

Roper v. Simmons: Can Juvenile Offenders be Executed?

Charles L. Scott, MD

In *Roper v. Simmons*, the U.S. Supreme Court was once again asked to determine if the execution of a juvenile, aged 16 or 17 years at the time of the offense, represents cruel and unusual punishment. In a five-to-four decision, the U.S. Supreme Court affirmed the decision of the Supreme Court of Missouri to overturn the death penalty of Christopher Simmons and held that the execution of juvenile offenders violates the Eighth and Fourteenth Amendments.

J Am Acad Psychiatry Law 33:547–52, 2005

During the last 25 years, the U.S. Supreme Court has been asked repeatedly to tackle the following question: Does the execution of an individual under the age of 18 years at the time the offense was committed represent cruel and unusual punishment? In the case of *Roper v. Simmons*,¹ the U.S. Supreme Court was once again asked to address the constitutionality of sentencing a juvenile offender to death.

The Eighth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment, prohibits cruel and unusual punishment. The U.S. Supreme Court has interpreted cruel and unusual punishment to include those penalties that are excessive and not graduated and proportioned to the offense² and those that do not consider the defendant's degree of criminal culpability.³ In determining which punishments are so disproportionate as to be cruel and unusual, the U.S. Supreme Court established in *Trop v. Dulles*⁴ the importance of analyzing "the evolving standards of decency that mark the progress of a maturing society" (Ref. 4, pp 100–1). In essence, whether or not a punishment is considered cruel and unusual is partly related to the acceptance of the punishment by our society as one that is just and appropriate.

The punishment of juveniles by execution is a longstanding practice in our nation's history. The earliest recorded execution of a juvenile was the 1642

hanging of Thomas Granger in Plymouth Colony. When he was 16 years of age, Granger was discovered to have had sexual encounters with a cow, a mare, two goats, five sheep, two calves, and a turkey. He confessed his crimes of bestiality and was sentenced to death. Before his hanging, all of the animals with whom he had sexual relations were slaughtered before his face.⁵ The youngest offender executed in the United States was James Arcene, a Cherokee Indian youth, who participated in a robbery and murder at age 10 and was subsequently hanged in Arkansas in 1885. In 1927, Fortune Ferguson was 13 years of age when he was executed in Florida for the crime of rape.⁶

In *Thompson v. Oklahoma*,⁷ the U.S. Supreme Court was asked to determine if our nation's evolving standards of decency constitutionally allowed the execution of any offender who was under the age of 16 at the time the crime was committed. On January 23, 1983, William Wayne Thompson and three older individuals murdered Thompson's former brother-in-law. The victim was shot twice, and his throat, chest, and abdomen were cut before his body was chained to a concrete block and thrown into a river. All four defendants were sentenced to death. Thompson appealed on the basis that the Eighth Amendment forbids execution of a person who was 15 years of age at the time of the crime. A plurality of the Court determined that the execution of any offender under 16 years of age at the time of the crime was cruel and unusual punishment and therefore unconstitutional under the Eighth Amendment. The Court plurality reasoned that no state with a juvenile

Dr. Scott is Chief, Division of Psychiatry and the Law, Forensic Psychiatry Residency Training Director, University of California, Davis, California. Address correspondence to: Charles L. Scott, Department of Psychiatry, University of California, Davis Medical Center, 2230 Stockton Boulevard, Sacramento, CA 95817. E-mail: charles.scott@ucdmc.ucdavis.edu

death penalty statute outlining a minimum age for execution had set that age at less than 16 years.

In addition, the Court commented that both professional organizations and civilized nations had expressed the view that executing juveniles less than 16 years old at the time of their crimes offended civilized standards of decency. They also noted that juries rarely imposed the death penalty on offenders aged less than 16 years. The Court plurality reasoned that offenders younger than 16 years at the time of their crimes were less culpable, and therefore the death penalty was inappropriate as a form of retribution.

In a separate opinion, Justice O'Connor voted to overturn Thompson's death penalty sentence because Oklahoma's statute did not expressly state a minimum age for capital punishment, thereby making it theoretically possible for a youth of any age to be executed. As a result of her separate opinion, the *Thompson* Court (4:1:4) overturned the constitutionality of Thompson's death sentence, thereby suggesting that the execution of juvenile offenders 15 years of age or younger at the time of the crime represented cruel and unusual punishment.⁷

In *Stanford v. Kentucky*,⁸ the U.S. Supreme Court held (5:4) that the execution of juvenile offenders over 15 but under 18 years of age was not in violation of the Eighth and Fourteenth Amendments. As evidence that the execution of 16- and 17-year-olds did not violate contemporary standards of decency, the Court noted that 22 of the 37 death penalty states permitted the death penalty for 16-year-old offenders and 25 of these 37 states permitted execution of 17-year-old offenders. On the same day the Court issued its *Stanford* ruling, they also issued a ruling in *Penry v. Lynaugh*,⁹ holding that the Eighth Amendment did not automatically forbid the execution of persons with mental retardation.

In 2002, the U.S. Supreme Court overturned its *Penry* holding when asked to review the case of Daryl Atkins, a defendant with mild mental retardation who had been sentenced to death. In a six-to-three decision, the U.S. Supreme Court held that execution of persons with mental retardation violates the Eighth Amendment's ban on cruel and unusual punishment. The Court noted that since its ruling in *Penry*, the federal government and state legislatures in 16 additional states had enacted statutes prohibiting the execution of those with mental retardation. The Court cited the rarity with which the death penalty was imposed on this group of offenders as well as

increasing polling data that indicated an emerging consensus against the imposition of the death penalty for those with mental retardation. The Court emphasized that because individuals with mental retardation had diminished capacities to understand and process information and to control their impulses, they were morally less culpable. As a result, the societal goal of retribution was of limited value, as the concept of retribution requires that the severity of the punishment match the culpability of the offender. In addition, the Court reasoned that because individuals with mental retardation are more likely to act impulsively, they are less likely to be deterred from criminal behavior over a concern of a possible future death penalty.¹⁰

After the *Atkins* ruling, the following question arose: in light of evolving standards of decency, does the execution of a juvenile offender who was 16 or 17 years old at the time of the crime now represent cruel and unusual punishment? The case of *Roper v. Simmons* presented a decision by the Missouri Supreme Court that challenged the U.S. Supreme Court's prior holding in *Stanford v. Kentucky* and resulted in the Court's decision to reexamine this important issue.

Case Background

Christopher Simmons was 17 years old and a junior in high school when he committed murder. Prior to his offense, Christopher discussed with his friends his desire to kill someone by breaking into and entering the person's home, robbing the person, tying the person up, and then throwing the person off a bridge. He told his peers that they could get away with the murder because they were minors. On September 9, 1993, Christopher and a younger male peer met around 2:00 a.m. and then went to the home of Shirley Crook. After reaching through a window and unlocking the back door, they entered her home. Mrs. Crook was awakened and called out, "Who's there?" Christopher walked into Mrs. Crook's bedroom and at that moment recalled having seen her after a car accident in which they were both involved, and he was concerned that she also recognized him. He later acknowledged that his recognizing her strengthened his determination to kill her.

Christopher and his peer used duct tape to bind Mrs. Crook's hands and to cover her mouth and eyes. He then put her into her minivan and drove to a local

state park. After arriving near a railroad trestle that spanned the Meramec River, Christopher and his friend used electrical wire to tie Mrs. Crook's hands and feet together, wrapped her entire face with duct tape, and then threw her alive from the bridge into the river below where she drowned. Christopher was subsequently heard telling friends that he had killed Mrs. Crook "because the bitch seen my face." Later that afternoon, fishermen found Mrs. Crook's dead body in the river.

The following day, police arrested Christopher who waived his *Miranda* rights and confessed to the murder. He was tried and convicted as an adult of first-degree murder. At the sentencing phase, the State presented aggravating factors highlighting the fact that he had murdered Mrs. Crook to prevent his arrest, combined with the brutal, inhuman nature of the killing following a botched burglary. Simmons' defense counsel emphasized his lack of any prior charges or convictions and his close, loving relationship with family members. His defense counsel asked the jury to consider Simmons' age as a mitigating factor, noting that juveniles were not legally allowed to drink, serve on a jury, or see certain movies because they were not considered old enough to assume those responsibilities. In response, the prosecutor told the jury: "Age, he says. Think about age. Seventeen years old. Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary" (Ref. 1, p 4).

The jury recommended the death sentence, which was imposed by the judge. Simmons appealed his conviction, arguing that he had received ineffective assistance of counsel because additional information regarding his difficult home background, impulsivity, and susceptibility to being easily influenced by others were not adequately presented at the sentencing hearing. The petition for postconviction relief was denied by the trial court, and that decision was affirmed by the Supreme Court of Missouri. Simmons' subsequent 2001 petition for writ of *habeas corpus* was denied by the federal courts.

In the following year, the U.S. Supreme Court held in *Atkins v. Virginia* that the Eighth and Fourteenth Amendments prohibit the execution of a person with mental retardation.¹⁰ Simmons argued that the Supreme Court's reasoning for prohibiting imposition of the death penalty on those with mental retardation should also be applied to juveniles. He submitted a new petition for postconviction relief.

The Missouri Supreme Court agreed with Simmons' contention and held that since the U.S. Supreme Court's prior ruling in *Stanford*, a national consensus had developed against the execution of juvenile offenders. The Supreme Court of Missouri decided that the U.S. Supreme Court's prior holding in *Stanford* was no longer applicable. The Missouri court overturned Simmons' death sentence and resentenced him to life imprisonment without the possibility of parole.¹¹ The U.S. Supreme Court granted *certiorari* to determine if the imposition of the death penalty on a juvenile who commits a capital offense is cruel and unusual punishment and is therefore barred by the Eighth and Fourteenth Amendments.

The Decision

In a five-to-four decision, the U.S. Supreme Court affirmed the judgment of the Missouri Supreme Court and held that the Eighth and Fourteenth Amendments of the U.S. Constitution forbid the imposition of the death penalty on a juvenile offender who was younger than 18 and older than 15 when he committed a capital crime. The Court reviewed evidence to determine if a national consensus had developed against the death penalty for juvenile offenders as they did in their *Atkins* decision, which evaluated society's changing attitude toward the execution of people who are mentally retarded. The Court emphasized that at the time of their review, 30 states prohibited the juvenile death penalty and for those states without a formal prohibition on executing juveniles, the practice was infrequent. The Court noted that the governor of Kentucky had commuted Kevin Stanford's death sentence to life without parole, thereby preventing the very execution which the *Stanford* Court had previously upheld as constitutionally permissible. The Court observed that although the rate of abolition for the juvenile death penalty since its *Stanford* ruling was not as significant as the rate of abolition of the death penalty for those with mental retardation, the change was nevertheless significant and was in a consistent direction.

Citing their reasoning in *Atkins*, the Court majority explained that the death penalty was reserved for offenders who had committed a serious crime and whose extreme culpability warranted execution. In supporting the Court's tradition that imposition of the death penalty should be morally proportional to the culpability of the offender, the Court reviewed its previous rulings that excluded juvenile offenders

younger than 16 years,⁷ those incompetent to be executed,¹² and individuals with mental retardation¹⁰ from the death penalty. The Court cited three general differences between offenders under age 18 and adults that suggested juveniles should not be considered among the worst offenders: (1) juveniles are less mature and responsible than adults and therefore are more likely to engage in impetuous and poorly thought out actions. To support this view, the Court noted that almost every state prohibits those less than age 18 from voting, serving on juries, or marrying without parental consent; (2) juveniles are more vulnerable and susceptible to negative influences such as peer pressure; (3) a juvenile's character is not as well formed as that of an adult and therefore is not a result of an irretrievably depraved character. The Court reasoned that because of these three differences, juveniles were less culpable than adults and could not be considered to be among the worst group of offenders for whom the death penalty was intended.

The Court commented that due to this diminished culpability, two social purposes served by the death penalty, retribution and deterrence, had less application to juveniles when compared with adults. The majority acknowledged that a case could arise where a juvenile had sufficient psychological maturity to commit an act with particular depravity. However, the Court emphasized that because of the marked differences between the majority of juveniles and adults in regards to their blameworthiness, there was an unacceptable high risk that a jury, faced with the facts of a particularly brutal crime, would be unable to consider fairly any mitigating arguments regarding the juvenile's immaturity or vulnerability.

To support their assertion that it was difficult to determine if a youth's antisocial behavior was due to the transient immaturity of youth versus a permanently corrupt character, the Court noted the difficulty experienced by expert psychologists in distinguishing between these two groups and the diagnostic exclusion of antisocial personality disorder in those under age 18, as defined by the DSM. The majority recognized that their current opinion was in conflict with their *Stanford* ruling and emphasized that the evidence of an objective consensus against the death penalty for juveniles had changed since 1989 when they had ruled on this same issue.

In addition to a growing national consensus against the death penalty for juveniles, the Court majority reviewed foreign laws that prohibit the ex-

ecution of minors, indicating an international consensus against this practice. The Court commented that although international policies do not govern the interpretation of the U.S. Eighth Amendment, the Court had previously referred to other nations' laws when asked to assess evolving standards of decency and therefore it was appropriate to do so in this case.

Dissent

Justice O'Connor and Justice Scalia wrote separate dissents. In her dissenting opinion, Justice O'Connor expressed concern regarding the establishment of a categorical rule prohibiting the execution of any juvenile offender. She acknowledged that adolescents, as a class, are less mature than adults; however, she noted that many state legislatures allow for some 17-year-old murderers to receive the death penalty. She challenged the Court majority's assertion that there had been a significant change in society's rejection of the juvenile death penalty since the Court's *Stanford* ruling. In analyzing whether a national consensus had truly developed against executing juvenile offenders, Justice O'Connor argued that the evidence was weaker in this case than in *Atkins*. She distinguished the trends against the execution of those with mental retardation noted by the *Atkins* Court from societal attitudes toward the juvenile death penalty since their *Stanford* ruling in the following three areas: (1) states had not moved consistently toward abolition of the juvenile death penalty; (2) eight states had statutes that specifically set the ages of 16 or 17 as a minimum age for imposition of the death penalty; and (3) the pace of change opposing the death penalty against juveniles was slower than that described in *Atkins*.

Justice O'Connor commented that when examining the proportionality of a punishment, the Court looks not only at evolving standards of decency, as reflected in legislative trends and sentencing decisions, but also examines the relationship to the degree of inflicted harm to the victim and the defendant's blameworthiness. Justice O'Connor strongly challenged the majority's opinion that juveniles could not reliably be classified among the worst offenders and therefore the death penalty was disproportional to any crime they may commit. She wrote, "It is beyond cavil that juveniles as a class are generally less mature, less responsible, and less fully formed than adults" (Ref. 1, p 13).

Justice O'Connor presented five arguments challenging the premise that juveniles should be categorically excluded from capital punishment because the death penalty was disproportionate to their culpability. First, she stated that there was no actual evidence to support the claim that 17-year-olds only rarely demonstrate sufficient maturity to act with such depravity to warrant the death penalty. Second, she noted that chronological age is not a perfect measure of psychological development and argued that many 17-year-olds are more mature than some adults. Third, she distinguished 17-year-olds as a class as qualitatively and materially different from those with mental retardation, noting that although 17-year-olds may be less mature, they do not have the clearly defined deficits and life impairments observed in those with mental retardation. Fourth, she expressed confidence in a jury's ability to weigh a juvenile's immaturity during the individualized sentencing phase, and therefore argued that juveniles do not require a categorical exclusion from the death penalty. Fifth, she did not find sufficient evidence to support the claim that a juvenile's immaturity would render the penological goals of retribution or deterrence meaningless.

Justice O'Connor chastised the Court majority for failing to reprimand the Supreme Court of Missouri for their refusal to follow the *Stanford* precedent. She highlighted her concern when she wrote, "By affirming the lower court's judgment without so much as a slap on the hand, today's decision threatens to invite frequent and disruptive reassessments of our Eighth Amendment precedents" (Ref. 1, p 8).

Justice Scalia wrote a separate dissent joined by Chief Justice Rehnquist and Justice Thomas. He opined that the majority's finding that a national consensus against the juvenile death penalty had developed over the last 15 years was based on the "flimsiest of grounds" (Ref. 1, p 1). He challenged the notion that a national consensus had developed when less than 50 percent of death penalty states prohibited capital punishment for juvenile offenders, only four states had raised the age for imposing the death penalty since their *Stanford* ruling, and four states had expressly established 16 as the minimum age, either through statute or ballot initiative. He contended that juries' infrequent imposition of the juvenile death penalty was not evidence of a growing consensus against executing juvenile offenders but evidence that juries carefully considered a youth's age

as a mitigating factor when considering a death sentence.

Justice Scalia argued that the real issue was not a national legislative change against the juvenile death penalty but the Court's substitution of its own judgment that juvenile murderers are never as morally culpable as adults. He questioned, "By what conceivable warrant can nine lawyers presume to be the authoritative conscience of the Nation?" (Ref. 1, p 10). He accused the majority of picking and choosing those scientific and sociological studies that supported their position that juveniles are not as morally culpable as adults.

Justice Scalia highlighted the contradiction between the American Psychological Association's brief contending that juveniles under age 18 lack the ability to take moral responsibility for a decision to kill, when this same organization submitted a brief in *Hodgson v. Minnesota*¹³ claiming that a rich body of research indicated that juveniles have sufficient maturity to decide whether to obtain an abortion without parental involvement. He commented, "Whether to obtain an abortion is surely a much more complex decision for a young person than whether to kill an innocent person in cold blood" (Ref. 1, p 14). He rejected the contention that because juveniles were not legally allowed to drink alcohol or vote they were not mature enough to understand that murdering another human being was wrong. He dismissed the argument that the punishment goals of retribution and deterrence were not relevant to juveniles, highlighting the fact that Simmons encouraged his peers to participate in the crime because they could "get away with it" because they were minors.

Justice Scalia vigorously rejected the idea that American law should conform to the laws of the other nations and suggested that the Court majority was inconsistent in which international policies they chose to follow. For example, he noted that there are several areas in which the United States does not follow trends in other nations, such as the failure to exclude evidence obtained during illegal searches, the lack of separation of Church and State, and the prohibition of abortion on demand. Finally, Justice Scalia also voiced dismay that the Court majority affirmed the decision of the Missouri Supreme Court without any admonishment for their having ignored the Court's *Stanford* precedent.

Discussion

Since the reinstatement of the death penalty in 1976, 22 offenders who were juveniles at the time of their crimes have been executed. As a result of the ruling in *Simmons*, juvenile death penalty statutes in 20 states are unconstitutional and 72 juveniles living on death rows in these states will no longer face execution. In terms of the number of offenders affected, Texas is the state most greatly affected, with 29 offenders on death row who were juveniles at the time of their crimes, followed by Alabama ($n = 15$) and Mississippi ($n = 5$).¹⁴

In reaching this closely divided decision, the Court continued its trend of carving out categories of individuals to be excluded from a death penalty sentence. To what degree might this extension continue? Because the Court relied heavily on the assertion that juveniles were morally less culpable due to developmental immaturity, increased impulsivity, and increased vulnerability to peer influence, this logic might theoretically be extended to other classes of individuals. For example, one could argue that an immature 18-year-old with an IQ of 74 (borderline intellectual functioning) is less morally culpable than a 17-year-old with an IQ of 110. Likewise, a person with schizophrenia may have impairments in reality testing and cognition that interfere with his moral reasoning, thereby making him less blameworthy. Will the Court one day consider a categorical exclusion of all individuals with mental illness from the death penalty despite the brutality of their crimes? The foundation has been laid for this potential proposal.

Finally, the Supreme Court of Missouri refused to follow the *Stanford* Court's ruling upholding the constitutionality of the juvenile death penalty for 16- and 17-year-olds. The Supreme Court of Missouri argued that their interpretation of evolving standards of decency indicated that the U.S. Supreme Court's prior *Stanford* ruling was now unconstitutional. The dissenting justices expressed great concern regarding a lower court's decision to challenge and effectively overturn a U.S. Supreme Court's ruling. In his final comment, Justice Scalia predicted the potential for judicial anarchy that would arise from allowing this challenge to stand when he wrote:

To allow lower courts to behave as we do, 'updating' the Eighth Amendment as needed, destroys stability and makes our case law an unreliable basis for the designing of laws by citizens and their representatives, and for action by public officials. The result will be to crown arbitrariness with chaos [Ref. 1, p 24].

References

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