Should 'life' mean life?

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Last week the Court of Appeal decided that the 'life' sentences of two murderers really will mean 'life' in prison, exceptional circumstances aside. The Secretary of State for Justice, Christopher Grayling, said:

'Our courts should be able to send the most brutal murderers to jail for the rest of their lives. I think people in Britain will be glad that our courts have disagreed with the European Court of Human Rights...'

This glosses over the complexity of the issue. What is the reality?

Most 'lifers' do not spend the rest of their lives in jail. The trial judge sets a minimum term: maybe ten years for a one-off crime committed in a moment of madness or when drunk, 15 for a more calculated murder, 20 or 25 for sadistic murder. It all depends on the seriousness of the crime.

Once this minimum 'tariff' has been served the prisoner is eligible for release on licence. The only issue is whether release would be safe. This is decided by the Parole Board on evidence that is as objective as possible. While there are no guarantees when predicting the future, 'lifers' released on licence are closely supervised and subject to restrictive conditions – eg, banning alcohol or contact with victims' families. A breach of licence or threatening behaviour leads to recall to prison. No court hearing, no appeal, just straight back to jail until the next parole hearing.

So, although some lifers are returned to prison, few commit further offences, let alone kill again. Those who stay out are never at complete liberty. They remain on licence, subject to recall. 'Life' is a life sentence; it's just not necessarily all spent in prison.

Some lifers are never judged to be safe. Few lifers re-offend because the Parole Board is extremely risk-averse. Murderers who remain dangerous remain in jail for the rest of their lives. The UK and European courts have never said otherwise.

So what is the argument about? The worst murderers of all – Ian McLoughlin, for example, who was at the centre of last week's Court of Appeal case – are given 'whole life' tariffs. This means that they will never be released, however safe it may be, except on compassionate grounds if they are thought to be dying (as in Ronnie Biggs' case).

Last year the European Court of Human Rights ruled that 'whole life' sentences contravene the prohibition on inhuman and degrading treatment. However, the Court of Appeal decided that the European Court gave insufficient weight to release on compassionate grounds, suggesting that the requirement that the prisoner be thought to be literally dying need not be adhered to. This got the government out of a hole. It keeps 'whole life' sentences in 99% of circumstances without defying the European Court ruling.

But the argument about 'human rights' is a distraction. First, McLoughlin – and people like him – will struggle to convince the Parole Board that they are safe. People like him (he murdered while on day-release from a murder sentence) are so self-evidently dangerous that most will stay in prison for all or almost all of their life whether or not they have a 'whole life' tariff. The rights and wrongs of day-release are another issue, but remain unaffected by the Court of Appeal ruling.

Secondly, occasionally even the worst murderers reform. What kind of society offers no hope and forgiveness, after an appropriately severe punishment, to people who have genuinely changed? What kind of signal does that send to our children? What kind of justice is as vindictive and brutal as the people we condemn? This is less a matter of human rights than a matter of simple humanity.

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