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Life Imprisonment Without the Possibility of Parole is Cruel and Unusual Punishment and Barred by the Eighth Amendment for Juveniles Who Have Committed Nonhomicide Crimes: *Graham v. Florida*

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Life Imprisonment Without the Possibility of Parole is Cruel and Unusual Punishment and Barred by the Eighth Amendment for Juveniles Who Have Committed Nonhomicide Crimes: *Graham v. Florida*

UNITED STATES—CRIMINAL LAW—JUVENILE SENTENCING PROCEDURES—The United States Supreme Court held that the Constitution prohibits sentencing juveniles, who have committed nonhomicide crimes, to life imprisonment without the possibility of parole.


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I. THE FACTS AND PROCEDURAL HISTORY OF GRAHAM

Terrance Jamar Graham was arrested in July of 2003, at the age of sixteen, for his involvement in a robbery.\(^1\) Pursuant to Florida law, Graham was prosecuted as an adult.\(^2\) The maximum sentence Graham could face was life in prison without the possibility of parole.\(^3\) However, Graham pled guilty and was sentenced to three years probation and served twelve months in prison.\(^4\) While on probation, Graham was accused again of robbery on December 2, 2004.\(^5\) He was still under the age of eighteen at the time of his second arrest.\(^6\)

On December 13, 2004, an affidavit was filed with the trial court that alleged that Graham had acted in violation of the terms of his probation.\(^7\) The trial court held hearings in December 2005 and January 2006 concerning the alleged violations.\(^8\) The trial court found that Graham had indeed violated the terms of his probation.\(^9\) At the sentencing hearing, the minimum possible sentence was five years, which was requested by his counsel.\(^10\) While the maximum penalty allowed was life imprisonment, the Florida Department of Corrections suggested a four year sentence, whereas the state asked that Graham be given a total sentence of forty-five

\(^1\) Graham v. Florida, 130 S. Ct. 2011, 2018 (2010). Graham, along with three accomplices, attempted to rob a restaurant in Jacksonville, Florida. Graham, 130 S. Ct. at 2018. While no money was actually taken from the restaurant, one of Graham's accomplices hit the manager in the head twice with a metal bar, causing injury. Id.

\(^2\) FLA. STAT. § 985.557(1)(b)(2007). "Under Florida law, it is within a prosecutor's discretion whether to charge 16 and 17-year-olds as adults or juveniles for most felony crimes." Graham, 130 S. Ct. at 2018.

\(^3\) Graham, 130 S. Ct. at 2018. Graham was charged with a first degree felony, armed burglary with assault or battery, which had a maximum sentence of life imprisonment without the possibility of parole. Id. Also, Graham was charged with a second degree felony, attempted armed-robbery, which had a maximum sentence of fifteen years imprisonment. Id.

\(^4\) Id. Graham was released from prison on June 25, 2004 because he received credit for time served while he was awaiting trial. Id.

\(^5\) Id. at 2018. On that night, Graham and two accomplices forcibly entered a home and held the occupants at gunpoint and then locked the occupants in a closet. Id at 2018-19. Graham was also suspected of another robbery that evening where one of his accomplices was shot. Id. at 2019. Graham took the accomplice to the hospital where a police officer noticed him and thereafter a high speed chase ensued before Graham crashed his car and was apprehended. Id.

\(^6\) Id. Graham was thirty-four days shy of his eighteenth birthday at the time of his arrest. Id.

\(^7\) Id.

\(^8\) Graham, 130 S. Ct. at 2019.

\(^9\) Id. By admitting to fleeing, the trial court reasoned that Graham essentially acknowledged that he violated the terms of his probation. Id.

\(^10\) Id.
years. The trial court judge, however, found Graham to be hopeless and gave Graham the maximum sentence of life, plus fifteen years, without the possibility of parole.

Graham disputed the sentence by filing a motion with the trial court asserting a violation of his constitutional rights under the Eighth Amendment. The time period for the trial court to rule on the motion lapsed and it was thus denied by operation of law. Graham then appealed to the First District Court of Appeal of Florida. The court agreed with the trial judge's opinion, finding Graham incorrigible and ruled that the sentence imposed by the trial court was not unwarranted due to the nature of his crimes. The Florida Supreme Court denied review and the United States Supreme Court granted certiorari to resolve the constitutional issue.

The issue faced by the Court was whether the Eighth Amendment's Cruel and Unusual Punishments Clause makes a sentence of life imprisonment without the possibility of parole unconstitutional when given to a minor under the age of eighteen for a non-homicide offense. Graham's case, challenging the length of his sentence, was an issue of first impression. The Supreme Court reversed the lower court by a five to three vote and held that a life sentence under such circumstances without the possibility of parole, from the outset, is unconstitutional.

11. Id. The state recommended thirty years for the armed burglary and fifteen years for the attempted robbery. Id.
12. Id. at 2020. The trial court judge explained the sentence by stating: “Given your escalating pattern of criminal conduct, it is apparent to the Court that you have decided that this is the way you are going to live your life and that the only thing I can do now is to try and protect the community from your actions.” Id.
13. Graham, 130 S. Ct. at 2020. Graham was sentenced to life for the armed burglary charge and fifteen years for the attempted armed robbery charge. Id. Florida has abolished its parole system, so a life sentence gives a defendant no possibility of release unless he is granted executive clemency. FLA. STAT. § 921.002(1)(e) (2003); Graham, 130 S. Ct. at 2020.
15. Id.
16. Id.
17. Id.
18. Id.
21. Id. at 2017. Justice Kennedy delivered the opinion of the Court, to which Justice Stevens, Justice Ginsburg, Justice Breyer, and Justice Sotomayor joined.
22. Id. at 2034. The Court held:

The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit a homicide. A State need not guarantee the offender
II. THE UNITED STATES SUPREME COURT DECISION IN GRAHAM

A. Justice Kennedy’s Majority Opinion

Justice Kennedy, writing for the majority, began by examining what aspects of a punishment make it cruel and unusual as to be prohibited by the Eighth Amendment. One of the main concepts of the Eighth Amendment is the sentence given should be balanced and appropriate to the crime committed. The case at issue challenged the sentencing practice as a whole, pertaining to all persons convicted of nonhomicide crimes under the age of eighteen. Thus, a case-by-case proportionality test would not be applicable. To determine if a life sentence without the possibility of parole for a juvenile is cruel and unusual, the majority took into account state sentencing practices.

Justice Kennedy first examined state and federal legislation. The results varied as some jurisdictions have enacted legislation allowing life imprisonment and others have banned it. To gain a clearer picture of the nation’s actual consensus on the issue, the majority researched the sentencing practices in those jurisdictions that allow juveniles to receive life sentences for nonhomicide offenses. The majority found the actual application of such sentences to be rare. Through the study of the actual application of state sentencing practices, Justice Kennedy found that the majority of courts are actually against it.

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eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.

Id.
23. Id. at 2021.
24. Id.
26. Id. at 2023.
27. Id. at 2022.
28. Id. at 2023.
29. Id.

Six jurisdictions do not allow life without parole sentences for any juvenile offenders. Seven jurisdictions permit life without parole for juvenile offenders, but only for homicide crimes. Thirty-seven States as well as the District of Columbia permit sentences of life without parole for a juvenile nonhomicide offender in some circumstances.

Id.
31. Id. “[O]nly 11 jurisdictions nationwide in fact impose life without parole sentences on juvenile nonhomicide offenders—and most of those impose the sentence quite rarely—while 26 States as well as the District of Columbia do not impose them despite apparent statutory authorization.” Id. at 2024.
32. Id. at 2026.
While the study of actual sentencing practices was beneficial to the determination of the issue, the majority highlighted the importance of the criminal culpability, actual crime committed, and length of the sentence as crucial portions of the analysis in determining if the punishment is cruel and unusual. The Court acknowledged that juveniles are at a greater risk than mature adults to be influenced by negative behavior, as their minds are not as developed as adult minds. But, juveniles also have the ability to grow and modify their behavior. The Court recognized in Roper v. Simmons that minors lack culpability and should not receive the harshest sentences. Justice Kennedy noted that with the exception of the death penalty, life imprisonment without the possibility of parole is the harshest punishment available. The majority contended that there is a lack of penological justifications for sentencing juveniles to life imprisonment when they have committed a nonhomicide crime. Justice Kennedy argued that inflicting the most severe punishment was not warranted for nonhomicide crimes. Further, the Court asserted that the same qualities possessed by juveniles that make them less culpable than adults, also limit the effect of deterrence. Also, while the trial court found Graham to be incorrigible, the majority found it impossible to determine if a juvenile's crime shows his true character or just lack of maturity, thus the Court was unable to justify categorizing the criminal minor as incapacitated.

33. Id.
34. Id.
35. Graham, 130 S. Ct. at 2026.
36. 543 U.S. 551 (2005). Roper involved a juvenile sentenced to death for a murder that was committed when he was seventeen years old. Roper, 543 U.S. 556. The Supreme Court held that it was unconstitutional to execute juveniles who were under the age of eighteen when the offense was committed. Id. at 578.
37. Graham, 130 S. Ct. at 2026. “As compared to adults, juveniles have a ‘lack of maturity and an underdeveloped sense of responsibility’; they ‘are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure’; and their characters are ‘not as well formed.’” Id. (citing Roper, 543 U.S. at 569-70).
38. Graham, 130 S. Ct. at 2027.
39. Id. at 2028. The goals of penal sanctions that have been recognized are legitimate-retribution, deterrence, incapacitation, and rehabilitation. Id.
40. Id. at 2027. “The Court has recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers.” Id.
41. Id. at 2028-29. “[Juveniles] are less likely to take a possible punishment into consideration when making decisions. This is particularly so when that punishment is rarely imposed.” Id.
42. Id. at 2029. It is difficult to determine if a minor will forever pose a risk to society. Id. “It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile
nological justification was rehabilitation and when a juvenile is not provided with an opportunity for parole, the majority contended there is no motive for the juvenile to change.\textsuperscript{43}

Justice Kennedy did not deny that Graham's conduct warranted punishment, rather he maintained that Graham may not be a danger to the community forever and as such, he should have a chance to eventually reenter society and show maturation and rehabilitation.\textsuperscript{44} Because minors who commit nonhomicide offenses do lack certain characteristics that adults possess and there is a lack of justification for imposing the most severe sentences, the Court held that life imprisonment without the possibility of parole is a cruel and unusual punishment when imposed upon a juvenile for a nonhomicide offense.\textsuperscript{45} The majority clarified that those who were under eighteen at the time of their offense, like Graham, were not promised that they will receive parole; rather, the Court concluded that the Constitution prohibits courts from inflicting a life sentence from the beginning.\textsuperscript{46} Justice Kennedy stated that Graham and other juveniles are to be given a chance to mend their ways.\textsuperscript{47}

B. Chief Justice Roberts's Concurring Opinion

Chief Justice Roberts wrote a concurring opinion in judgment agreeing with the majority's conclusion that Graham's sentence was unconstitutional, but under a different analysis.\textsuperscript{48} Chief Justice Roberts based his analysis primarily on case law.\textsuperscript{49} Through an examination of proportionality, Chief Justice Roberts agreed that the sentence of life imprisonment violated the Constitution of offender whose crime reflects irreparable corruption." \textit{Id.} at 2026 (citing \textit{Roper}, 543 U.S. 551, 573).
\textsuperscript{43} \textit{Graham}, 130 S. Ct. at 2029-2030.
\textsuperscript{44} \textit{Id.} at 2030.
\textsuperscript{45} \textit{Id.}
\textsuperscript{46} \textit{Id.} "The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society." \textit{Id.}
\textsuperscript{47} \textit{Id.}
\textsuperscript{48} \textit{Graham}, 130 S. Ct. at 2036 (Roberts, C.J., concurring). Justice Roberts stated: "I agree with the Court that Terrance Graham's sentence of life without parole violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.' Unlike the majority, however, I see no need to invent a new constitutional rule of dubious provenance in reaching that conclusion." \textit{Id.}
\textsuperscript{49} \textit{Id.} at 2037.
with regard to Graham’s case. However, Chief Justice Roberts disagreed with the majority concerning the blanket rule that mandates the unconstitutionality of life sentences without the possibility of parole for all juvenile nonhomicide offenders and instead contended that some juveniles could receive such punishments. While this concurring opinion agreed with the decision concerning Graham, the Chief Justice disagreed with the categorical rule and asserted that there are some crimes where it would be constitutional to impose a life sentence without possibility of parole.

C. Justice Thomas’ Dissenting Opinion

Justice Thomas dissented from the majority and contended that judges and juries within the states should retain the power to impose a life sentence without parole for juvenile offenders. The dissenting opinion disagreed entirely with the categorical rule imposed to protect all juveniles who have committed any offense besides murder. Justice Thomas also asserted that the majority did not sufficiently provide any evidence rationalizing the categorical rule it has applied. First, the dissent addressed the majority’s argument that there was a national consensus against the application of life sentences for juveniles and concluded the opposite, as juveniles are permitted to be tried as adults and thus can

50. Id. at 2036. Justice Roberts explained, “Graham’s juvenile status-together with the nature of his criminal conduct and the extraordinarily severe punishment imposed lead me to conclude that his sentence of life without parole is unconstitutional.” Id.
51. Id. at 2038-39. The concurring opinion concludes that case precedence is sufficient in this area:

[O]ur existing precedent already provides a sufficient framework for assessing the concerns outlined by the majority. Not every juvenile receiving a life sentence will prevail under this approach. Not every juvenile should. But all will receive the protection that the Eighth Amendment requires.

52. Id. at 2042. Chief Justice Roberts asserted “[s]ome crimes are so heinous, and some juvenile offenders so highly culpable, that a sentence of life without parole may be entirely justified under the Constitution.” Id.
53. Graham, 130 S. Ct. at 2043 (Thomas, J., dissenting). Justice Scalia joined, while Justice Alito joined as to Parts I and III. Id.
54. Id. at 2046. Justice Thomas noted, “[f]or the first time in its history, the Court declares an entire class of offenders immune from a noncapital sentence using the categorical approach it previously reserved for death penalty cases alone.” Id. Justice Thomas further asserted that “[n]o reliable limiting principle remains to prevent the Court from immunizing any class of offenders from the law’s third, fourth, fifth, or fiftieth most severe penalties as well.” Id.
55. Id. at 2048.
be sentenced as adults.\footnote{Id.} The rationale for this argument, as Justice Thomas noted, was based largely on the increasing severity of punishments for juvenile offenders and the overwhelming majority of jurisdictions that allow minors to be tried as adults.\footnote{Id. at 2050.} Justice Thomas maintained that because there may be circumstances where a juvenile did possess the culpability for a heinous, non-homicide crime, juries should retain their ability to make the decision to punish the juvenile as an adult.\footnote{Graham, 130 S. Ct. at 2050 (Thomas, J., dissenting).}

Justice Thomas analyzed the data received from the test showing the rarity of life sentences actually being imposed differently and concluded that the study merely showed that the majority of jurisdictions are in agreement that the penalty should be administered rarely, not that it should never be given.\footnote{Id. at 2051.} Justice Thomas further asserted that the evidence that jurisdictions have enacted legislation allowing life sentences showed that the people of those jurisdictions are aware that there may be certain situations in which the sentence may be warranted; therefore, the sentence is not cruel and unusual.\footnote{Id. at 2054.} Ultimately, the dissent's issue with the majority opinion reached by the Court was the blanket constitutional ban on life sentences without parole for juveniles in non-homicide cases.\footnote{Id.}

\begin{itemize}
\item \footnote{Id.} Justice Thomas argued that as because all the states and government allow for juveniles to be tried as adults under certain circumstances, they may also be punished as adults. \footnote{Id.} The dissent also provided statistics that show that "[only five States prohibit juvenile offenders from receiving a life without-parole sentence that could be imposed on an adult convicted of the same crime.]" \footnote{Id. at 2049.}
\item \footnote{Id. at 2050.} Id. at 2051. The dissent reasoned, "[t]hat a punishment is rarely imposed demonstrates nothing more than a general consensus that it should be just that-rarely imposed. It is not proof that the punishment is one the Nation abhors." \footnote{Id.}
\item \footnote{Id.} To further illustrate his conclusion, Justice Thomas used a recent case in Oklahoma as an example. \footnote{Id.} Recently, a seventeen year old was sentenced to life without the possibility of parole for attacking and raping a teenage girl. \footnote{Id.} Before this instance, Oklahoma had never utilized the sentence and Justice Thomas concluded that while the sentence was rare, it was to be used when those rare circumstances arise. \footnote{Id.}
\item \footnote{Id. at 2054.} Justice Thomas poses the main issue of the case as: Our society tends to treat the average juvenile as less culpable than the average adult. But the question here does not involve the average juvenile. The question, instead, is whether the Constitution prohibits judges and juries from \textit{ever} concluding that an offender under the age of 18 has demonstrated sufficient depravity and incorrigibility to warrant his permanent incarceration. \footnote{Id.}
\end{itemize}
D. Justice Steven's Concurring Opinion

Justice Stevens briefly responded to Justice Thomas's dissent through a concurring opinion. Through the concurrence, Justice Stevens argued that while the Court may not have found an issue with certain sentences being cruel and unusual, society is continuously changing.

E. Justice Alito's Dissention Opinion

Finally, Justice Alito further dissented from the majority opinion to make two brief points. Justice Alito noted that the Court's holding on the ban of life sentences for juveniles does not affect term of years punishments from still being imposed on juveniles. Lastly, Justice Alito refused to come to a conclusion regarding the proportionality issue, as he found that the issue was not before the Court in this case.

III. THE EVOLUTION OF THE EIGHTH AMENDMENT AND PRECEDENT LEADING TO GRAHAM

A. Weems v. United States

In Weems v. United States, the Supreme Court determined that there is a proportionality requirement for criminal penalties; thus, a punishment must be proportionate to the offense in order to not be cruel and unusual under the Eighth Amendment. The Court assessed the proportionality of sentences through either a case-by-case approach, or a categorical rule approach, in determining whether a punishment is unconstitutionally excessive. The

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62. Id. at 2036 (Stevens, J., concurring). Justice Ginsburg and Justice Sotomayor joined. Id.
63. Graham, 130 S. Ct. at 2036 (Stevens, J., concurring). Justice Stevens elaborated that "[p]unishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time; unless we are to abandon the moral commitment embodied in the Eighth Amendment, proportionality review must never become effectively obsolete." Id.
64. Id. at 2058 (Alito, J., dissenting).
65. Id.
66. Id.
67. 217 U.S. 349, 367 (1910). "[t] is a precept of justice that punishment for crime should be graduated and proportioned to offense." Weems, 217 U.S. at 367.
68. Id. See, e.g., Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (holding that the Eighth Amendment "does not require a strict proportionality between crime and sentence" but rather "forbids only extreme sentences that are 'grossly disproportionate' to the crime."); Solem v. Helm, 463 U.S. 277 (1983) (holding that life without the possibility of parole was unconstitutional for the defendant's seventh nonviolent felony).
The Court has limited categorical rules to cases restricting the imposition of the death penalty, limiting sentences based on either the type of crime or the characteristics of the accused. In making categorical rules for the implication of the death penalty, the Court has looked to societal standards, sentencing practices, and penological goals to determine whether the sentence is excessive and unconstitutional under the Eighth Amendment. The language of the Eighth Amendment’s ban on cruel and unusual punishment has not been defined, and its application must be interpreted through the established framework discussed in Trop v. Dulles that looks to the changing standards of society.

B. Coker v. Georgia

In Coker v. Georgia, the issue before the Court was whether the imposition of the death penalty was an excessive and unconstitutional punishment under the Eight Amendment for the crime of rape. The Court held that the death penalty would be cruel and unusual punishment and unconstitutional when the offender committed rape. In reaching its conclusion, the Court looked to the state legislatures to determine how many states allowed the death penalty for such an offense. The Court also looked to the actual sentencing practices because juries are the true indication of society’s standards, and the majority found that the results indicate that death is excessive as a punishment for rape of an adult.

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69. Graham, 130 S. Ct. at 2022.
70. Coker v. Georgia, 433 U.S. 584, 592 (1977). The Court noted: [A] punishment is “excessive” and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. A punishment might fail the test on either ground. Furthermore, these Eighth Amendment judgments should not be, or appear to be, merely the subjective views of individual Justices; judgment should be informed by objective factors to the maximum possible extent. To this end, attention must be given to the public attitudes concerning a particular sentence history and precedent, legislative attitudes, and the response of juries reflected in their sentencing decisions are to be consulted.

Coker, 433 U.S. at 592 (citing Gregg v. Georgia, 428 U.S. 153 (1976)).

71. Trop v. Dulles, 356 U.S. 86, 100-01 (1958). This Court held that we must look to “the evolving standards of decency that mark the progress of a maturing society” in deciding whether or not a punishment is unconstitutional under the Eighth Amendment. Trop, 356 U.S. at 101.

72. Coker, 433 U.S. at 592.
73. Id.
74. Id. at 594-97.
75. Id. at 596-97.
C. Enmund v. Florida

In Enmund v. Florida, the Court was faced with the issue of whether it was constitutional under the Eighth Amendment to impose the death penalty for an offense where the offender did not commit murder, attempt to commit murder, or intend for a death to occur. In this case, an elderly couple was robbed and subsequently murdered. Enmund, 458 U.S. at 784. Enmund drove the getaway car and was convicted for his involvement as an accomplice in the armed burglary and was sentenced to death. Id. at 785-86.

The Supreme Court held that it was unconstitutional to impose the death penalty on one who does not kill, attempt to kill, or intend a killing to take place when merely aiding and abetting a felony. In crafting this rule, the Court researched the prevalence of such sentences. Eight jurisdictions permitted the death penalty in cases where the offender only played a part in the robbery in the course of which a killing occurred. The research further showed that juries rarely imposed the death penalty in such cases, and the Court therefore inferred that society rejected such a sentence for the defendant’s limited involvement. Further, the majority found that unless the imposition of the death penalty contributed to the penological goals of retribution and deterrence, the sentence was unconstitutional as cruel and unusual. Thus, through findings of the sentencing practices and the lack of penological goals accomplished, the Court found the death penalty to be unconstitutional for those who did not actually commit the murder or intend for that murder to take place.

D. Thompson v. Oklahoma

The Court later faced the issue of whether or not the death penalty was cruel and unusual as a sentence when it is imposed on a

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76. 458 U.S. 782, 787 (1982). In this case, an elderly couple was robbed and then subsequently murdered. Enmund, 458 U.S. at 784. Enmund drove the getaway car and was convicted for his involvement as an accomplice in the armed burglary and was sentenced to death. Id. at 785-86.
77. Id. at 797. In concluding the case, the Court noted: For purposes of imposing the death penalty, Enmund's criminal culpability must be limited to his participation in the robbery, and his punishment must be tailored to his personal responsibility and moral guilt. Putting Enmund to death to avenge two killings that he did not commit and had no intention of committing or causing does not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts. This is the judgment of most of the legislatures that have recently addressed the matter, and we have no reason to disagree with that judgment for purposes of construing and applying the Eighth Amendment. Id. at 801.
78. Id. at 789-91.
79. Id. at 792.
80. Id. at 794.
81. Enmund, 458 U.S. at 798.
82. Id.
juvenile in the case of Thompson v. Oklahoma.\textsuperscript{83} The Court held that it was unconstitutional for a juvenile who was under the age of sixteen, at the time of his offense, to receive the death penalty.\textsuperscript{84} Cruel and unusual punishments are prohibited under the Constitution, which coincidentally does not define what constitutes cruel and unusual punishments.\textsuperscript{85} When the punishment would be constitutional for an adult, the Court must look at additional standards in determining why for the same crime it may be unconstitutional due to the offender’s age.\textsuperscript{86} The majority noted that juveniles, especially those under the age of sixteen, are treated differently in society because they are not afforded the same rights as adults.\textsuperscript{87} The majority emphasized a minor’s lack of development and sensibility.\textsuperscript{88} Because of the juvenile’s lack of development, the Court found no support for the traditional justifications for the death penalty: deterrence and retribution.\textsuperscript{89}

E. Atkins v. Virginia

Following Thompson, the Court began to consider the culpability of the criminal defendant in considering the constitutionality of the punishment as was the case in Atkins v. Virginia.\textsuperscript{90} The issue before the Court was whether it was constitutional under the Eighth Amendment to give an individual with an intellectual disability the death penalty.\textsuperscript{91} The Court answered the issue in the affirmative.\textsuperscript{92} In reaching the conclusion, the majority acknowl-
edged that adults with intellectual disabilities, like children, have an impaired sense of moral culpability.\textsuperscript{93} The majority also discussed the apparent national consensus for the prohibition of the death penalty for a person with an intellectual disability and noted that the standards of punishment may be different for those with lessened culpability.\textsuperscript{94} Additionally, as with the other cases discussed, the Court found that the penological goals of retribution and deterrence were not satisfied by sentencing a defendant with an intellectual disability to death.\textsuperscript{95}

\textbf{F. Roper v. Simmons}

In \textit{Roper v. Simmons}, the Court was again faced with the issue of whether a juvenile under the age of eighteen could receive the maximum sentence of the death penalty.\textsuperscript{96} The juvenile, Simmons, petitioned on the ground that his sentence was unconstitutional based on the Court's ruling in \textit{Atkins}.\textsuperscript{97} The Supreme Court of Missouri held in favor of Simmons, finding that the national consensus concerning juvenile death penalty sentencing practices was changing\textsuperscript{98} and therefore, sentenced Simmons to life imprisonment without the possibility of parole.\textsuperscript{99} The Supreme Court agreed and granted certiorari to create a categorical ban, holding that the death penalty was prohibited as a sentence for juveniles under the age of eighteen.\textsuperscript{100}

The Court noted a transition through the years that the national consensus, as evidenced by sentencing practices, grew stronger in support of a ban against juvenile death penalty sentences, which mirrored the consensus against executing those with an intellectual disability.\textsuperscript{101} The majority in \textit{Roper} discussed the differences between juveniles and adults in culpability, susceptibility, and character and found that because of the differences, juveniles could never be classified as the worst offenders and receive

\begin{itemize}
  \item \textsuperscript{93} \textit{Id.} at 310.
  \item \textsuperscript{94} \textit{Id.} at 316.
  \item \textsuperscript{95} \textit{Id.} at 319-20.
  \item \textsuperscript{96} 543 U.S. 551, 555 (2005). Simmons committed murder at the age of seventeen and was sentenced to death at a jury trial. \textit{Roper}, 543 U.S. at 556.
  \item \textsuperscript{97} \textit{Id.} at 559.
  \item \textsuperscript{98} \textit{Id.} at 551. In the case of \textit{Stanford v. Kentucky}, 492 U.S. 361 (1989) \textit{abrogated by Roper}, 543 U.S. 551, the Court held that the death penalty was not prohibited for juveniles over fifteen but under eighteen years of age. \textit{Stanford}, 492 U.S. at 361.
  \item \textsuperscript{99} \textit{Roper}, 543 U.S. at 559-60.
  \item \textsuperscript{100} \textit{Id.} at 560.
  \item \textsuperscript{101} \textit{Id.} at 564.
\end{itemize}
the harshest punishment. The majority relied on scientific data that indicated that juveniles, with their lack of maturity and responsibility, often act impulsively, thus showing their diminished culpability. The empirical evidence examined by the majority showed that juveniles often engage in reckless behavior, are more susceptible to peer pressure, and do not have fully developed characters. The Court concluded that juveniles were more deserving of forgiveness as they were not as morally reprehensible as adult offenders. At the time Roper was decided in 2005, the Court resentsized the defendant to life imprisonment without the possibility of parole.

IV. HOW THE SUPREME COURT CORRECTLY INTERPRETED THE EIGHTH AMENDMENT IN EVALUATION WHETHER IT IS CRUEL AND UNUSUAL PUNISHMENT FOR A MINOR TO RECEIVE LIFE IN PRISON, WITHOUT THE POSSIBILITY OF PAROLE, FOR A NONHOMICIDE OFFENSE

There is an old expression that says one should not judge a book by its cover, which implies that appearances may be deceiving. The majority decision of Graham v. Florida embodies this expression by holding that a juvenile’s actions under the age of eighteen may be deceiving of the person’s true character and his true ability to change. The majority held, as a categorical rule, that it is unconstitutional for a juvenile to be sentenced to life without the possibility of parole when they have committed a nonhomicide offense. Justice Kennedy employed a comparative analysis, that was previously used in determining proportionality issues in death penalty cases, and found that after studies of society’s standards through sentencing practices, lessened juvenile culpability, and a lack of penological justifications and concluded that life sentences for nonhomicide crimes could not be justified.

102. Id. at 570. The Court noted that there are three general differences between adults and minors under the age of eighteen. Id. First, juveniles lack maturity and responsibility. Id. Second, juveniles are more susceptible to outside pressures. Id. Finally, a juvenile’s character is not as formed and juveniles have more ability to change as their characters are not fixed. Roper, 543 U.S. at 570.
103. Id. at 569.
104. Roper, 543 U.S. at 569.
105. Id. at 570.
106. Id. at 560.
108. Id. at 2034.
109. Id.
The issue of lessened culpability for teenagers was discussed at length in *Roper v. Simmons*, where the Court concluded that it was unconstitutional under the Eighth Amendment's proportionality requirements for any juvenile to receive the death penalty.110 While for many years the Court has noted that death is different, it has now been realized with *Graham* that the sentence of life imprisonment without the possibility of parole is an extremely harsh punishment for juveniles as it guarantees the same end: death in jail.111

It was noted by many lawyers after the ruling in *Roper v. Simmons* that those juveniles who acted impulsively and without maturity now would spend the rest of their days rotting in prisons without the opportunity for parole.112 For example, what is to become of the fourteen year old boy who was playing video games at a friend's house and because he did not want to be left alone, he accompanied a group to a home that was eventually burglarized? While this burglary occurred he hid behind a chair when a victim in the home was shot and killed?113 The juvenile in this example was sentenced to life imprisonment, while the reasoning for him being present that day was because he did not want to be made fun of, so he simply tagged along.114

It is arguable that the mere fact that our punishment process distinguishes an adult system from a juvenile system shows the difference in how society views a juvenile offender.115 Two fundamental principles exist for the juvenile system: first, juveniles have diminished culpability, and second juveniles are more likely able to be rehabilitated.116 A juvenile without the opportunity to ever leave jail alive has no chance to be rehabilitated; thus, the sentence is against the fundamental goals of the juvenile justice system.

The majority's rationale for its decision is logical. Justice Kennedy, in writing the majority opinion, followed a similar analysis employed in cases involving the death penalty where a categorical ban for a class of people was being requested.117 The majority be-

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111. *Graham*, 130 S. Ct. at 2033.
113. Id. at 296-97.
114. Id.
115. Id. at 314.
116. Id.
117. See e.g. *Atkins*, 536 U.S. 304; *Roper*, 543 U.S. 551.
gan by determining what the national consensus was in regards to juvenile life imprisonment sentences imposed for nonhomicide crimes.\textsuperscript{118} By researching the various legislative decisions in each state, the Court could determine current contemporary values.\textsuperscript{119} While legislation may be an important factor to determine society's values, the Court made a further examination of actual sentencing practices to determine how often juveniles were sentenced to life imprisonment without the possibility of parole for nonhomicide crimes where legislation would have permitted the courts to do so.\textsuperscript{120} The results illustrated that the actual sentencing of juveniles to life imprisonment for nonhomicide cases was rare.\textsuperscript{121}

Then, consistent with other opinions considering categorical bans, the Court gave consideration to the lessened culpability of a juvenile defendant.\textsuperscript{122} Teenagers often act impulsively and under negative pressures from peers. Mistakes made at that young age should not guarantee their death in prison without a meaningful opportunity to show a change in their character as they age. The majority also argued that no penological goals were met and therefore available to justify the punishment for a juvenile who did not commit homicide.\textsuperscript{123} The same characteristics that make a juvenile less culpable also make deterrence less effective.\textsuperscript{124} The other main penological goal is retribution. The majority did not say that juveniles should not be punished, but it is argued that juveniles should not receive such a severe punishment where they will have all hope lost, as they will receive no opportunity to ever rejoin society.\textsuperscript{125}

Most people have done something or made a decision in their youth that in hindsight and with the wisdom of age they now regret. The categorical ban created in \textit{Graham}, that forbids a juvenile from being sentenced to life imprisonment without the possibility of parole for nonhomicide offenses, does not guarantee that the juvenile will be released, but it mandates that from the outset, they must be given an opportunity to obtain release.\textsuperscript{126} Chief Justice Roberts wrote a concurring opinion in which he agreed that in

\begin{itemize}
  \item \textsuperscript{118} \textit{Graham}, 130 S. Ct. at 2023.
  \item \textsuperscript{119} \textit{Id.}
  \item \textsuperscript{120} \textit{Id.} at 2023-24.
  \item \textsuperscript{121} \textit{Id.} at 2024.
  \item \textsuperscript{122} \textit{Id.} at 2026.
  \item \textsuperscript{123} \textit{Graham}, 130 S. Ct. at 2029.
  \item \textsuperscript{124} \textit{Id.} at 2028-29.
  \item \textsuperscript{125} \textit{Id.} at 2028.
  \item \textsuperscript{126} \textit{Id.} at 2034.
\end{itemize}
Graham's specific case the sentence of life imprisonment without parole was unconstitutional as it was disproportionate; however, the Chief Justice maintained that it should not be a rule for the entire class of juveniles. The majority opinion's argument followed the rationale of the previous decisions that the Court used when deciding categorical bans for death penalty cases. Children make mistakes and should be afforded the opportunity to learn from them.

The dissent, written by Justice Thomas, argued that jurisdictions that have legislation allowing such a punishment should be allowed to continue. The dissent disagreed that the data used by the majority showed a consensus. Justice Thomas argued that the right to impose the sentence is for the jury to determine and that many juries gave this punishment only for the most heinous of crimes. Justice Thomas noted concern for continued limiting and categorical bans for even less severe punishments now that the Court created a categorical ban for an entire class and for a noncapital crime. The dissent also raised the issue of distinguishing a juvenile who kills someone and has the requisite culpability to be deserving of the punishment from a minor who rapes a child, but lacks sufficient culpability.

While this is a very controversial issue, the majority adequately responded to many of the concerns mentioned. Mainly, it is important that the majority recognized that a juvenile may never actually reenter society. The holding in Graham only mandated that at the initial sentencing, a juvenile who did not commit a homicide may not receive life imprisonment without the possibility of parole. The Court acknowledged that it is difficult even for psychologists to determine when a juvenile is immature or truly corrupt. States will not have to guarantee eventual freedom, so the concerns of the dissent about those juveniles who did commit some of the most heinous crimes may not ever leave jail if they are not rehabilitated or show a change in character.

127. Id. at 2036 (Roberts, C.J., concurring).
128. Graham, 130 S. Ct. at 2043 (Thomas, J, dissenting).
129. Id. at 2051.
130. Id. at 2043.
131. Id. at 2046.
132. Id. at 2055-56.
133. Graham, 130 S. Ct. at 2034 (majority opinion).
134. Id.
135. Id. at 2029 (quoting Roper, 543 U.S. at 573).
Finally, while there may be future conflicts as to cases where an offender may commit an offense at the age of eighteen years and one day, thus not falling into the protected class, a definitive line must be drawn. *Graham* determined that eighteen is the line that is drawn by society for many purposes to show a distinction between childhood and adulthood and this categorical rule will also limit the age to eighteen at the time of the committed act.\(^{137}\) Also the constitutionality of a term of years sentence was never discussed by the Court. For example, a juvenile sentenced to seventy years in prison without parole is the functional equivalent of the unconstitutional life without parole sentence. It will be left to the states to determine the rehabilitation of juveniles and to determine if any limits are to be placed on the length of the sentence before the offender is available for parole. It is likely that in the future the Court will require juveniles to appeal for certiorari because of long term sentences, but at this time the ban is limited to life sentences for nonhomicide crimes. In the end, it is important for the states to remember that teenagers make mistakes in their youth and should not lose all chance of hope at a life outside of prison for a mistake made when they were only seventeen years old.

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