

ROPER V. SIMMONS

125 S.CT. 1183 (2005)

Introduction	707
I. Legal Background	708
II. Facts	709
III. The Analysis of the United States Supreme Court	710
A. Whether the National Consensus Supports Abolishing the Juvenile Death Penalty for Offenders who Committed a Crime When Under the Age of Eighteen	710
B. Whether the Juvenile Death Penalty Is a Disproportionate Punishment	712
IV. Implications	713
Conclusion	714

INTRODUCTION

The United States Supreme Court ruled on the constitutionality of the juvenile death penalty seventeen years ago in *Thompson v. Oklahoma*,¹ and held that executing offenders who committed crimes while under the age of sixteen was unconstitutional.² One year later, in *Stanford v. Kentucky*, the Court upheld the constitutionality of the juvenile death penalty for youth ages sixteen and seventeen.³ The Court specifically noted that national standards demonstrated that the public supported the death penalty for sixteen- and seventeen-year-olds.⁴ Despite these rulings, the Court recently opted to reexamine the constitutionality of the juvenile death penalty for sixteen- and seventeen-year-olds under the Eighth and Fourteenth Amendments of the U.S. Constitution.

In 2003, the Missouri Supreme Court held that the juvenile death penalty

1. 487 U.S. 815 (1988).

2. *See id.* at 838 (concluding that the Eighth and Fourteenth Amendments prohibit the execution of such an individual).

3. *See* 492 U.S. 361 (1989).

4. *See id.* at 373 (suggesting that the “pattern of enacted laws” revealed no opposition to the death penalty for sixteen- and seventeen-year-olds). *But see Thompson*, 487 U.S. at 822-29 (summarizing how state laws, jury behavior and decency standards indicate a national consensus against executing fifteen-year-old criminal offenders).

was unconstitutionally cruel and unusual under the Eighth and Fourteenth Amendments and reversed seventeen-year-old Christopher Simmons' death sentence.⁵ Because the state court's decision was contrary to the precedent in *Stanford*, the Supreme Court granted certiorari.⁶ On March 1, 2005, the Supreme Court decided the case in a landmark ruling, which affirmed the decision of the Missouri Supreme Court and overruled the prior Supreme Court decision in *Stanford*.⁷

I. LEGAL BACKGROUND

In determining the constitutionality of the juvenile death penalty, recent cases⁸ have questioned whether the practice constitutes cruel and unusual punishment under the Eighth Amendment.⁹ The state courts have the power to make this determination under the Eighth Amendment, as applied to the states through the Fourteenth Amendment.¹⁰

The Supreme Court provided the framework for analyzing the constitutionality of the juvenile death penalty in two cases prior to *Roper v. Simmons*.¹¹ In *Thompson*, the Court analyzed the constitutionality of the juvenile death penalty by asking whether it comports with "evolving standards of decency that mark the progress of a maturing society."¹² The Court set out a list of broad criteria to consider in determining current national standards.¹³ In deciding *Thompson*, the Court ultimately held that the national consensus did not support the death penalty for those under the age of sixteen.¹⁴

5. See *State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 413 (Mo. 2003) (en banc), (explaining that the Supreme Court of the United States would draw a similar conclusion after engaging in a similar legal analysis), *aff'd*, *Roper v. Simmons*, 125 S.Ct. 1183 (2005).

6. See *id.*, *cert. granted*, 540 U.S. 1160 (Jan. 26, 2004).

7. *Roper v. Simmons*, 125 S.Ct. 1183, 1200 (2005), *aff'g State ex rel. Simmons v. Roper*, 112 S.W.3d 397 (Mo. 2003) (en banc).

8. See, e.g., *Stanford*, 492 U.S. at 364-65; *Thompson*, 487 U.S. at 818-19.

9. See U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

10. See *Furman v. Georgia*, 408 U.S. 238, 240-42 (1972) (Douglas, J., concurring) (stating that the due process clause of the Fourteenth Amendment incorporates the Eighth Amendment by requiring courts to determine whether the death penalty is administered in an inhumane [cruel] manner or applied unequally [unusual] by reason of race, religion, or socio-economic factors).

11. See *Stanford*, 492 U.S. at 361 (describing how the Court will determine whether the death penalty violates the Eighth Amendment); *Thompson*, 487 U.S. at 821-23 (listing the criteria the Court reviews in ruling on the constitutionality of the death penalty).

12. *Thompson*, 487 U.S. at 821 (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

13. See *id.* at 822 (listing state laws, jury behavior and current standards of decency as some of the criteria that the Court will consider). The Court also examined various state laws regarding the rights of fifteen-year-olds, the weight of public opinion as evidenced by prominent national organizations such as the American Bar Association and the practice of other developed nations around the world. *Id.* at 824-38.

14. See *id.* at 838.

One year later, the Court faced the issue of the death penalty for sixteen- and seventeen-year-olds in *Stanford*.¹⁵ The Court upheld the constitutionality of the death penalty for these juvenile offenders, stating that the only indicator to consider should be the law of each state.¹⁶ These different approaches to examining the constitutionality of the death penalty have caused confusion as to what is the appropriate method of determining the national consensus relating to the juvenile death penalty.

In the same year as *Stanford*, the Supreme Court ruled on the constitutionality of executing a mentally retarded person in *Penry v. Lynaugh*.¹⁷ The Court applied the *Thompson* framework of determining the national standards of decency and held that, based on the state laws in effect, there was no national consensus against executing mentally retarded offenders.¹⁸ Thirteen years later, the Court again examined a case challenging the constitutionality of executing mentally retarded individuals in *Atkins v. Virginia*.¹⁹ The Court reevaluated the national consensus and found that based on state laws, the frequency with which the punishment was used, opinions of national organizations and medical professionals, and the current standards of decency, the death penalty for mentally retarded individuals was unconstitutional, as it constituted cruel and unusual punishment.²⁰ The Court's ruling in *Atkins* raised the question as to what extent national standards have changed such that the public consensus would now object to the juvenile death penalty for those under age eighteen at the time of commission of the crime.

II. FACTS

In September 1993, Christopher Simmons, then age seventeen, plotted with two of his friends to commit burglary and murder.²¹ On September 8, 1993, he and one other friend went to the home of Shirley Crook and

15. See 492 U.S. at 365-66 (recounting the facts of the two consolidated cases before the Court, one involving a juvenile who committed his capital crime at age sixteen and the other at age seventeen).

16. See *id.* at 377 (determining that the national consensus is best measured by looking at the state and federal laws). The Court stated that including the opinion of national organizations and others is not an accurate measure of public opinion and, rather, a dubious foundation for constitutional law. *Id.*

17. 492 U.S. 302, 340 (1989) (concluding that the Eighth Amendment does not preclude the execution of a mentally retarded individual), *abrogated by* *Atkins v. Virginia*, 536 U.S. 304 (2002).

18. See *id.* at 334 (noting that only two states prohibited the execution of mentally retarded individuals).

19. See 536 U.S. at 304-11 (describing the case of Daryl Atkins, a mildly retarded man sentenced to death for capital murder, abduction and armed robbery).

20. See *id.* at 315-16.

21. See *State v. Simmons*, 944 S.W.2d 165, 169-70 (Mo. 1997) (en banc) (recounting the details of the crime), *habeas corpus granted by* *State ex rel. Simmons v. Roper*, 112 S.W.3d 397 (Mo. 2003), *aff'd*, 125 S.Ct. 1183 (2005).

murdered her.²² Two days later, police arrested Simmons and he confessed to the crime.²³ A jury convicted him of first-degree murder and sentenced him to death.²⁴

The Missouri Supreme Court affirmed Simmons's conviction in 1997, noting that the death penalty was not disproportionate when compared to the penalties imposed in other cases.²⁵ Upon a writ of habeas corpus in 2003, the Missouri Supreme Court overturned Simmons's conviction and sentenced him to life in prison without the possibility of parole.²⁶ The judge stated that since the Supreme Court recently held the death penalty unconstitutional for mentally retarded persons in *Atkins*, it was likely the Court would now find the death penalty unconstitutional for juvenile offenders who committed crimes when under the age of eighteen.²⁷ In January 2004, the Supreme Court granted certiorari to reexamine the constitutionality of the juvenile death penalty.²⁸

III. THE ANALYSIS OF THE UNITED STATES SUPREME COURT

To determine whether applying the death penalty to juveniles who were under eighteen at the time of the offense is constitutional, the Supreme Court examined the "evolving standards of decency that mark the progress of a maturing society."²⁹ More specifically, the Court reviewed the national consensus relating to the issue and discussed whether, in its own judgment, the punishment is disproportionate for juveniles.³⁰

A. *Whether the National Consensus Supports Abolishing the Juvenile Death Penalty for Offenders who Committed a Crime When Under the Age of Eighteen*

The Supreme Court concluded that a national consensus exists for the abolition of the death penalty for offenders under eighteen-years-old at the

22. *See id.* (describing how the defendant and his friend entered the victim's residence, bound her and pushed her off of a railroad trestle into a river).

23. *See id.* at 170 (stating that Simmons even agreed to reenact the crime on videotape).

24. *See id.*

25. *See id.* at 191 (citing *State v. Wilkins*, 736 S.W.2d 409 (Mo. 1987) (en banc); *State v. Richardson*, 923 S.W.2d 301 (Mo. 1996) (en banc)). Both cases involved sentencing juvenile offenders to the death penalty. *Id.*

26. *See Simmons*, 112 S.W.3d at 413.

27. *See id.* (suggesting that, under the "evolving standards of decency" analysis, the U.S. Supreme Court would prohibit executing offenders convicted of committing a crime under the age of eighteen).

28. *State ex rel. Simmons v. Roper*, 112 S.W.3d 397 (Mo. 2003), *cert. granted*, *Roper v. Simmons*, 540 U.S. 1160 (Jan. 26, 2004) (mem.).

29. *Roper*, 125 S.Ct. at 1190 (quoting *Trop*, 356 U.S. at 100-01).

30. *See id.* at 1192 (recognizing that the Court must reevaluate the factors for the juvenile death penalty in this case, even though the framework appears similar to the *Stanford* analysis).

time of the crime.³¹ Both the U.S. Supreme Court and the Supreme Court of Missouri utilized the analysis set forth in the U.S. Supreme Court's decision in *Atkins*.³² Justice Stevens, in announcing the opinion in *Atkins*, reached the Court's conclusion by examining the current legislative intent across the country, the frequency with which states imposed capital punishment, the opinion of national organizations, medical professionals, and international laws and finally the proportionality of the death penalty in light of today's decency standards.³³

The Supreme Court noted the similarities between the present case and *Atkins* regarding the national consensus.³⁴ The Court found that thirty states prohibit the juvenile death penalty, which was the same number of states that prohibited the execution of the mentally retarded when the Court decided *Atkins*.³⁵ The Court also noted that, since its decision in *Stanford*, only six states have executed juvenile offenders.³⁶ Additionally, in the seminal *Stanford* case, the Governor of Kentucky spared Kevin Stanford's life, suggesting that the state should abolish its practice of sentencing juvenile offenders to death.³⁷

While most indicia of national consensus proved to be similar between *Roper* and *Atkins*, the Court noted that the change of the public's opinion for the abolition of the juvenile death penalty was occurring more slowly than it did for the mentally retarded.³⁸ The Court attributed this difference to the fact that many states already recognize the inappropriateness of executing juvenile offenders by limiting the penalty to those over age seventeen or eighteen.³⁹ Despite this slower progress toward abolition, the

31. *See id.* at 1194 (proposing that all "objective indicia" of a national consensus point to a societal opposition to administering the juvenile death penalty).

32. *See id.* at 1192 (reasoning that the evidence in this case was analogous to the evidence in the *Atkins* case and thus it was appropriate to use a similar analysis); *see also Simmons*, 112 S.W.3d at 407 (justifying the use of the *Atkins* approach because the same factors the Court used in determining the constitutionality of the death penalty for the mentally retarded also apply to the death penalty for juveniles).

33. *See Simmons*, 112 S.W.3d at 404 (citing *Atkins*, 536 U.S. at 313).

34. *See Roper*, 125 S.Ct. at 1192 (describing the evidence against the juvenile death penalty as parallel to the evidence against the death penalty for the mentally retarded).

35. *See id.* (noting that twelve states reject the death penalty altogether, while eighteen expressly prohibit juveniles from its application).

36. *See id.* (emphasizing that, in the past ten years, only three states have executed juvenile offenders).

37. *See id.* (demonstrating that states have increasingly refused to acknowledge the juvenile death penalty as a proportionate punishment).

38. *See id.* at 1193 (explaining that in the period between the two death penalty cases involving the mentally retarded, *Penry* and *Atkins*, sixteen states that allowed executions for mentally retarded offenders had abandoned the practice; whereas in the time between *Stanford* and *Roper*, only five states had moved to prohibit the juvenile death penalty).

39. *See id.* (referencing the fact that at the time of *Stanford*, twelve states prohibited execution of any juvenile under age eighteen, and fifteen states prohibited execution of those under age seventeen).

Court found the data compelling enough to conclude that the “consistency of the direction of change” demonstrated that the juvenile death penalty was phasing out of state criminal systems.⁴⁰

After conducting the analysis above, the Court determined that the prohibition of the juvenile death penalty in a majority of states, the infrequency of its use and the clear trend towards eliminating the practice urged the conclusion that the national consensus supported abolition.⁴¹

B. Whether the Juvenile Death Penalty Is a Disproportionate Punishment

In assessing the proportionality of the death penalty to the crimes juveniles commit, the Court explored when the death penalty should be used under the Eighth Amendment.⁴² The Court focused its analysis on the maturity and intelligence of juvenile offenders, the purposes of the death penalty, and whether executing juveniles serves the purposes behind the punishment.⁴³

The Court discussed how the death penalty is an extreme punishment deserving special attention under the Eighth Amendment.⁴⁴ An underlying premise is that the states will apply the death penalty to a narrow group of crimes and offenders.⁴⁵ The Court argued that juveniles cannot be classified as the worst offenders, and should instead be excluded from this narrow group to which the death penalty applies.⁴⁶ To the Court, juveniles deserve special treatment because they lack maturity, make impulsive decisions, are vulnerable to peer pressure and negative influences and lack the character of fully-grown adults.⁴⁷ Guided by its decision in *Thompson*, the Court concluded that the characteristics inherent to juveniles preclude

40. *Id.* (quoting *Atkins*, 536 U.S. at 315) (discussing the significance of the fact that no death penalty state had lowered the minimum age, and that a group of states had chosen to abandon the practice altogether).

41. *See id.* at 1194 (pointing to the evidence to show that juveniles deserve similar treatment regarding the death penalty as the mentally retarded) (citing *Atkins*, 536 U.S. at 316 (determining the evidence in that case made the mentally retarded “categorically less culpable than the average criminal”)).

42. *See id.* at 1194-96 (reasoning why juveniles under the age of eighteen do not deserve this severe of a punishment).

43. *See id.*

44. *See id.* at 1194 (observing that throughout Supreme Court jurisprudence, the justices have held that states should only use the death penalty for the most serious crimes and for the most reprehensible criminals).

45. *See id.* at 1195 (noting that the Court has previously held that states cannot sentence certain groups of individuals to death, such as juveniles under sixteen, the criminally insane and the mentally retarded).

46. *See id.* (listing the three differences between juvenile and adult offenders that makes the death penalty cruel and unusual punishment under the Eighth Amendment).

47. *See id.* (emphasizing that because of these differences, wrongful behavior on the part of a juvenile is not as morally reprehensible as that of an adult).

the imposition of the death penalty to those under age eighteen.⁴⁸

The Court analyzed whether the desire for retribution or deterrence of capital crimes justified imposing the death penalty on juveniles under eighteen in order to determine the proportionality to the punishment.⁴⁹ Regarding retribution, the Court based its reasoning on its holding in *Atkins* and posited that retribution was not proportional in juvenile death penalty cases since the state would impose the punishment on someone who was less culpable due to “youth and immaturity.”⁵⁰ The Court reached a similar conclusion regarding the deterrent effect of the death penalty on juveniles.⁵¹ The Court noted that the lack of evidence proving a deterrent effect amongst juveniles led to the conclusion that the effect was insignificant.⁵² Therefore, the Court determined that the social purposes of retribution and deterrence do not provide justification for use of the death penalty for those under eighteen.⁵³

In concluding that the juvenile death penalty is disproportionate for offenders under eighteen, the Court also discussed how no other country officially sanctions the practice except for the United States.⁵⁴ The Court explained that establishing a bright line rule at age eighteen conforms to society’s view of when a juvenile becomes an adult.⁵⁵

IV. IMPLICATIONS

The Supreme Court’s decision to abolish the juvenile death penalty

48. *See id.* at 1195-96 (arguing that juveniles have a greater chance of reforming themselves); *see also Thompson*, 487 U.S. at 833-38 (stating that the punishment must be proportionate to the personal culpability of the defendant and that juveniles are less culpable than adult offenders due to their vulnerability and other traits inherent in youth).

49. *See Roper*, 125 S.Ct. at 1196 (noting that given juveniles’ “diminished capacity” it is less likely that the death penalty’s purposes will apply to juveniles in the same manner as for adults).

50. *See id.* (citing *Atkins*, 536 U.S. at 319).

51. *See id.* (citing *Thompson*, 487 U.S. at 837) (noting that juveniles are less susceptible to deterrence than adults).

52. *See id.* (conceding that while the efficacy of a criminal penalty is usually reserved for debate among the legislature, the absence of data is important here in inferring that juveniles are unlikely to be deterred by this punishment).

53. *See id.* at 1196-97 (stressing that the Court cannot overlook the fact that many juveniles commit brutal crimes, but finding that the brutality of a particular crime would not outweigh the mitigating factor of a juvenile’s diminished capacity).

54. *See id.* (clarifying that while international law is not controlling when interpreting the U.S. Constitution, the courts have considered it in determining what is “cruel and unusual” under the Eighth amendment); *see, e.g., Atkins*, 536 U.S. at 316 n.21 (noting the international disapproval for the execution of mentally retarded people); *Thompson*, 487 U.S. at 830-31 (recognizing that other Western countries have abolished the juvenile death penalty).

55. *See Roper*, 125 S.Ct. at 1198 (noting that the *Thompson* Court drew the line for the death penalty at sixteen without objection and, considering the changing standards of decency, the Court held that the *Thompson* logic applied to raising the death penalty age to eighteen).

raises new questions of whether the Court will abolish the death penalty as a whole. The Court's analysis placed high value on the "evolving standards of decency" as measured by criteria determining a national consensus as well as the independent judgment of judges. Justice Scalia, dissenting from this opinion, criticized this new approach to Eighth Amendment jurisprudence.⁵⁶

The Court's ruling immediately affected pending and future cases concerning the juvenile death penalty.⁵⁷ This decision vacated seventy-two juvenile death sentences in over twelve states.⁵⁸ Moreover, many experts view the Court's analysis as an opportunity to go beyond the juvenile death penalty and apply it to other special classes of people.⁵⁹ The Court may find other characteristics of offenders or categories of crimes that may further limit the use of the death penalty.⁶⁰

One aspect of the decision raises questions about future American constitutional analysis. The Court noted that its decision conforms to current international law.⁶¹ Beyond the current issue of the juvenile death penalty, the Court may refer to international law in resolving other constitutional questions, a possibility which some justices find troubling.⁶²

CONCLUSION

The Supreme Court's decision in *Roper v. Simmons* is a significant step toward the abolishment of the death penalty. The Court held that the

56. *See id.* at 1217 (Scalia, J., dissenting) (refusing to support the majority's decision because it does not rely on objective factors); *see also* Bill Mears, *High Court: Juvenile Death Penalty Unconstitutional* (Mar. 1, 2005) (detailing Scalia's opinion that the analysis in the *Roper* case was nothing more than the personal views of the justices and a "snapshot of American public opinion at a particular point in time"), at <http://www.cnn.com/2005/LAW/03/01/scotus.death.penalty/index.html>.

57. *See Roper*, 125 S.Ct. at 1198 (explaining that *Stanford* is no longer good law and cannot be relied upon to carry out executions).

58. *See* Mark Hansen, *Ruling May Spur New Death Penalty Challenges: Abolition Unlikely, But Experts See Limits to Capital Punishment for Other Groups*, 4 ABA J. EREPORT 9 (March 4, 2005) (reporting that the *Roper* decision also prohibits the twenty states that allow juvenile executions from imposing such sentences), at <http://www.abanet.org/journal/ereport/m4sct.html>.

59. *See id.* (stating that the reasoning of the Court opens the door to claims by "[eighteen to twenty]-year-olds, minorities, the mentally ill, foreign nationals and other classes of people").

60. *See id.* (suggesting that it is possible that the death penalty will be further restricted, but that the current composition of the Court makes it unlikely that it will be abolished).

61. *See Roper*, 125 S.Ct. at 1198 (explaining that only the United States officially sanctioned the juvenile death penalty).

62. *See id.* at 1225-26 (Scalia, J., dissenting) (noting that the Court cited to international treaties and conventions that the U.S. President has not yet signed nor has the Senate ratified). *Contra id.* at 1215-16 (O'Connor, J., dissenting) (suggesting the Court has referred to international law over the past fifty years in previous decisions relating to the Eighth Amendment and that the Court derives value in knowing that their rulings comport with standards of decency prevailing in other countries).

juvenile death penalty for offenders who were older than fifteen but younger than eighteen at the time of the commission of the crime is impermissible under the Eighth and Fourteenth Amendments of the Constitution as cruel and unusual punishment. The Court's decision opens up the possibility for other classes of offenders to propose more limitations to the death penalty in the future, potentially leading to a complete abolition of the practice.

JENNIFER ESWARI BORRA