

# Update on Death Penalty for Juveniles: Supreme Court Decides *Roper v. Simmons*

Charles F. Williams

IN THE OCTOBER 2004 ISSUE of SOCIAL EDUCATION, our preview of the Supreme Court's upcoming term highlighted the Court's decision to review the constitutionality of imposing the death penalty on juvenile offenders. On March 1, 2005, the Court determined in *Roper v. Simmons*, No. 03-633, that the Constitution forbids states from imposing the death penalty on offenders who were under the age of 18 when they committed their crimes.

Christopher Simmons, the offender in this case, was 17 years and five months old when he planned and carried out the murder of Shirley Crook. The killing was not the sudden impulsive act of a robbery gone badly. Rather, as Justice Kennedy noted in the Court's majority opinion, Simmons had planned the murder in great detail, telling his friends in "chilling, callous terms" how they could break into the victim's home at night, tie her up, and throw her off a bridge. Moreover, Simmons had assured these friends, they could "get away with it" because they were still juveniles.

True to his plans, Simmons eventually persuaded a 15-year-old accomplice to help him break into Crook's home in the middle of the night and force the terrified woman from her bed. They then drove her to a state park, walked her to a railroad trestle spanning the Meramec River in Missouri, tied her hands and feet with electrical wire, wrapped her face in duct tape, and threw the fully conscious woman off the bridge to drown in the river below. Crook left behind a husband (who

had been out of town on an overnight trip the evening of the murder), a daughter, and two sisters.

Nine months later, Simmons was a little over 18 years old when he was convicted of Crook's murder. He was sentenced to death and began the appeal process that culminated in the Court's 5-4 decision that spared his life on March 1. He is now 28.

The opinions in *Roper v. Simmons* are remarkable in that they so clearly outline the philosophical differences between the majority (Justices Kennedy, Stevens, Souter,

Ginsburg, and Breyer) and the dissenters (Chief Justice Rehnquist and Justices Scalia, Thomas, and O'Connor). These fundamental differences in outlook go well beyond the justices' disagreement over the constitutionality of the juvenile death penalty. The first divide concerns the nature of the Constitution itself: Is it a "living" document whose meaning changes over time? Or, should the justices follow the drafters' original intent and relegate constitutional changes to the amendment process? The second disagreement concerns the role that laws and decisions of foreign courts may



AP/Missouri Department of Corrections

Missouri death row inmate Christopher Simmons, shown in this September 30, 2003 photo provided by the Missouri Department of Corrections, was at the center of the U.S. Supreme Court case, decided on March 1, 2005, that it is unconstitutional to execute killers who were juveniles when they committed their crimes. Christopher Simmons killed Shirley Crook of Fenton when he was 17.

# Issues for Class Discussion

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## Juveniles and Culpability

What arguments can be made to support a categorical determination that all juveniles under 18 are less blameworthy for capital crimes than adults? What arguments can be made that culpability for capital crimes committed by young people should be made on a case-by-case basis? What might be the effect of the Court's decisive determination that all juveniles under 18 should be treated as less culpable for capital crimes than adults in non-capital cases?

## Legislation and State Practices as Objective Indicators of Evolving Standards of Decency

When evaluating evolving standards of decency, the Supreme Court looks at legislation and state practices to determine national consensus. Since the Court last reviewed the constitutionality of the death penalty in 1989, five additional states have "abandoned" the practice. In contrast, when the Court declared the death penalty for the mentally retarded unconstitutional in 2002, it found that in the previous 13 years, 16 states had abandoned the practice. Should the Court examine the rate of change as part of its assessment of an evolution of a standard of decency, or is it sufficient to simply note a direction of change? Is national legislation, such as the 1994 Federal Death Penalty Act, which prohibits execution of juveniles under 18 in federal cases, a weightier indicator than the practices of the states? Why or why not?

## The U.S. Supreme Court and Precedent

Should the lower courts always abide by Supreme Court precedent? Should the Supreme Court alone have the prerogative to overrule one of its precedents? What might happen if other lower courts followed the Missouri Supreme Court's example by ruling that other aspects of the Supreme Court's Eighth Amendment precedents are no longer binding? Must the lower courts follow Supreme Court precedent for the legal system to work? Why or why not? What arguments might be made for allowing lower courts to overrule the decisions of the higher courts? Arguments against?

## Supreme Court Justices as Moral Arbiters

Should Supreme Court justices conduct their own individual assessments of aspects of the law, or should they rely entirely on objective indicators agreed upon through national consensus when evaluating evolving standards of decency?

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## Selected Online Resources

### Juvenile Death Penalty

Juvenile Justice Committee, ABA Criminal Justice Section, [www.abanet.org/crimjust/just/just/juvedp.html](http://www.abanet.org/crimjust/just/just/juvedp.html). Offers information on juvenile death penalty cases, including an "Evolving Standards of Decency" resource kit.

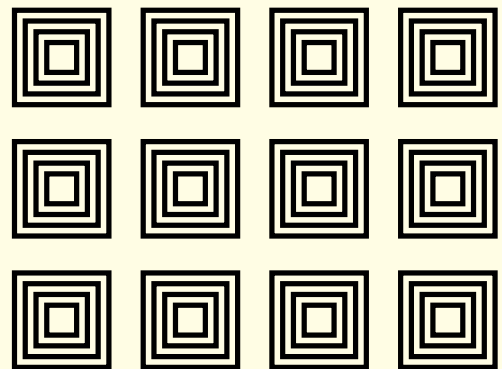
### Death Penalty Curricula for High School

Death Penalty Information Center, [teacher.deathpenaltyinfo.msu.edu](http://teacher.deathpenaltyinfo.msu.edu). Curricular units explore arguments for and against the death penalty, history of the death penalty, state-by-state data, and courtroom cases.

### Juveniles and the Death Penalty

Coordinating Council on Juvenile Justice and Delinquency Prevention, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, [ncjrs.org/html/ojjdp/coordcouncil/index.html](http://ncjrs.org/html/ojjdp/coordcouncil/index.html). Provides a history of the death penalty and information on pre-Roper decisions on the juvenile death penalty. Also offers information on how international opinion might influence determinations of evolving standards of decency.

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play in the U.S. Supreme Court's interpretation of the Constitution. The third involves the propriety of allowing American courts to decline to follow Supreme Court precedent when they believe that precedent to be outmoded.

### Evolving Standards

The Eighth Amendment prohibits the infliction of "cruel and unusual punishments." In his majority opinion, Justice Kennedy noted with approval that the Court has referred to "the evolving standards of decency that mark the progress of a maturing society" when determining which punishments are "so disproportionate as to be cruel and unusual."

In other words, a majority of the Court believes the Constitution's meaning can change over time, so that punishments the Eighth Amendment did not ban in the eighteenth century (because no one, including the drafters, would have considered them cruel and unusual) might well be deemed unconstitutionally cruel and unusual today. Justice Kennedy believes this to be the case with regard to the imposition of the death penalty on persons who were 17 years old when they committed murder. He noted that modern scientific and sociological studies show that juveniles' immaturity renders them less culpable than adults. He pointed out that since 1989, five capital-punishment states that permitted juveniles to be sentenced to death have abandoned the practice—"four through legislative enactments and one through judicial decision." In addition, he observed, no state that previously prohibited capital punishment for juveniles has reinstated it. Today, 18 of the 38 remaining capital punishment states bar the execution of anyone who was younger than 18 when he or she committed a capital crime.

In dissent, Justice Scalia first noted his ongoing disagreement with the view that the Eighth Amendment is an "ever-changing reflection of 'the evolving standards of decency.'" But even under that view, he said, the Court is still at least obligated to identify a "national consensus" among Americans before determining that there has been a change in the meaning of "cruel and unusual punishments." In this case,

Scalia wrote, "Words have no meaning if the views of less than 50 percent of death penalty states can constitute a national consensus."

### Foreign Law

Nearly as controversial as the ruling itself was the Court's reference to foreign laws regarding capital punishment for juveniles. "It is proper," Justice Kennedy wrote, "that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime." He said that while the opinion of the world community did not control the outcome in this case, it did "provide respected and significant confirmation for our own conclusions."

Justice Scalia was appalled. The majority is citing the foreign sources, he said, "to set aside the centuries-old American practice—a practice still engaged in by a large majority of the relevant states—of letting a jury of 12 citizens decide whether, in the particular case, youth should be the basis for withholding the death penalty. What these foreign sources 'affirm,' rather than repudiate, is the justices' own notion of how the world ought to be, and their diktat that it shall be so henceforth in America."

Justice O'Connor dissented separately in this case on the grounds that there is no genuine national consensus that the Eighth Amendment forbids capital punishment of 17-year-old murderers "in all cases." But she was careful to part ways with Scalia's wholesale rejection of the relevance of foreign and international law. Unlike Scalia, she believes that an international consensus could in fact serve "to confirm the reasonableness of a consonant and genuine American consensus."

### Precedent

In *Stanford v. Kentucky*, 492 U.S. 361 (1989), the Supreme Court ruled that the Constitution does not bar capital punishment for juvenile killers who were older than 15 but younger than 18 when they committed their crime. The Court can, of course, always reconsider such rulings: it can entertain the question of whether it

should overrule itself. But in the ordinary course, one would expect such a question to arrive at the Court via a petition for certiorari filed by the condemned defendant—because the lower appellate court would be expected to have dutifully followed *Stanford*.

But in this case, as Justice O'Connor noted in her dissent, the Supreme Court of Missouri, determining the *Stanford* ruling obsolete, simply refused to follow it. As much as O'Connor disapproved of the Missouri court's refusal to follow binding precedent, she seemed even more annoyed by Justice Kennedy's "failure to reprove, or even to acknowledge" the Missouri court's action. Indeed, there is not a single comment on the unusual procedural posture of this case anywhere in the majority opinion. "By affirming the lower court's judgment without so much as a slap on the hand," O'Connor wrote, "today's decision threatens to invite frequent and disruptive reassessments of our Eighth Amendment precedents."

Justice Scalia ends his dissent on this point as well. For the legal system to work, Scalia says, the Court must insist that the lower courts do as the Supreme Court says, not as it does: "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." 🗞

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This article is adapted from the forthcoming spring 2005 issue of *Insights* on Law

and Society, a magazine for teachers of civics and government, history, and the law, published by the ABA Division for Public Education. For more information on *Insights*, visit [www.insightsmagazine.org](http://www.insightsmagazine.org).