitution article V, section 8(a) gives the governor sole authority to commute sentences for those capital inmates with only one felony conviction. But four justices of the California Supreme Court must concur in commutation if a person has been twice convicted of a felony. The Los Angeles Times estimates that "more than half of the inmates on death row" have two or more felonies. The upshot: the governor can commute about half by himself and the other half with assent. Making and requesting blanket commutation is possible, achievable, and compelled by circumstance.

The impetus to consider commutation is the recent effort by California prison officials to move capital inmates out of San Quentin's Death Row and merge them into the general prison population; this because, as The Guardian explains, "there is no expectation that any will face execution anytime in the near future." That amounts to bureaucratic resignation to a policy of ignoring Proposition 66, the electorate's last word on capital punishment — which directed executions to happen faster, not never. This conflict between voter will and government resistance produces absurd results like building a $853,000 execution chamber that's never been used.

Rearranging capital inmates has no effect on their death sentences. The moratorium only stays their execution process, and rehousing those inmates just moves their uncertain fates to a new bunk. The new California governor elected in 2026 could undo the moratorium and restart executions in the first five minutes of taking office. The only way to abolish Death Row and make sure no current capital inmate gets executed is to commute their sentences to life without parole. That action will be final and is at the governor's sole discretion for about half the current capital inmates.

To commute the other half (with equally permanent effect) the governor only needs California Supreme Court approval. When the executions moratorium started in 2019 the prospects of securing that approval were uncertain, with the court comprising a mix of conservative and liberal members. Now the seven-member court has a solid six-member bloc of Brown and Newsom appointees. That's a best-case scenario for a governor seeking commutation approval.

Those who voted for Proposition 66 should resign themselves to reality. There's no upside to waiting out Governor Newsom's term limit. He was elected twice and beat a recall — with 60% each time — despite his well-known views on capital punishment. Odds are that the next governor will be another Democrat who feels equally fearless about opposing executions. That means waiting at least 12 more years for the state's politics to change enough to elect a kill-'em-all governor; more waiting, more uncertainty, more wasted funds. You won't get death, but life in prison isn't a life. Taxpayer funds are preserved, and families of victims escape the limbo of perpetually delayed executions.

On the other side, those who want to abolish capital punishment (but can't get the 51% they need at the ballot box) should take the next best thing: mass commutation. It's

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within the governor's power, and he is well-justified in dismissing concerns about political blowback after his moratorium was greeted with a yawn. The status quo can't be more appealing than taking a largely risk-free moral stand. And the chance to reverse a wrongful conviction will never be cut off by an execution.

Time is short: the governor has only a few years left in office, and processing even a single capital merits appeal can take years at the California Supreme Court. With several hundred inmates to consider commuting, the court will be hard-pressed to move quickly past the threshold issue of a mass request to processing so many files on that deadline. And time may be even shorter, with CalMatters reporting that death penalty supporters have readied an initiative to limit the governor's ability to grant a blanket reprieve for executions.

Reasonable minds can disagree about whether capital inmates best deserve mercy or a swift death. Regardless, the existing system is dysfunctional, and everyone deserves certainty of the ultimate punishment. The electorate's intent with Proposition 66 may be unfulfilled, but at least they have a clear answer ("we're not doing executions") and can proceed from there. The fiction of executions in California serves no one. Commuting all death sentences to life without parole brings finality to victims' families, a reduced taxpayer burden, and closes the book on this sordid chapter.

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