



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

Texas, more liberal than Mass.?

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What a shocker! And for Massachusetts liberals like me who are proud of our state's tradition of social progressiveness, what an embarrassment! When it comes to punishing juveniles, Texas is apparently more enlightened than Massachusetts--Austin more liberal than Boston.

In case you missed it--and I admit that I did as well--the Lone Star State legislature voted last year to abolish life without parole (LWOP) for juveniles. Actually, the legislation passed with little attention, as Texas had rarely sentenced juvenile offenders in this way. Prior to the change in criminal code, only four Texas inmates were serving LWOP for offenses committed while under age 18.

By comparison, Massachusetts, according to [latest count](#), has as many as 57 prisoners behind bars for life without parole eligibility for crimes committed while they were juveniles, ranking us 10th among states in absolute number.

The Massachusetts cohort translates to just over 2% of the 2,500 convicts serving juvenile LWOP sentences nationally. Although this may seem like a small share of the pool, it compares unfavorably to our 1% share of the country's juvenile homicides.

How did we get to this place? I will be tracing our recent history of legislative over-response to high profile cases in an upcoming posting.

Fortunately, there is some glimmer of hope that this deplorable practice--one that places our country far apart from other developed nations around the globe--will soon be abandoned outright, thereby giving thousands of inmates incarcerated since their adolescence some glimmer of hope for a future chance at freedom. The U.S. Supreme Court will rule before the end of this term on the constitutionality of sentencing juvenile offenders to life without parole.

Despite its conservative leaning, the High Court may very well find juvenile LWOP to be in violation of the 8th Amendment protection against cruel and unusual punishment. Five years ago, in *Roper v. Simmons*, a 5-4 majority stuck down the death penalty for offenders under age 18 by noting that:

"The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

It became popular in recent years to voice the slogan, "adult time for adult crime." Though definitely snappy, this principle is contrary to scientific evidence. Teenagers may look like adults, dress like adults, and even kill like adults, but they think and reason like children. Adolescents tend to be impulsive, impatient, and imprudent, often acting without fully considering the repercussions of their choices. In fact, recent neurological studies suggest that the portion of the brain responsible for rational decision-making doesn't fully develop until adulthood, and sometimes not until the age of 25. So when a youngster says, "Gee, I didn't think it would turn out that way," it reflects the lack of foresight common among in this age group.

But why wait until the Supreme Court rules? I urge the Massachusetts Legislature to take the bold step of joining with the short but growing list of states (as many as 8 at this juncture) that have reconsidered their approach to punishing juvenile offenders, including young killers. Youth and immaturity does not excuse violent crime, of course, but certainly should limit the extent of criminal responsibility and thus punishability.

Author's note: Unlike the usual definition of majority status at age 18, Massachusetts has long used 17 as the threshold for prosecution in criminal court. Thus, some of the 57 prisoners who committed murder as "juveniles" were 17 years old at the time of the offense and considered adults in the eyes of the law, as Massachusetts law sees it. However, as of 1996, the law pertaining to juvenile homicide was changed drastically so that 14 became the minimum age for *automatic* prosecution and sentencing as an adult.