



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

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Flawed objections to juvenile law reform

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The response to my [last blog post](#)--a call to abolish life without parole sentences for juvenile murderers in Massachusetts--was lively and contentious. While many readers concurred with the goal of better aligning our state with the rest of the nation, some would have Massachusetts remain one of the harshest and most punitive when it comes to sentencing youth.

The negative tenor of certain reader comments was unsurprising, not because introducing parole eligibility for juvenile murderers is in any way a radical idea. Rather the unwillingness of some folks to consider the reforms proposed in [S. 672](#) and [H. 1346](#) (*An Act Relative to the Sentencing of Children*), is based on an array of misconceptions and falsehoods about juvenile justice.

A group of responders, thinking perhaps with their pocketbook in mind, argued for restoring the death penalty in Massachusetts. Aside from the fact that the death penalty costs more, not less, than long term incarceration, a return to capital punishment would not-- and could not--apply to juveniles. The U.S. Supreme Court already decided that executing those whose crimes were committed before their 18th birthday is unconstitutional.

In [Roper v. Simmons](#) (2005), the Court ruled that the former practice in many states of executing juvenile murderers was cruel and unusual: cruel because it was contrary to evolving standards of decency and unusual because the U.S. was virtually alone in this regard. Moreover, the Court was persuaded by scientific evidence that youngsters are different. No matter how heinous the crime, juveniles should not be held to the same standard of responsibility as adults.

Undoubtedly, as several of my critics argued, juveniles are fully aware of the wrongfulness of killing. However because of their transitional stage of cognitive and emotional development, their ability to think long term and to grasp fully the enormous impact of their crimes is limited. They fail to appreciate the profound consequences of taking someone's life--not for their victim or even for themselves. They don't imagine what it would be like growing up and growing old in prison, never marrying, and never having kids or a career. Indeed, what is the significance of life from the perspective of someone who has lived only 14 years?

This lack of foresight helps to explain why, according to a [study](#) by the Children's Law Center of Massachusetts, nearly half of the offenders serving life without parole for juvenile murder had rejected a plea bargain offered by the prosecution in favor of a jury trial. They end up paying with their lives for a

bad decision on legal strategy. If the prosecutor thought that 15 years (parole eligibility for second-degree murder) was just punishment, is it right that the juvenile should instead spend the remainder of his life in prison?

Besides having poor judgment, juveniles are especially susceptible to external forces, including the approval and disapproval of peers. They do terrible things on a dare, often commit crimes in groups, and are easily pressured by older teens or adults.

Juveniles behave impulsively. Simply put, teenagers may look like adults, dress like adults and even kill like adults, but they reason and deliberate as juveniles. A harsh punishment will not make someone think twice, when they don't really think once before acting.

Other commenter's to my blog focused more on the need to keep extremely dangerous offenders away from society for extended periods of time, even life. Names like Eddie O'Brien and Daniel LaPlante were mentioned by a couple of outraged readers. However, the proposal to give juvenile murderers parole eligibility does not necessarily grant them parole release. The proposed change in law appropriately provides for lifetime incarceration in the case of individuals who cannot be safely returned to society. But this decision is best made down the road, not at time of sentencing.

A few indignant readers reminded me of the simple fact that there is no parole for the victims of first-degree murder from their fate. For them, regardless of the perpetrator's age and level of maturity, there can be no second chances. Of course, this sad truth holds for victims of second-degree murder, manslaughter, and vehicular homicide--all crimes for which the perpetrator does have the possibility of returning back to society even while the victim remains buried in the grave.

In general, punishments should fit the crime. But they should also fit the criminal. Murderers are not all the same in terms of culpability and dangerousness to society. With sufficient time, most juvenile offenders will mature, develop better judgment and foresight, and earn the opportunity for a second chance. Life without parole is a walking death sentence.

Dissenting readers based their objections while contemplating repeat, chronic, ruthless hoodlums. However, 40% of juveniles sentenced to life without parole in Massachusetts were first-time offenders. Contrary to the claims posted by several of my critics, many of these juvenile offenders are or will someday be excellent parole risks.

Also quite different from the common stereotype are youngsters who were convicted under the felony-murder rule, representing as many as 20% of those serving life without parole in Massachusetts for juvenile homicide. By law, all parties involved in the commission of a felony during which someone is killed are considered responsible, regardless of how the death occurred, who caused it, or whether it was intentional.

An accomplice can be convicted of first-degree murder without having dealt the fatal blow, or any blow for that matter. In such cases, the prosecution need not prove the intent to kill, nor is such intent even required for conviction.

By far the biggest myth is the notion that Massachusetts is soft on violent juveniles. To the contrary, the state stands as one of the very toughest. In Massachusetts, all defendants as young as 14 who are accused of murder are tried as adults--no exceptions. Other states also permit trying such youngsters as adults, but make it discretionary depending on the circumstances. Moreover, in Massachusetts anyone 14 or

older who is convicted of first-degree murder, including felony murder and joint ventures, are automatically given life sentences without the possibility of parole.

Massachusetts trial judges have expressed discomfort and regret as they send a teenager away for life without parole. However, the Commonwealth gives them no other option. Other states employ life without parole, but allow exceptions given mitigating factors.

The problem with the current law is not so much in its toughness, but in its rigidity. The law was passed in the wake of the Eddie O'Brien murder case and was designed to put such offenders away for life. O'Brien may represent the worst case, but is hardly the typical case. Of course, laws need to accommodate worst case situations, but at the same time allow for more measured responses for less extreme crimes.

For second-degree murder (i.e., murderous intent without premeditation), Massachusetts grants parole eligibility after 15 years. Given what we know about the immaturity and impulsivity of juveniles, shouldn't they have the same opportunity? Even then, those believed to pose too much of a threat to public safety can, and should, be held longer. Under the proposed amendments, juvenile murderers can be incarcerated for their entire lives if the parole board determines that they are at risk of reoffending.

I hope you put aside your preconceptions of liberal Massachusetts, one of only two states that employs life without parole for someone as young as 14. I hope you will consider the fairness of giving juveniles--those who are truly deserving--the possibility for a second chance at freedom. For a teenage offender, a sentence of fifteen years, at the minimum, is hardly a slap on the wrist or in any respects an insult to the victim.