

## ROPER v. SIMMONS, 543 U.S. 551

[March 1, 2005]

*Justice Kennedy* delivered the opinion of the Court.

This case requires us to address, for the second time in a decade and a half, whether it is permissible under the Eighth and Fourteenth Amendments to the Constitution of the United States to execute a juvenile offender who was older than 15 but younger than 18 when he committed a capital crime. In *Stanford v. Kentucky*, [492 U. S. 361](#) (1989), a divided Court rejected the proposition that the Constitution bars capital punishment for juvenile offenders in this age group. We reconsider the question.

### I

At the age of 17, when he was still a junior in high school, Christopher Simmons, the respondent here, committed murder. About nine months later, after he had turned 18, he was tried and sentenced to death. There is little doubt that Simmons was the instigator of the crime. Before its commission Simmons said he wanted to murder someone. In chilling, callous terms he talked about his plan, discussing it for the most part with two friends, Charles Benjamin and John Tessmer, then aged 15 and 16 respectively. Simmons proposed to commit burglary and murder by breaking and entering, tying up a victim, and throwing the victim off a bridge. Simmons assured his friends they could "get away with it" because they were minors.

The next day, after receiving information of Simmons' involvement, police arrested him at his high school and took him to the police station in Fenton, Missouri. They read him his *Miranda* rights. Simmons waived his right to an attorney and agreed to answer questions. After less than two hours of interrogation, Simmons confessed to the murder and agreed to perform a videotaped reenactment at the crime scene.

The State charged Simmons with burglary, kidnaping, stealing, and murder in the first degree. As Simmons was 17 at the time of the crime, he was outside the criminal jurisdiction of Missouri's juvenile court system. He was tried as an adult. At trial the State introduced Simmons' confession and the videotaped reenactment of the crime, along with testimony that Simmons discussed the crime in advance and bragged about it later. The defense called no witnesses in the guilt phase. The jury having returned a verdict of murder, the trial proceeded to the penalty phase.

The State sought the death penalty. As aggravating factors, the State submitted that the murder was committed for the purpose of receiving money; was committed for the purpose of avoiding, interfering with, or preventing lawful arrest of the defendant; and involved depravity of mind and was outrageously and wantonly vile, horrible, and inhuman. The State called Shirley Crook's husband, daughter, and two sisters, who presented moving evidence of the devastation her death had brought to their lives.

In mitigation Simmons' attorneys first called an officer of the Missouri juvenile justice system, who testified that Simmons had no prior convictions and that no previous charges had been filed against him. Simmons' mother, father, two younger half brothers, a neighbor, and a friend took the stand to tell the jurors of the close relationships they had formed with Simmons and to plead for mercy on his behalf. Simmons' mother, in particular, testified to the responsibility Simmons demonstrated in taking care of his two younger half brothers and of his grandmother and to his capacity to show love for them.

During closing arguments, both the prosecutor and defense counsel addressed Simmons' age, which the trial judge had instructed the jurors they could consider as a mitigating factor. Defense counsel reminded the jurors that juveniles of Simmons' age cannot drink, serve on juries, or even see certain movies, because "the legislatures have wisely decided that individuals of a certain age aren't responsible enough." Defense counsel argued that Simmons' age should make "a huge difference to [the jurors] in deciding just exactly what sort of punishment to make." In rebuttal, the prosecutor gave the following response: "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."

The jury recommended the death penalty after finding the State had proved each of the three aggravating factors submitted to it. Accepting the jury's recommendation, the trial judge imposed the death penalty.

## II

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The provision is applicable to the States through the Fourteenth Amendment. The prohibition against "cruel and unusual punishments," like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design. To implement this framework we have established the propriety and affirmed the necessity of referring to "the evolving standards of decency that mark the progress of a maturing society" to determine which punishments are so disproportionate as to be cruel and unusual.

In *Thompson v. Oklahoma*, [487 U. S. 815](#) (1988), a plurality of the Court determined that our standards of decency do not permit the execution of any offender under the age of 16 at the time of the crime. The next year, in *Stanford v. Kentucky*, [492 U. S. 361](#) (1989), the Court, over a dissenting opinion joined by four Justices, referred to contemporary standards of decency in this country and concluded the Eighth and Fourteenth Amendments did not proscribe the execution of juvenile offenders over 15 but under 18.

## III

### A

Now, 30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach. In the present case, too, even in the 20 States without a formal prohibition on executing juveniles, the practice is infrequent. Since *Stanford*, six States have executed prisoners for crimes committed as juveniles. In the past 10 years, only three have done so: Oklahoma, Texas, and Virginia.

We consider the change from *Stanford* to this case to be significant. Petitioner cannot show national consensus in favor of capital punishment for juveniles but still resists the conclusion that any consensus exists against it. The objective indicia of consensus in this case--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 our society views juveniles, in the words *Atkins* used respecting the mentally retarded, as "categorically less culpable than the average criminal."

## B

A majority of States have rejected the imposition of the death penalty on juvenile offenders under 18, and we now hold this is required by the Eighth Amendment.

Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force. Capital punishment must be limited to those offenders who commit "a narrow category of the most serious crimes" and whose extreme culpability makes them "the most deserving of execution." The death penalty is reserved for a narrow category of crimes and offenders.

Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." It has been noted that "adolescents are overrepresented statistically in virtually every category of reckless behavior." In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.

These differences render suspect any conclusion that a juvenile falls among the worst offenders. Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults. We have held there are two distinct social purposes served by the death penalty: "retribution and deterrence of capital crimes by prospective offenders." As for retribution, we remarked in *Atkins* that "[i]f the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution." The same conclusions follow from the lesser culpability of the juvenile offender. Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult. Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.

As for deterrence, it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles, as counsel for the petitioner acknowledged at oral argument. In general we leave to legislatures the assessment of the efficacy of various criminal penalty schemes. Here, however, the absence of evidence of deterrent effect is of special concern because the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence. In particular, as the plurality observed in *Thompson*, "[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent." To the extent the juvenile death penalty might have residual deterrent effect, it is worth noting that the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person.

In concluding that neither retribution nor deterrence provides adequate justification for imposing the death penalty on juvenile offenders, we cannot deny or overlook the brutal crimes too many juvenile offenders have committed. Certainly it can be argued, although we by no means concede the point, that a rare case might arise in which a juvenile offender has sufficient psychological maturity, and at the same time demonstrates sufficient depravity, to merit a sentence of death. Indeed, this possibility is the linchpin of one contention pressed by petitioner and his *amici*. They assert that even assuming the truth of the observations we have made about juveniles' diminished culpability in general, jurors nonetheless should be allowed to consider mitigating arguments related to youth on a case-by-case basis, and in some cases to impose the death penalty if justified. A central feature of death penalty sentencing is a particular assessment of the circumstances of the crime and the characteristics of the offender. The system is designed to consider both aggravating and mitigating circumstances, including youth, in every case. Given this Court's own insistence on individualized consideration, petitioner maintains that it is both arbitrary and unnecessary to adopt a categorical rule barring imposition of the death penalty on any offender under 18 years of age.

We disagree. The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability. 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. In some cases a defendant's youth may even be counted against him. In this very case, as we noted above, the prosecutor argued Simmons' youth was aggravating rather than mitigating. While this sort of overreaching could be corrected by a particular rule to ensure that the mitigating force of youth is not overlooked, that would not address our larger concerns.

Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. The plurality opinion in *Thompson* drew the line at 16. In the intervening years the *Thompson* plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of *Thompson* extends to those who are under 18. The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.

#### IV

Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty. This reality does not become controlling, for the task of interpreting the Eighth Amendment remains our responsibility. Yet at least from the time of the Court's decision in *Trop*, the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment's prohibition of "cruel and unusual punishments."

Respondent and his *amici* have submitted, and petitioner does not contest, that only seven countries other than the United States have executed juvenile offenders since 1990: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and China. Since then each of these countries has either abolished capital punishment for juveniles or made public disavowal of the practice. In sum, it is fair to say that the United States now stands alone in a world that has turned its face against the juvenile death penalty.

The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. The judgment of the Missouri Supreme Court setting aside the sentence of death imposed upon Christopher Simmons is affirmed.

***Justice O'Connor, dissenting.***

The Court's decision today establishes a categorical rule forbidding the execution of any offender for any crime committed before his 18th birthday, no matter how deliberate, wanton, or cruel the offense. Neither the objective evidence of contemporary societal values, nor the Court's moral proportionality analysis, nor the two in tandem suffice to justify this ruling.

Although the Court finds support for its decision in the fact that a majority of the States now disallow capital punishment of 17-year-old offenders, it refrains from asserting that its holding is compelled by a genuine national consensus. Indeed, the evidence before us fails to demonstrate conclusively that any such consensus has emerged in the brief period since we upheld the constitutionality of this practice in *Stanford v. Kentucky*, [492 U. S. 361](#) (1989).

Instead, the rule decreed by the Court rests, ultimately, on its independent moral judgment that death is a disproportionately severe punishment for any 17-year-old offender. I do not subscribe to this judgment. Adolescents *as a class* are undoubtedly less mature, and therefore less culpable for their misconduct, than adults. But the Court has adduced no evidence impeaching the seemingly reasonable conclusion reached by many state legislatures: that at least *some* 17-year-old murderers are sufficiently mature to deserve the death penalty in an appropriate case. Nor has it been shown that capital sentencing juries are incapable of accurately assessing a youthful defendant's maturity or of giving due weight to the mitigating characteristics associated with youth.

On this record--and especially in light of the fact that so little has changed since our recent decision in *Stanford*--I would not substitute our judgment about the moral propriety of capital punishment for 17-year-old murderers for the judgments of the Nation's legislatures. Rather, I would demand a clearer showing that our society truly has set its face against this practice before reading the Eighth Amendment categorically to forbid it.

***Justice Scalia, with whom The Chief Justice and Justice Thomas join, dissenting.***

In urging approval of a constitution that gave life-tenured judges the power to nullify laws enacted by the people's representatives, Alexander Hamilton assured the citizens of New York that there was little risk in this, since "[t]he judiciary ... ha[s] neither FORCE nor WILL but merely judgment." What a mockery today's opinion makes of Hamilton's expectation, announcing the Court's conclusion that the meaning of our Constitution has changed over the past 15 years--not, mind you, that this Court's decision 15 years ago was *wrong*, but that the Constitution *has changed*. The Court reaches this implausible result by purporting to advert, not to the original meaning of the Eighth Amendment, but to "the evolving standards of decency," *ante*, at 6 (internal quotation marks omitted), of our national society. It then finds, on the flimsiest of grounds, that a national consensus

which could not be perceived in our people's laws barely 15 years ago now solidly exists. Worse still, the Court says in so many words that what our people's laws say about the issue does not, in the last analysis, matter: "[I]n the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment." The Court thus proclaims itself sole arbiter of our Nation's moral standards--and in the course of discharging that awesome responsibility purports to take guidance from the views of foreign courts and legislatures. Because I do not believe that the meaning of our Eighth Amendment, any more than the meaning of other provisions of our Constitution, should be determined by the subjective views of five Members of this Court and like-minded foreigners, I dissent.

