

**When dealing with Juvenile offenders, is death, or serving life without parole, a violation of the Eighth Amendment?**

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## **Introduction**

Any time the judge pronounces a court ruling, it is pretty obvious that there will be mixed reactions in the court room. The winning camp always celebrates regardless of whether the ruling is justified or not. As expected, the losing camp feel frustrated and rages with the urge to appeal the ruling. Therefore, it becomes very hard to know which ruling is best to make because there is not one judgment delivered that would satisfy all. However, if we go by the various definitions of justice given by different scholars, we find that any decision that appeals to the majority is deemed to be just. In our situation therefore, we are dealing with the issue of whether juvenile offenders serving life without parole is a violation of the Eighth amendment. According to the Eighth Amendment, excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. This paper will take into consideration the fact that, in as much as the complainant's have the right to push for justice, the ruling should not be excessively cruel and harsh. Justice should strike a balance to make sure that no party feels too much offended. In the attempt to explore this critical issue, we are going to look at various cases whereby the judges made various rulings that aroused mixed reactions, and the views that different people have towards those rulings. The paper will look at the following court

cases that were handled in the past: *Roper V. Simmons*, *Terrance V. Florida*, and *Solem V. Helm*, *Atkins v. Virginia*, *Coker v. Georgia*, *Stanford v. Kentucky*, and *Furman v. Georgia* and *Penry v. Lynaugh*. The rulings from these cases will enable us to investigate whether serving life without parole for juvenile offenders is a violation of the Eighth Amendment or not.

### **The extent of juveniles serving life without parole in the United States.**

A famous Senior Researcher in the U.S. program for Human Rights Watch once said, “Kids who commit crimes should not go scott-free, but if they are too young to vote or to buy cigarettes, they are too young to spend the rest of their lives behind bars.” Statistics show that there are at least 2,225 child offenders serving life without parole sentences in the U.S. prisons for crimes committed before their eighteenth birthday. That is a report given by the Human Rights Watch and Amnesty International. Currently, most of the child offenders are now adults, but at their time of arrest, they were between the ages of 13 and 15. More than half of them were sentenced to life without parole in their first- ever criminal action. In the U.S., forty two states currently have laws that allow children to receive life without parole sentences. While releasing their research outcome, the Amnesty International and the Human Rights Watch indicated that while fewer youths are committing serious crimes like murder, states are increasingly sentencing them to life without parole. Dr. William F. Schulz, Executive Director of Amnesty International said, “Untie the hands of the states and the federal judges and prosecutors.” He was pleading for a chance to have different treatment of juvenile offenders since they were people with the potential to transform and become better people in future (*Roper, Superintendent, Potosi Correctional Center, 204*). A keener analysis shows that in twenty-six states, the sentence of life without parole is mandatory for anyone who is found guilty of committing first degree murder, regardless of age. Among the youth offenders serving life without parole, 93 percent were

convicted of murder. However, Human Rights Watch and Amnesty International found out that, an estimated 26 percent of the youth offenders serving life without parole were convicted of “felony murder”, which holds that anyone involved in the commission of a serious crime during which someone is killed is also guilty of murder, even if he or she did not directly or personally get involved in the murder. In short, the United States is one of the only countries that allow kids to be sentenced to life without parole.

### **Juveniles serving life without parole violates the Eighth Amendment.**

The US Supreme Court has come to a conclusion that serving life without parole for juvenile offenders violates the Eighth Amendment. Graham, who was 16 at the time he committed the crime of armed burglary was the petitioner. Under the plea agreement, the Florida trial Court sentenced him to probation and withheld adjudication of guilt. Subsequently, the trial court found that Graham had violated the terms of his probation by committing additional crimes. The trial Court adjudicated Graham as guilty of earlier charges, revoked his probation and sentenced him to life in prison for the burglary. Since the Florida court has abolished its parole system, the life sentence left Graham with no possibility of release except by executive clemency. He challenged the sentence under the Eighth Amendment’s Cruel and Unusual Punishments Clause, but the state’s First District Court of Appeal affirmed the ruling. The Supreme Court determined that the Eighth Amendment does not permit a juvenile offender to be sentenced to life in prison without parole for a non-homicide crime. Embodied in the cruel and unusual punishments ban is the precept that, punishment for crime should be graduated and proportioned to the offense. *Weems v. United States* (217 U. S. 349, 367). This includes considerations of whether a sentence is unconstitutionally excessive based on the defendant’s crime and also on the characteristics of the defendant.

The Court noted that, it prohibits the death penalty for defendants who committed their crimes before age 18, *Roper v. Simmons* (543 U. S. 551), or whose intellectual functioning is in a low range, *Atkins v. Virginia*, (536 U. S. 304).

These are the opinions that Justice Kennedy wrote for the Court:

- Florida State argued that no national consensus exists against the sentencing practices in question, because of the great discrepancy among states on juvenile life without parole sentences. The court noted that “Nationwide, there are only 129 juvenile offenders serving life without parole sentences for non-homicide crimes. Because 77 of those offenders are serving sentences imposed in Florida, and the other 52 are imprisoned in just 10 States and in the federal system, it appears, only 12 jurisdictions nationwide in fact impose life without parole sentences on juvenile non-homicide offenders”...They further noted that, 26 States and the District of Columbia do not impose juvenile life without parole sentences despite apparent statutory authorization. Finally, they emphasized that these sentences are excessively rare, because the statistics reflect that, nearly all juvenile non-homicide offenders have received life without parole sentences, stretching back many years.
- The Court concluded that the juvenile life without parole sentencing is cruel and unusual. This is based on “the inadequacy of penological theory to justify life without parole sentences for juvenile non-homicide offenders, the limited culpability of such offenders, and the severity of these sentences. They indicated that “no recent data provide reason to reconsider *Roper*’s holding that, because juveniles have lessened culpability, they are less deserving of the most serious forms of punishment.”

- The Court determined that, a categorical rule was necessary because two alternative approaches failed to address the relevant constitutional concerns. First, Florida and other states tried to enact comprehensive rules to govern the treatment of youthful offenders, but the result is that a judge or jury must make a subjective judgment about whether a juvenile is irredeemably depraved, so that it is impossible to prevent the risk that an offender will receive a JLWOP sentence without having the moral culpability. Secondly, a case-by-case approach where an offender's age is weighed against the seriousness of the crime, does not allow the courts to accurately distinguish the few juvenile offenders who have the psychological maturity and depravity warranting JLWOP from the many that have the capacity to change as they mature. They further cited that this case-by-case approach doesn't consider the challenges encountered by counsel in representing juveniles, due to their impulsivity, difficulty thinking in terms of long-term benefits, and reluctance to trust adults. The courts determined that a categorical rule avoids the risk that a court or jury will in error conclude that a particular youth is sufficiently culpable to deserve life sentence without parole, and give the juvenile offender a chance to demonstrate maturity and reform.
- Finally, the Court indicated that juvenile life without parole sentence has been rejected the world over, with the United States being the only Nation that continued to impose JLWOP. While the judgments of other nations and the international community are not disposed as to the meaning of the Eighth Amendment, the Court has looked abroad to support its independent conclusion that a particular punishment is cruel and unusual
- There are just over 100 inmates serving Juvenile life without parole sentences for non-homicide crimes in Florida and seven other states — California, Delaware, Iowa,

Louisiana, Mississippi, Nebraska and South Carolina — according to a Florida State University study.

- More than 2,000 other juveniles are serving life sentences without parole for killing someone.
- Justices Samuel Alito, Antonin Scalia and Clarence Thomas dissented from the court's ruling.

### **The court cases and their analysis**

The Eighth Amendment's prohibition against Cruel and unusual punishments must be interpreted according to its text, by considering history and tradition, and precedent, together with its due regard for its purpose and function in the constitution design. In order for it to implement this framework, the Court has established the propriety and affirmed the necessity, referring to the revolving standards of decency that mark the progress of a maturing society, to determine which punishments are so inappropriate as to be cruel and unusual (*Martinez v. Ryan*)<sup>120</sup>, (*Roper v. Simmons*), as a plurality, determining that national standards of decency did not permit the execution of any offender under the age of sixteen at the time of the crime. The next year in *Stanford*, a 5-to-4 Court referred to contemporary standards of decency, but concluded that the Eighth Amendment did not prescribe the execution of offenders over 15 but under 18, since 22 out of 37 death penalty states permitted that penalty for 16 year old offenders, and 25 permitted it for 17 year olds, thereby indicating that there was no consensus. A plurality also emphatically rejected the suggestion that the Court should bring its own judgment to bear on the acceptability of the juvenile death penalty. That same Court held that the Eighth Amendment did not mandate a categorical exemption from the death penalty for the mentally handicapped

persons because only two states had enacted laws banning such executions. Previously in *Atkins*, the Court had held that standards of decency had evolved since *Penry* and now demonstrated that the execution of mentally handicapped persons was unusual and cruel. The *Atkins* Court noted that, the objective indicia of society's standards, as expressed in pertinent legislative enactments and state practice, demonstrated that such executions had become so truly unusual that it was fair to say that national consensus had developed against them (*Furman v. Georgia* 277). The Court also returned to the rule, established in decisions predating *Stanford* that the Constitution contemplates that the court's own judgment be brought to bear on the question of the acceptability of the death penalty. After observing that being mentally handicapped that diminishes mental culpability, even if the offender can distinguish right from wrong, mentally handicapped offenders' impairments make it less defensible to impose the death penalty as retribution for past crimes or as a real deterrent to future crimes. The Court ruled that the death penalty constitutes an excessive sanction for the entire category of mentally handicapped offenders, and that the Eighth Amendment places a substantive restriction on the State's power to take such an offender's life. Just as the *Atkins* Court reconsidered the issue decided in *Penry*, the Court now reconsidered the issue decided on *Stanford*. Both objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question, and the Court's own determination in the exercise of its independent judgment, demonstrates that, the death penalty is disproportionate in punishment for juveniles. As in *Atkins*, the objective indicia of national consensus here –that is the rejection of the juvenile death penalty in the majority of states; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice- provide sufficient evidence that today's society views, in the words of *Atkins*, juvenile and mentally handicapped as categorically less



culpable than the average criminal (*Missouri v. Frye* 2012 P. 277). The evidence of such consensus is similar and in some respects parallel, to the evidence in *Atkins*: 30 states prohibits the juvenile death penalty, including twelve that have rejected it altogether, and others maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach. Moreover, even in the 20 states without a formal prohibition, the execution of juveniles is infrequent. Although by contrast to *Atkins*, the rate of change in reducing the incidence of the juvenile death penalty, or in taking specific steps to abolish it, has been less dramatic, the difference between this and *Atkins* in that respect is counterbalanced by the consistent direction of the change toward abolition. Rejection of the imposition of the death penalty on the juvenile offenders under the age of eighteen is required by the Eighth Amendment. Capital punishment must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes the most deserving of the execution.

*Atkins*, 536 U. S. at 319 contends that there are three differences between juveniles under the age of 18 and adults that are clearly demonstrated. He shows that, at all possible costs, juveniles cannot be considered as among the list of the worst offenders. Juveniles' susceptibility to immature and irresponsible behavior means their irresponsible conduct is not morally reprehensible as that of an adult. *Thompson v. Oklahoma*, 487 U. S. 815, 835. Their own vulnerability and comparative lack of control over their immediate surroundings means juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment (*Thompson v. Oklahoma* 1988 P. 125 ). The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. The *Thompson* plurality recognized the importance of these characteristics with respect to juveniles under 16. The same

reasoning applies to all juvenile offenders under 18. Once juveniles' diminished culpability is recognized, it is evident that neither of the two penological justifications for the death penalty, the retribution and deterrence of capital crimes by prospective offenders has weight. For example, *Atkins*, 536 U. S., at 319--provides adequate justification for imposing that penalty on juveniles. Although the Court cannot deny or overlook the brutal crimes too many juvenile offenders have committed, it disagrees with petitioner's contention that, given the Court's own insistence on individualized consideration in capital sentencing, it is arbitrary and unnecessary to adopt a categorical rule barring imposition of the death penalty on an offender under 18 (*Sackett v. Agency P* 251). An unacceptable likelihood exists, that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death. When a juvenile commits a heinous act, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity. While drawing the line at 18 is subject to the objections always raised against categorical rules that are the point where society draws the line for many purposes between childhood and adulthood, it should be the age at which the line for death eligibility ought to rest. *Stanford* should be deemed no longer controlling on this issue. The overwhelming weight of international opinion against the juvenile death penalty is not controlling here, but provides respected and significant confirmation for the Court's determination that the penalty is disproportionate punishment for offenders under 18. The United States is the only country in the world that continues to give official sanction to the juvenile death penalty. It does not lessen fidelity to the Constitution or pride in its origins to

acknowledge that the express affirmation of certain fundamental rights by other nations and people underscores the centrality of those same rights within our own heritage of freedom.

### **Stanford v. Kentucky**

At 17 years old, Stanford was convicted by a Kentucky jury of murder, sodomy, robbery, and the receipt of stolen property. Stanford was sentenced to death under a state statute which permitted juvenile offenders to receive the death penalty for Class A felonies or capital crimes. Stanford appealed his sentence and his case was consolidated with that of Wilkins v. Missouri, involving a 16 year Old's appeal of his death sentence following a conviction for murder in Missouri. Both Stanford and Wilkins alleged that the imposition of the death penalty on offenders as young as themselves violated their constitutional rights

### **Terrance v. Georgia**

Chief Justice Roberts gave his opinion in this case and agreed that the sentence of life without parole violates the eighth Amendment's on prohibition of cruel and unusual punishments.

### **Coker v. Georgia**

In this particular case, rape and robbery has been taken as a capital crime. While it is very clear that rape and robbery are non-homicide crimes, they bore penalty of capital crimes. Amicus curiae warned of the dire consequences of this move since when it happens, the criminal has every reason to kill his victim, in this way he removes at a stroke the best possible witness against him without appreciably increasing the severity of his punishment if he is caught. Justice White, joined by Justice Stewart among others concluded that the sentence of death for the crime

of rape was grossly disproportionate and excessive. Therefore, it was forbidden by the Eighth Amendment as cruel and unusual punishment. Death being a disproportionate punishment for rape is strongly indicated by the objective evidence of present public judgment, as represented by the attitude of the state legislatures and sentencing juries, concerning the acceptability of such punishment. It is clear that Georgia is the only state authorizing the penalty of death for rape (Coker v. Georgia P. 125)

### **Penry v. Lynaugh, Director, Texas Department of Corrections**

The petitioner was charged with capital murder in Texas state court. He was found competent to stand the trial; although the psychologist testified that he was mildly to moderately mentally handicapped and had the mental age of a six and a half-year-old. At the guilt innocence phase of the trial, petitioner raised an insanity defense and presented psychiatric testimony that he suffered from a combination of organic brain damage and was moderately mentally handicapped which resulted in poor impulse control and inability to learn from experience. The evidence also indicated that he had been abused as a child (Penry v. Lynaugh, Director, Texas Department of Corrections)<sup>211</sup>. The state introduced testimony that the petitioner was legally sane but had an antisocial personality, thereby rejecting the petitioner's insanity defense and found him guilty of capital murder. The Texas court declined all claims that the sentence was a violation of the Eighth Amendment. This was because the jury was not adequately instructed to consider all his mitigating evidence and because the special issue' terms were not defined that the jury could consider and give effect to that evidence. It was held that the judgment was affirmed in part and reversed in part, and the case remanded. One thing that is clearly noticeable here is the absence of instructions informing the jury that it could consider and give effect to the petitioner's

mitigating evidence of being mentally handicapped and a background of abuse by declining to impose the death sentence.

### **Solem v. Helm**

The respondent had been convicted of uttering a no account check for \$100 in a South Dakota State in 1979. In ordinary rulings, the maximum punishment for that crime would have been five years imprisonment and a 5,000 fine. The respondent was sentenced to life imprisonment without possibility of parole under South Dakota's recidivist statute because of his six prior felony convictions. There were three convictions for third degree burglary and convictions for obtaining money under false pretenses and a third one of driving while intoxicated. The Court affirmed the sentence. After the respondents request for commutation was denied, he sought habeas relief in Federal District Court, contending that (*Solem, Warden, South Dakota State Penitentiary v. Helm* 2012 P. 277), his sentence constituted cruel and unusual punishment under the Eighth and Fourteenth Amendments respectively. The District Court denied relief, but the court of appeals reversed. It was therefore held that the Eighth Amendment's proscription of cruel and unusual punishment prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed.

### **Atkins v. Virginia**

In the opinion delivered by Justice John Paul Stevens, the Court held that executions of mentally handicapped criminals are "cruel and unusual punishments" prohibited by the Eighth Amendment. Since it last confronted the issue, the Court reasoned that a significant number of States have concluded that death is not a suitable punishment for a mentally handicapped criminal. Moreover, the Court concluded that there was serious concern over whether either justification underpinning the death penalty - retribution and deterrence of capital crimes -

applies to mentally handicapped offenders, due to their lessened culpability (*Atkins v. Virginia*, 2002 P. 304). "Construing and applying the Eighth Amendment in the light of our 'evolving standards of decency,' we therefore conclude that such punishment is excessive and that the Constitution 'places a substantive restriction on the State's power to take the life' of a mentally handicapped offender," wrote Justice Stevens. Chief Justice William H. Rehnquist and Justice Antonin Scalia filed dissenting opinions. Justice Clarence Thomas joined both. "This newest invention promises to be more effective than any of the others in turning the process of capital trial into a game," argued Justice Scalia

## **Conclusion**

This paper has taken a deeper look at various cases that raised contention over the violation of the Eighth Amendment. It has analyzed the balance that should be struck in order to ensure that the course of justice is not interfered with but at the same time maintaining acceptable standards of decency. Justice should be administered at all costs but it should not be done by exerting excessive penalties or cruel rulings against the defendants. We have seen how some cases did exactly that while others gave rulings that violated the Eighth Amendment. This is what all institutions of human rights across the whole world advocate for. Justice should be fair to all parties involved.

## References

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