



# Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING , YOUTH VIOLENCE

## Supreme Court to review juvenile injustice

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Tomorrow morning, the justices of the U.S. Supreme Court will hear oral arguments in two cases, *Jackson v. Hobbs* and *Miller v. Alabama*, challenging the controversial practice of sentencing juvenile offenders to life imprisonment without the possibility of parole. Hopefully, the Court will resist the common visceral response to youth violence and consider the scientific evidence that, as compared with adults, adolescents are less equipped to contemplate the consequences of their crimes, are more susceptible to pressure from peers to engage in behaviors they would not ordinarily commit on their own, and may, therefore, someday earn a second chance.

It has been decades since state legislatures around the country overreacted to the late-1980s surge in youth violence by expanding the pool of juveniles who could be tried and punished as if they were adults. Several criminologists (with me among them) had warned that juvenile crime rates could continue to surge if there were not a deep and determined investment in youth development. Unfortunately, most politicians took an alternative approach, emphasizing punishment rather than prevention.

The wholesale transfer of juveniles to the jurisdiction of the criminal court was supported by the catchy, yet illogical slogan, adult time for adult crime. Juveniles may look like adults, talk like adults, and even kill like adults, but they reason like the immature kids they are really are. Adolescents are not just a smaller version of adults.

Even without the large body of research on adolescent development, we see the immature nature of young people every day. They tend to be impulsive, imprudent and impatient. Severe penalties will not make them think twice when they act without thinking even once.

And if actually weighing the risks and rewards, adolescents frequently place much greater importance on short-term benefits, especially peer approval, while minimizing or ignoring the potential long-term consequences. They have yet to develop fully the kind of cognitive skills needed to make the right decision when standing in the wrong place at the wrong time. Punishments as severe as life imprisonment tend not to deter those who have yet to live long enough to appreciate fully the unparalleled preciousness of life.

To the homicide victim and his or her family, of course, the fact that the offender may be young and misguided is of no consolation. The victim is dead, whether the assailant is 16 or 66. Some surviving victims argue that there is no reprieve for their murdered loved one, and so there should no second

chance for the perpetrator. That is true, but the victim is dead whether or not the young offender spends life behind bars. Moreover, there are many families who mourn the loss of a loved one, yet do not wish to see the life of another child destroyed in the pursuit of justice.

In thinking about youngsters involved in serious crimes, we typically view immaturity only as a bad thing. But immaturity and impulsivity tend to change with age and experience, even when that comes while growing up in prison. The immaturity of juvenile offenders, as compared to their adult counterparts, can ultimately provide a greater opportunity for reformation.

Ending life without parole for young people does not mean that we should immediately open wide the prison gates and cease holding them accountable for harm they have caused. What it does mean is that we should revisit the sentence sometime in the future once they have had a chance to grow, mature and change. No matter how heinous the crime, we should resist the temptation to pass irreversible judgment by condemning young offenders when they are teenagers.

With murder rates at a 40-year low and hundreds of prisoners locked away for senseless and thoughtless acts committed when they were young and stupid, a national campaign to reform and rationalize juvenile sentencing practices has gathered steam. Yet, progress toward rethinking the wisdom of sentencing juveniles to life without the possibility parole has been slow amidst a social and political climate in which such reforms are summarily dismissed as being soft on crime. It is precisely in situations like this that we should count on justices with lifetime appointments to do the right thing, no matter what the political fallout.

In the past several years, the U.S. Supreme Court has recognized on multiple occasions the significant differences between kids and adults when it comes to criminal responsibility. In 2005, the Court determined that it is unconstitutional to sentence juveniles to death; and then in 2010, it prohibited sentencing youth to life without the possibility of parole for non-homicide crimes. It is time for the justices to take the final step by eliminating the absolute throw away the key approach for all juveniles.