



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING

Habitual offenders: Third strike or check swing?

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No surprise that there aren't many criminologist jokes floating about, at least as far as I'm aware. Still, I do recall one I heard back in graduate school that may actually have some relevance to the ongoing debate up on Beacon Hill concerning the best approach to punishing the worst offenders.

It is told that there was once a very old land ruled by a very old King who, in a gesture of compassion from his deathbed, ordered all prison sentences to be immediately cut in half. By the King's decree, a robber's ten-year prison term was commuted to five years, and the rapist who was serving a 30-year sentence saw his penalty reduced to 15 years. But prison officials, having to carry out the King's wishes without deviation, had no clue on how to proceed with halving the sentences of murderers serving life. The Warden was just about as confused as many appear today about the House and Senate bills pertaining to habitual offenders.

To make a long and lame story short and painless, the punch line came in the advice that the Warden received when consulting with a local criminologist about how to administer half a life sentence. Let the murderer go free tomorrow, recommended the criminologist. But before the Warden could utter a word of dismay, the learned advisor continued detailing the plan. Then bring him back to prison the next day, and continue the release/return process for alternating days of freedom and incarceration until the convict dies a natural death. □ Never was the term revolving justice any truer.

Fortunately, when it comes to rewriting the state's habitual offender law, the Massachusetts legislature is avoiding the half-a-life dilemma completely. By current statute, third-time felons charged and convicted as habitual offenders must serve one-half of their sentence before becoming eligible for parole consideration. Crafted in response to two particularly high profile murder cases involving repeat offenders, both the Senate and the House bills call for increasing the threshold from one-half to two-thirds of the maximum sentence imposed.

But the more significant change comes with the second portion (Subsection b) of these bills, which makes those habitual offenders who had committed one of a long list of nearly 60 crimes ineligible for parole consideration (as well as good time reduction). These prisoners would need to serve the maximum with no gifts from a parole board (or a dying royalty).

A close examination of the list of crimes raises two concerns. The first involves the overly broad range of offenses among those that disallow parole, and the other relates to the subset that is punishable by life without parole.

While the array of serious felonies appropriately includes such atrocities as homicide and rape, lesser offenses such as stalking in violation of a restraining order and assault with intent to commit robbery would also make the third-timer ineligible for early release on parole.

Particularly curious, if not problematic, is the fate of those convicted on a smaller subset of crimes that are punishable by as much as a life sentence. At the severity extreme, there is, of course, murder. A first degree murder conviction already carries a life sentence without parole eligibility, whether the offender is a first-timer or a repeat criminal. A habitual offender convicted of second degree murder would also, by virtue of the pending legislation, receive life without parole.

Not so reasonable, however, is that many other habitual offenders convicted of crimes far short of murder could also be sentenced to life without the possibility of parole. If charged as a habitual offender, defendants convicted of such crimes as armed robbery and burglary could be sent away to prison forever.

While I do not mean to minimize the severity of such transgressions, they do not rise to the gravity level of homicide. Life without parole should be reserved for the very worst of the worst, and robbers and burglars -- even habitual ones -- do not fall in the category of those who should never ever experience freedom again. The most serious crimes short of homicide require long sentences, but not life-long ones.

I understand that habitual offender designation is hardly automatic. In baseball, the source of the three strike metaphor, both a batter's check swing and a nasty corner pitch determined by the ump to be just off the plate fail to qualify as a third strike. Similarly, the application of the habitual offender designation involves some level of discretion. But to avoid the chance of anyone crying foul later on, we should remedy the bill before it ever becomes law.

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Postscript: Had Abner Doubleday decided to give batters four strikes at the plate, would our sentencing laws be correspondingly different? Were it not for our obsession with baseball metaphors (e.g., you really threw me a curve, let's touch base later, and You knocked it out of the park), would we determine punishment based on the nature, but not number, of prior convictions. I love baseball, but we should keep it far afield from the criminal justice system.