



# Crime & Punishment

James Alan Fox on criminal behavior and the justice system

## Chat Tuesday on death penalty

Posted by Jason Tuohey May 17, 2010 02:09 PM

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James Alan Fox discussed the death penalty with readers on Tuesday, May 18.

Professor Fox has testified about the death penalty on several occasions on Capitol Hill and on Beacon Hill, has published numerous articles and columns on the topic, has testified in death penalty trials, and was the 2008 recipient of the Hugo Bedau Award for death penalty scholarship given annually by the Massachusetts Citizens Against the Death Penalty (MCADP).

### Crime & Punishment chat with James Alan Fox

(05/18/2010)

12:57

**Comment From Homer**

Why should we pay to keep people alive and healthy when they murdered innocent citizens? That's not justice, that's fear.

12:59



**James Alan Fox:**

Not sure what you mean by "fear." We keep them alive because we believe in life and not killing, and because we're civilized. No need to copy what murderers do--killing one's enemies.

1:02



**James Alan Fox:**

I've been looking forward to this chat. Just for sake of into, I've been opposed to the DP for my entire career, not based on morality but evidence about its utility and disutility. There is a reason why over 90% of professional criminologists opposed Cap Punishment. It accomplishes very little.

1:02

**Comment From Kurt**

Isn't it true that the death penalty can be used to encourage defendants to take deals, thereby releasing information that might be of value to the police? Thereby stepping down from death to life imprisonment, rather than stepping from life imprisonment to an early release.

1:04



**James Alan Fox:**

Sure, but it that why we should have it? As a weapon to coerce guilty pleas? It is either an appropriate sentence or not.

1:04

**Comment From Paul**

Homer: Fear of what? Professor Fox: Do you have any figures as to what is the average cost to keep an inmate incarcerated for life is versus executing them?

1:06



**James Alan Fox:**

You've likely hear that it costs about 40K per yr to incarcerate. But most of that cost is fixed (e.g., salaries, utilities, etc). The actual expendables are about 2-3K per year. So a life sentence is probably in the ballpark of 100K. By contrast, death rows are more expensive to run, and the trial costs for DP cases is much higher.

1:07

**Comment From tom**

But it is hugely expensive. California's prison system--which is in receivership--commissioned a study that found they would save millions if they decreased CP, eventually billions if they ended CP.

1:08



**James Alan Fox:**

Not just CA, but MD, FL, KS, NJ many other states have found the same. We spend far too much time and money focused on a penalty that only impacts a tiny fraction of the offender pop.

Many states have abandoned DP b/c of the high cost.

1:08

**Comment From Mark**

Mr. Fox, could you list the other countries that currently allow Capital Punishment? I'd like to see what company we keep on this particular issue.

1:10



**James Alan Fox:**

Sure,

Iran, Iraq, Afghanistan, China, Rwanda, Pakistan, etc. and of course the US

those that don't virtually all of Europe, Canada, Mexico, Australia

1:11

**Comment From Mark**

Excuse me, Professor Fox!

1:11



**James Alan Fox:**

yes? Mark

1:11

**Comment From Parker**

"You will essentially die in prison unless you are pardoned or your sentence is commuted or somebody gets the conviction overturned."

1:12



**James Alan Fox:**

That's right. Life without parole is exactly what it says. You rarely hear about this on the news. "Joe Smith is still in prison, film at 11" Not being released is a non-event, but it happens

1:15



**James Alan Fox:**

one one moment pls

1:15

**Comment From Vitzy**

Personally I am for the Death Penalty but how do we make it cost less? Why are appeals allowed to go on what seems like forever? And why is life in prison without parole not always the case? If it were then I might agree on that punishment in lieu of Death in certain cases. I feel like the prisoners are given way too much while behind bars, education, TV, etc...while those of us working hard have to earn these things. What do you suggest?

1:17



**James Alan Fox:**

As for the amenities (TV, etc), it serves a management function for the correctional system. And, things are hardly that great, even with TV (which some states make you pay for). Perhaps the \$5/day that the state wants to charge inmates for their stay would make you feel better about it.

P

1:17

**Comment From Guest**

Our justice system is based on the punishment fitting the crime. So the question should really be, is any crime so egregious that death is a suitable punishment? Do you agree with this assessment?

1:19



**James Alan Fox:**

In my opinion, no.

We use the deprivation of liberty as the punishment. The more severe the crime, the longer the incarceration.

The worst offenders forfeit their right to live free, but not their right to live

1:19

**Comment From Parker**

One of the comments in response to your article stated: re: life w/o parole: "You will essentially die in prison unless you are pardoned or your sentence is commuted or somebody gets the conviction overturned." That's my problem with life without parole. I don't want these killers back on the street again -- ever.

1:21



**James Alan Fox:**

It is overkill to execute inmate X in order to prevent Governor Y from ever commuting his sentence. If you have a concern for the process of commutation and pardon, then deal with that directly. We shouldn't use the death penalty as a deterrent for Executive commutation.

1:21

**Comment From Jack**

What percent of the prison population do you believe is actually innocent of the crime they were convicted of?

1:22



**James Alan Fox:**

I have no idea. Certainly some, but likely a small percentage.

1:22

**Comment From ScottC**

I refuse to see why this comes down to dollars and sense. The entire criminal justice system is a money losing proposition, but we do it because 1) it deters criminal behavior and 2) it is a way by which our society expresses its disapproval of certain actions. Caring for the poor and less fortunate also cost huge amounts of money with arguably little return, but we do it because it reflects our society's values. If you're going to be against CP, be against it, but couching it in terms of dollars and sense is sophistry, pure and simple.

1:24



**James Alan Fox:**

My opposition is NOT based on cost. That is only a response to those who say, "Why should I pay to keep this creep in prison."

But, Scott, the DP is not a deterrent, that is, any more than life imprisonment. Of course, people don't wish to be executed. But the question is whether death has any greater deterrent value than life w/o parole. Those who are not deterred by the prospect of long-term incarceration are not deterred by death.

1:25

**Comment From tom**

& last year in Georgia, Defendant Nichols said he would agree to Life w/out Parole. GA prosecutors refused and took it to trial. The result, after \$3 million spent on the trial bankrupted the GA defense fund: the jury gave Nichols LWOP.

1:26



**James Alan Fox:**

Good point. Not only does a DP trial cost more than a non-DP murder trial, but the cost is there whether or not the jury recommends death.

1:26

**Comment From Ken**

There seemed to be some momentum 10 or 15 years ago to abolish the death penalty. I recall Justice Blackmun, near the end of his career, declaring the DP unconstitutional in all cases. Later, Gov. Ryan of Illinois commuted all death sentences in his state. Why couldn't we build on that momentum?

1:28



**James Alan Fox:**

There momentum was not consistent. Blackmun's view was not shared by the other justices. And Ryan only imposed a moratorium to study the issue of error. He had already seen 7 of 13 DP cases overturned on appeal.

1:29



**James Alan Fox:**

One other thing to point out. There is a difference between wrongfully convicted and wrongful conviction. The former can be a guilty person convicted through improper means, the latter is innocent. These often get confused.

1:29

**Comment From Paul**

Professor Fox: I'm curious as to what factors would sway your opinion on the utility of the DP? Surely, it is not much of a deterrent for the vast majority of murder, but are there any circumstances in which you would find its use more practical? I imagine that the only true practicable use would be if it were to be either applied to lesser crimes than murder as a deterrent and also a reduction in convicted parties' rights (neither of which I am advocating for)?

1:32



**James Alan Fox:**

Opponents like me are often asked if they would change their mind were it proven that every execution actually did save significant numbers of innocent lives. Many of my colleagues remain adamant. Although I don't ever imagine such evidence (based on the strong weight of evidence that DP does not deter), but I would be compelled to reconsider.

1:32

**Comment From Mark**

Prof. Fox, could you speak a bit about the Supreme Court decision barring life sentences for non-homicides committed by minors? I believe it was based on a similar decision about the death penalty for minors.

1:35



**James Alan Fox:**

The 2005 Roper decision abolished DP for juveniles under the recognition that, for many reasons of development, their responsibility is not quite the same as adults. (See my previous posts on this topic). Yesterday's decision was based on a FL case of a juvenile convicted of burglary and given a life w/o parole. The Court did not go the extra mile and abolish LWOP for all juvenile crimes. I had hoped they would. Maybe next term, if a juvenile murder case comes their way

1:35

**Comment From Gerry**

I am conflicted about the DP. I feel some criminals deserve to be put to death. But too many wrongly convicted people, sentenced to death or life, have later been found innocent. I guess I would oppose the DP due to the wrongly punished. If we got it right 100% of the time I'd be all for it.

1:37



**James Alan Fox:**

That was Mitt Romney's approach. Design a system that is "fool proof." But that is exactly when we get a system that is incredibly expensive. If you want certainly, it will cost you.

1:37

**Comment From ajt**

How many people in the U.S. have been sentenced to death and later had the conviction overturned by DNA, bad evidence etc?

1:39



**James Alan Fox:**

While there have been 138 exonerations (people removed from death row prior to execution--one was already seated in the Chair when the stay arrived), no one can say how many executed inmates were innocent based on DNA. States resist testing when literally it is a dead issue. There is a TX case, however, where everything points to an irreversible error having been made.

1:39

**Comment From Rory**

It appears incarceration is not a deterrent to crime either.

1:41



**James Alan Fox:**

Sure it is, but not for everyone.

What deters is not the severity of punishment, but the perceived certainty (as well as swiftness). Whether it is death or life w/o parole, some offenders bet on their never getting caught (and therefore no punishment).

There are some people who smoke (knowing that it might kill them), but bet that they will not be so unfortunate

1:42

**Comment From Marie**

why doesn't a person who kills another deserve death themselves?

1:43



**James Alan Fox:**

We don't rape rapists, rob from robbers, or steal teh cars of auto theives. Why do we have to kill killers?

We use deprivation of freedom as the punishment. We don't just return the act in kind

1:43

**Comment From Tom**

In my 25 plus years of law enforcement experience...I find that there really is no such thing as life w/o [parole](#). [The](#) inmates get old sick...victims families move on move or die off....so no one watches....and they inmates get released to some kind of "program" and are not in prison for life as most of the population views a prison

1:46



**James Alan Fox:**

There is LWOP. Most of these statutes are only about 30-40 years old, so not that many inmates sentenced under them have died yet. But notice how many elderly inmates now fill our prisons.

Tom, as you may know, surveys of law enforcement officers indicate that they see the DP as the least effective crime prevention approach. care to comment?

1:46

**Comment From Jon Allan**

What are your comment of using DP for extreme case such as mass murders, serial killers, etc.

1:49



**James Alan Fox:**

Interesting that you ask that, since I've written many books on multiple homicide. Obviously these murderers should never, ever be released from prison...and they aren't. I see no advantage in executing them and in the process, giving them a stage (as in Bundy's final hours).

Michael McDermott who committed the massacre in Wakefield nearly 10 years ago sits in prison and will do so for decades to come. No need to hear much from him or about him

1:49

**Comment From Joe**

Prof Fox---based on your comments, it seems you do not draw a CJ distinction between rape, robbery, larceny and homicide...doesn't yesterday's decision from the Court in the FL case -- whatever it does in regard to LWOP -- draw just such a line?

1:50



**James Alan Fox:**

The only line in my mind is severity of the crime, and thus the length of appropriate sentence.

1:50

**Comment From Guest**

Robbing, raping, and grand theft auto are much different then murder.

1:51



**James Alan Fox:**

They are different in severity...as is the resulting length of incarceration.

1:51

**Comment From Tom**

I don't know which surveys you mean...I'd say 90% of the people I work with are for the DP in cases where there is no doubt...ie The Curley case and numerous other cases

1:54



**James Alan Fox:**

Yes, the majority of Americans favor the DP, especially in the most extreme cases. However, when given the alternative of LWOP the surveys show about even for death or LWOP.

Serious about the Curley case, Jeffrey's dad has, in recent years, come around to the anti-DP side. Apparently, the more he learned about the DP, the less he liked the idea. And maybe that is why those who study crime for a living, and understand the issue in depth, are overwhelmingly opposed to DP

1:54

**Comment From tom (different one)**

I have worked in three different prison systems, and inmates do die of old age in prison. And with the blitz of longer sentences, more will die of old age.

1:55



**James Alan Fox:**

THANK YOU for pointing that out. As I indicated before, when an inmate dies in prison of natural causes, we don't hear about it.

1:55

**Comment From Joe**

That is a fine restatement of the question...but do you disagree with the court's decision that 1st degree murder is a different class of offense?

1:58



**James Alan Fox:**

I agree that it is different in terms of gravity of the crime; I disagree that it is different in terms of the distinction between how juveniles and adults think and act. Kids may look like adults, dress like adults, and even kill like adults, but they think and reason like children. That is based on what we know about emotional and neurological development of adolescents.

1:58

**Comment From AlexR**

Grand theft auto is a crime that when committed the victim is inconvenienced. No we don't steal the car from someone who commits GTA because that punishment is not severe enough to fit the crime. When someone is raped they face years of recovery. If they recover at all. Rapists are numbered, entered into a database and monitored wherever they live or travel. So why can't you execute a murderer, if they are found 100% guilty? They took a life. Unlike to the victims of GTA or rape they will have a change to put their lives back together. A murderer took away a persons right to life, liberty, and the pursuit of happiness. They are gone forever. Why not erase the murderer as well so you don't have to worry about feeding him three squares or burning fuels to keep them warm. It does not have to be fancy. Bullets are pretty cheap.

2:01



**James Alan Fox:**

Why should we stoop to their level. As civilized people, we remove dangerous folks from society to protect the rest of us. Incarceration accomplished that just fine.

And this idea of 100% guilty is not so clear. To be that certain, you have to do alot more than just pay for a bullet

2:01

**Comment From mary**

I have always felt that for any punishment to work it must be consistent and fairly swift. The DP fits neither of those criteria. I understand that family members of those hurt or killed by those facing the DP might desire justice in the form of the DP, and I don't begrudge them that for a moment, but as a society we should hold higher standards.

2:03



**James Alan Fox:**

And, BTW, many families of murder victims do not wish to see someone else killed. As one mother of a murder victim remarked, "I don't wish my pain on the mother of the murderer."

2:03

**Comment From jopper**

so your objection is one purely of financial concerns?

2:05



**James Alan Fox:**

Nope. I object b/c it accomplishes nothing (and has the risk of a mistake, however small). I see no advantage.

2:05



**James Alan Fox:**

It looks like the chat window closed. Thanks all.

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