



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING , MURDER AND MAYHEM

Life without parole: Right for some, wrong for others

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It has been nearly two years since 24-year-old Jared Lee Loughner opened fire upon a crowded plaza in Tucson, killing six and wounding several others, including U.S. Rep. Gabrielle Giffords. Yet, after all the legal maneuvering, Loughner received sentence that guarantees he will never again walk free.

Mass murderers like Loughner or Winchester's Thomas Mortimer deserve nothing less than life imprisonment given the enormity of their crimes. While absolutely fair and appropriate for such atrocities, there are many other offenders, particularly here in Massachusetts, who receive the very same fate but who arguably deserve something less extreme.

In Massachusetts all defendants convicted of first degree murder are sent away to prison for life without the possibility of parole, regardless of any mitigating circumstances surrounding the offense or the offender. By contrast, two dozen states having life without parole on the books include it among a group of alternative sentences depending on the circumstances of the offense and the offender.

As one of the states that prohibits parole for first degree murderers, Massachusetts ranks high on the list in terms of the percentage of its incarcerated population having no hope of ever walking free (except for the very remote possibility of executive clemency). As of 2008 (see table below), according to statistics compiled by the Sentencing Project in Washington, D.C., 8.7% of the Massachusetts state prison population was under a life without parole sentence, a level that ranked third (behind Louisiana and Pennsylvania) and was four times the national average.

Of course, many states employ a more extreme sanction -- the death penalty -- among the possible sentences for first degree murder. Might the inordinately high proportion of whole-lifers in Massachusetts be a statistical artifact of our refusal to put these offenders to death?

Apparently, our extreme usage of life without parole cannot so easily be dismissed. Even when adding to the mix all those murderers given a death sentence (either executed or on death row), Massachusetts still stands at the high-end in sentencing murderers to die in prison either by natural causes or by action of the state executioner.

If the most severe punishment is to be reserved for the "worst of the worst," then life without parole makes sense for serial killers, mass murderers, certain repeat violent offenders, and those who rape or

torture victims before murdering them. However, in Massachusetts life without parole eligibility is mandatory for cases of felony murder, even though homicide may not have been part of the plan. It is also mandatory for those convicted in joint ventures, even if they were not the one to pull the trigger or plunge the knife.

Many other states allow for parole eligibility as a sentencing option for murder, if the circumstances warrant it. Included among the states that allow penalty short of life without parole are Mississippi and Texas, but not Massachusetts.

So maybe it is time for Massachusetts to infuse some flexibility into sentences for first degree murder by permitting parole consideration after, say after 30 years, in those cases where mitigation outweighs aggravation. Such factors as being a first offender, suffering from psychological conditions that fall outside of the narrow definition of legal insanity, being the follower in a group-perpetrated homicide or voluntarily surrendering and confessing to the crime should matter.

Giving judges or juries options besides life without parole has several advantages, and not just for the offender. Parole eligibility would encourage participation in drug rehab and other treatment programs currently eschewed by those who have no prospect of ever walking free. Parole, as a strong incentive for pro-social behavior, helps to maintain institutional order. Also, why keep locked up large numbers of aging prisoners (with their expensive health needs) whose criminality is well in the past and thereby limiting available for younger, more active offenders? Prison space is an expensive commodity; we should utilize it more wisely and sparingly.

Importantly, whatever the justification for granting parole eligibility may be in a particular case, that is not the same as parole release. Parole is never a guarantee; inmates should be released only if they earn it.

Of course, as victim advocates say, there's no parole for those who were murdered. And some say that paroling murderers adds insult to injury. However, many other Western nations do not employ life without parole (or the death penalty). Apparently, many reasonable people do not believe that murderers must necessarily forfeit their life or their freedom.

Here in the U.S., we often dismiss long prison sentences as "mere slaps on the wrist" or "county club vacations" when neither characterization even comes close to the truth. Ask anyone who has spent decades deprived of their freedom.

So it is about time to reintroduce rationality into the sentencing process, even for murder. Not all murders are the same in severity, and not all murderers are the same in dangerousness. So while life without the possibility of parole is justifiable for some first-degree murderers, like Loughner, it is certainly not appropriate for all.

State-by-State Comparison of Life without Parole

State	Prison Population	Lifers	LWOP	Percent LWOP	Executed	LWOP or Executed	Percent LWOP/Exec
Alabama	29,400	5,087	1,413	4.8%	38	1,451	4.9%
Alaska	3,500	229	---	0.0%	0	---	0.0%
Arizona	38,700	1,433	208	0.5%	23	231	0.6%
Arkansas	14,500	1,376	541	3.7%	27	568	3.9%
California	170,800	34,164	3,679	2.2%	13	3,692	2.2%
Colorado	23,000	2,136	464	2.0%	1	465	2.0%
Connecticut	19,500	430	334	1.7%	1	335	1.7%

Delaware	3,800	526	318	8.3%	14	332	8.7%
Florida	95,400	10,784	6,424	6.7%	66	6,490	6.8%
Georgia	54,900	7,193	486	0.9%	43	529	1.0%
Hawaii	3,600	412	47	1.3%	0	47	1.3%
Idaho	6,300	523	102	1.6%	1	103	1.6%
Indiana	27,800	250	96	0.4%	19	115	0.4%
Iowa	8,700	616	616	7.1%	0	616	7.1%
Kansas	8,800	806	2	0.0%	0	2	0.0%
Kentucky	13,800	1,073	66	0.5%	3	69	0.5%
Louisiana	38,200	4,161	4,161	10.9%	27	4,188	11.0%
Maine	2,200	58	54	2.4%	0	54	2.4%
Maryland	23,300	2,311	321	1.4%	5	326	1.4%
Massachusetts	10,300	1,760	902	8.7%	0	902	8.8%
Michigan	50,100	5,010	3,384	6.7%	0	3,384	6.8%
Minnesota	9,200	496	48	0.5%	0	48	0.5%
Mississippi	22,500	1,914	1,230	5.4%	10	1,240	5.5%
Missouri	29,700	2,582	938	3.1%	66	1,004	3.4%
Montana	3,400	171	51	1.5%	3	54	1.6%
Nebraska	4,400	515	213	4.9%	3	216	4.9%
Nevada	13,500	2,217	450	3.3%	12	462	3.4%
New Hampshire	2,900	177	63	2.2%	0	63	2.2%
New Jersey	26,200	1,257	46	0.2%	0	46	0.2%
New Mexico	6,300	391	0	0.0%	1	1	0.0%
New York	61,900	11,147	190	0.3%	0	190	0.3%
North Carolina	39,200	2,390	1,215	3.1%	43	1,258	3.2%
North Dakota	1,400	40	11	0.8%	0	11	0.8%
Ohio	50,000	5,202	216	0.4%	28	244	0.5%
Oklahoma	25,100	2,135	623	2.5%	88	711	2.8%
Oregon	13,600	719	143	1.1%	2	145	1.1%
Pennsylvania	46,300	4,349	4,343	9.4%	3	4,346	9.4%
Rhode Island	3,800	182	32	0.8%	0	32	0.8%
South Carolina	24,500	2,056	777	3.2%	40	817	3.3%
South Dakota	3,300	169	169	5.1%	1	170	5.1%
Tennessee	19,200	2,020	260	1.3%	4	264	1.4%
Texas	140,300	8,558	71	0.1%	423	494	0.4%
Vermont	2,200	89	13	0.6%	0	13	0.6%
Virginia	37,000	2,145	774	2.1%	102	876	2.4%
Washington	15,700	1,967	542	3.4%	4	546	3.5%
West Virginia	5,900	612	251	4.3%	0	251	4.3%
Wisconsin	22,300	1,072	171	0.8%	0	171	0.8%
Wyoming	2,100	197	20	1.0%	1	21	1.0%

Adapted from A. Nellis, Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States. *The Federal Sentencing Reporter*, 2010. Data for Illinois and Utah unavailable.