

Juvenile Offenders and the Death Penalty in the United States.

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With the changes created by the Supreme Court decisions in *Roper v. Simmons* and *Graham v. Florida*, there has been a sea of change in the legal landscape in America regarding criminal punishment of juvenile offenders. Not only have the Supreme Court Justices changed their way of thinking in this regard, but the national and international communities have reached a new “consensus” as well. This article attempts to bring these current developments into sharper focus.

Keywords: Juvenile offenders, death penalty, life imprisonment, capital punishment and cruel and unusual punishment.

INTRODUCTION

Within the seamless web of the law and the empirical reality of capital punishment, what role does the youth of the offender play? Victor L. Streib, *Death Penalty for Children: The American Experience With Capital Punishment for Crimes Committed While Under Age Eighteen*, 36 Okla. L. Rev. 613 (1983). The law makes clear that there are two bases on which to justify the imposition of the death penalty: retribution and deterrence. *Gregg v. Georgia*, 428 U.S. 153, 183 (1976). Retribution demands that the severity of punishment be dependent on the offender's culpability but that retribution and deterrence were not served by executing the mentally retarded. *Atkins v. Virginia*, 536 U.S. 304, 318-19 (2002).

We will discuss both elements later in this paper. It is assumed that "children have a very special place in life which law should reflect". *May v. Anderson*, 345 US 528, 536 (1953) (*Frankfurter, J., concurring*) does it not necessarily follow that "civilized societies will not tolerate the spectacle of execution of children?" Model Penal Code, § 210.6, Official Draft and Revised Comments, commentary at 133, (1980).

EARLY DEVELOPMENTS AND BACKGROUND

The first execution of a juvenile offender was in 1642 with Thomas Graunger in Massachusetts Bay Colony when he was tried and found guilty, at the age of 16 or 17, of buggery "with a mare, a cow, two goats, divers sheep, two calves and a turkey." R. Hale, *A Review of Juvenile Executions in America*, Lewiston, N.Y.: Edwin Mellon Press (1997). In the 360 years since that time, a total of approximately 365 persons have been executed for juvenile crimes, constituting 1.8% of roughly 20,000 confirmed American executions since 1608. Amnesty International, *Indecent and Internationally Illegal: The Death Penalty Against Child Offenders*, September, 2002.

A juvenile justice system separate from the adult criminal justice system was established in the United States in Cook County, Illinois, in 1899. The goal, envisioned by Jane Addams, was to divert young offenders from the destructive punishments of the criminal courts and encourage rehabilitation based on the individuals needs. Victor L. Strieb, *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973 – December 31, 2001*, 2002. This effort recognized that children are different than adults in terms of cognitive development, impulse and emotional control, and judgment capability. The first juvenile court led to a system that held juveniles accountable for delinquent behavior while providing developmentally appropriate rehabilitation and deterrence programs.

In 1999, at the age of 11, Michigan's Nathaniel Abraham was charged with murder. He became the youngest child in American history to be prosecuted as an adult. The movement toward trying juvenile cases in adult criminal courts has occurred despite the number of juvenile arrests declining in every violent crime category from 1993 to 1999. During this period, the juvenile population grew 8%. John A. Tuell, Child Welfare League of America, *Child Maltreatment and Juvenile Delinquency: Raising the Level of Awareness*, 2002. The United States leads the world in state- sanctioned juvenile executions. Between 1973 and 2001, courts

imposed 213 juvenile death sentences. Of those, 209 involved male offenders and 4 cases involved female offenders of which 18 (14%) resulted in execution. Victor L. Strieb, *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973 – December 31, 2001, 2002.*

The research of Professors Robinson and Stephans applied 5 descriptive categories to 91 juveniles who had been sentenced to death between 1973 and 1991.¹ The categories were based on mitigating circumstances that had been established by the evidence and were in addition to “Youth” – a mitigating factor established in *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

Robinson found the following:

- Almost half of those sentenced had troubled family histories and social backgrounds as well as problems such as physical abuse, unstable childhood environments, and illiteracy.
- Twenty-nine suffered psychological disturbances (e.g. profound depression, paranoia, self-mutilation)
- Just under one-third exhibited mental disability evidenced by low or borderline I.Q. scores.
- More than half were indigent
- Eighteen were involved in intensive substance abuse before the crime.

Juveniles sentenced to death share varying combinations of these mitigating circumstances, in addition to their youthful age. In 61 of the 91 cases (67 percent), one or more factors in addition to “youth” was present. Robinson, D.A. and Stephans, O.H., *Patterns of Mitigating Factors in Juvenile Death Penalty Cases*, *Criminal Law Review*, 28(3), 246-275 (2002).

The application of the death penalty to juvenile offenders is directly prohibited by multi-lateral international treaties such as the International Covenant on Civil and Political Rights (ICCPR), the United Nations (UN) Convention on the Rights of the Child and the American Convention on Human Rights. Although the United States signed and ratified the ICCPR, it reserved its right to ignore the covenant’s ban on executing juveniles. The United States is the only country of the 144 signatories with such a reservation. The United States signed the Convention in 1995 with a renewed reservation exempting itself from adherence to the juvenile death penalty ban. John A. Tuell, Director, Child Welfare League of America, *Juvenile Offenders and the Death Penalty, Is Justice Served?*, 2002. The United States has over the past decade, executed more juvenile offenders than every other nation in the world combined. American Civil Liberties Union, *Juveniles and the Death Penalty*, May 11, 2004.

¹ This research was completed in 1992.

THE ROPER DECISION – WHAT IT MEANS

On March 1, 2005 the United States Supreme Court decided in a 5 – 4 decision that it was unconstitutional to impose the death sentence on individuals who committed the underlying crime while under the age of 18. *Roper v Simmons*, 543 U.S. 551 (2005). This decision effectively overruled a prior decision by the same court which had upheld the death penalty for offenders above or at the age of 16. *Stanford v. Kentucky*, 492 U.S. 361 (1989). The *Roper* decision also overturned the statutes in 25 separate states which had set the death penalty at a lower age.

In 1989, the U.S. Supreme Court held that the Eighth Amendment did not preclude the execution of mentally retarded offenders by virtue of their mental retardation alone. *Penry v. Lynaugh*, 492 U.S. 302, 340 (1989). While terminology used to describe those individuals with sub-average intellectual functioning has evolved from “mentally retarded” to a more progressive categorization of either “mentally disabled” or “intellectually disabled”, the term mentally retarded will be used for consistency, since that was the language used by the Supreme Court. Natalie Pifer, *Is Life the Same as Death?: Implications of Graham v. Florida, Roper v. Simmons, and Atkins v. Virginia on Life Without Parole Sentences for Juvenile and Mentally Retarded Offenders*, Loyola of Los Angeles Law Review, Vol. 43:1495, 1497 (Summer, 2010). Thirteen years later, the Supreme Court reconsidered the issue in *Atkins v. Virginia*, 536 U.S. 304 (2002). After applying society’s evolved standards of decency, the Court reversed its earlier holding, finding in *Atkins* that executing mentally retarded offenders violated the Eighth Amendment’s prohibition of cruel and unusual punishment. (*Id.*, at 321).

In *Atkins*, the Court found that mental retardation directly affects a criminal offender’s culpability. James W. Ellis & Ruth A. Luckasson, *Mentally Retarded Criminal Defendants*, 53 Geo. Wash. L. Rev. 414, 429-32 (1985). The argument in *Roper* was the same as that in *Atkins*: diminished culpability renders the case for retribution not “strong enough to justify the “law’s most severe penalty.” *Roper v. Simmons*, 543 U.S. 551, 571 (2005).

The Petitioners in *Roper* relied on the Eighth Amendment protection against cruel and unusual punishment. Under the “evolving standards of decency” test, the Supreme Court held that it was therefore cruel and unusual punishment to execute a person who was under the age of 18 at the time of the murder.

In the majority opinion, Justice Kennedy cited research that found that juveniles have a lack of maturity and sense of responsibility when compared to that of adults. He went on to note that from 1990 until the *Roper* case was heard, “only seven countries other than the United States had executed juvenile offenders....Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo and China”. He went further in stating that each of these countries had either abolished the death penalty for juveniles or made a public disavowal of the practice, with the exception of the United States. *Roper v Simmons*, 543 U.S. 551 (2005).

In writing for the dissent, Justice Scalia argued that the appropriate question should be whether the execution of such defendants was considered cruel and unusual punishment at the point at which the Bill of Rights was ratified. Further, he objected to the Court's willingness to take guidance from foreign law in interpreting the Constitution. *Id.*

Justice Kennedy's opinion for the majority stands to move the debate to an even higher level of attention and importance. By citing foreign sources of law as further support for the Court's own views of what punishments violate the Eighth Amendment, the *Roper* Court showed what may be at stake in the outcome of this debate between the liberal justices and the conservatives, led by Justice Scalia. The depth of the support for citing foreign sources of law suggests that the movement to do this is just beginning and will only gather force over time. In the wake of *Roper* the debate on the Court is no longer over whether to cite foreign sources of law but over when and how to cite them. This portends a sea change in the Court's doctrine. Steven G. Calabresi and Stephanie Dotson Zimdahl, Social Science Research Network, *The Supreme Court and Foreign Sources of Law: Two Hundred Years of Practice and the Juvenile Death Penalty Decision*, April, 2005.

When the *Roper* decision was made in 2005, it just seemed wrong to execute people who were not even adults at the time of their crime because as the Court noted in its opinion the immaturity of juveniles renders them less culpable and therefore exempt from the death penalty. *Roper v Simmons*, 543 U.S. 551, 568-73 (2005). Justice Kennedy, citing *Trop v. Dulles*, 356 U.S. 86, 78 (1958), described the importance "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.'" *Roper*, at 560-61. While not excusing the crimes committed by juveniles, the Court focused on the important differences between youths and adults; namely, the diminished culpability of youth as a class and children's innate capacity for change. *Roper*, at 568-76. Juveniles' diminished culpability rests on their lesser developmental capabilities, increased susceptibility to negative influences, and inability to control their surroundings. The Court concluded that those characteristics make youth less deserving of the harshest forms of punishment. *Roper*, at 569-70.

Kennedy noted: the scientific and sociological studiestend 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." *Roper*, at 569. It has been noted that "adolescents are overrepresented statistically in virtually every category of reckless behavior." Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Review* 339 (1992). Juveniles are also more vulnerable or susceptible to negative influences and outside pressures, including peer pressure....This is explained in part by the prevailing circumstances that juveniles have less control, or less experience with control, over their own environment. Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003). Another difference is that the character of a juvenile is not as well formed as that of an adult.

Personality traits of juveniles are more transitory, less fixed. E. Erikson, *Identity: Youth and Crisis*, 1968.

The *Roper* Court made up for what it lacked elsewhere by relying heavily on international opinion to support its ruling in the case. *Roper*, at 575-78. The evidence was strong. In 2005, the United States was the only country in the world that officially sanctioned the juvenile death penalty. *Roper*, at 575.

This is not to deny that international opinion mattered in *Roper*. It did. But the reason it mattered had everything to do with politics, and nothing to do with the law. With forty-eight nations, a slew of former diplomats and over a dozen Nobel Peace Prize Laureates telling the Court how damaging the juvenile death penalty was to foreign relations, international opinion was going to color the Justices' thinking (especially after 9/11) no matter what their doctrine said. *See Generally*, Amicus Curia Briefs *Roper v. Simmons*, 543 U.S. 551 (2005). The Justices decided death the way they wanted to, not the way they had to. In the end, change came the way the Justices wanted the rule changed. The Court explicitly acknowledged the influence of international opinion in the case. *See*, Supra Text Accompanying Notes 143-44 *Roper v. Simmons*, 543 U.S. 551, 575-78 (2005).

EFFECT OF THE ROPER DECISION

In the wake of *Atkins* and *Roper*, life without parole sentences have replaced executions for juvenile and mentally retarded offenders, but this substitution is not without constitutional difficulties and challenges. Barry C. Feld, *A Slower Form of Death: Implications of Roper v. Simmons for Juveniles Sentenced to Life Without Parole*, 22 Notre Dame J. L. Ethics & Pub Pol'y 9, 10 (2008). The cases of *Adkins* and *Roper* made perfect sense in light of the larger historical context in which they were decided. Indeed, had the court not prohibited the death penalty for mentally retarded and juvenile offenders, it may well have suffered more damage to its institutional image (at least as the nation's moral guardian) than what it suffered from exposing its intellectually contrived "evolving standards" doctrine. Robert Weisberg, NY Times, *Cruel and Unusual Jurisprudence*, A21, March 4, 2005.

As Victor Hugo stated: "Greater than the thread of mighty armies is an idea whose time has come". Victor Hugo, *Histoire D'Un Crime: Conclusion: La Chute* 649 (1893). As a result of the *Roper* decision, 72 juvenile offenders in 12 states, on death row were re-sentenced. Prior to the ruling, 22 inmates were executed in the modern death penalty era for crimes committed before they reached 18. Capital Punishment in Context, *The Death Penalty for Juveniles*.

In concluding that the death penalty for minors is cruel and unusual punishment, the Court cited a "national consensus" against the practice, along with medical and social-science evidence that teenagers are too immature to be held accountable for their crimes to the same extent as adults. Charles Lane, Washington Post, *5-4 Supreme Court Abolishes Juvenile Executions*, A01, March 2, 2005.

"Our determination", Justice Kennedy added, "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”. *Id.* The ruling has thus shown that society’s reconsideration of capital punishment has penetrated the Court. The largest impact of the ruling was felt in Texas, where there were 29 juveniles awaiting execution and Alabama, where there were 14 more. No other state had more than five.

In *Exparte Adams*, 955 So 2d. 1106 (Ala. 2005), the Supreme Court of Alabama remanded the death sentence of a juvenile for a rehearing in light of the *Roper* decision. The State of Alabama later sought review in the United States Supreme Court, on a single issue, “Whether this Court should reconsider its decision in *Roper v. Simmons*, 543 U.S. 551 (2005). The Supreme Court denied certiorari with a published dissent on June 19, 2006; thereby re-establishing *Roper* as good law.

No recent data provide reason to reconsider *Roper’s* holding that because juveniles have lessened culpability they are less deserving of the most serious forms of punishment. Moreover, defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of such punishments than are murderers. *Roper v. Simmons*, 543 U.S. 551 (2005). Serious non-homicide crimes “may be devastating in their harm....but ‘in terms of moral depravity and of the injury to the person and to the public,’they cannot be compared to murder in their ‘severity and irrevocability.’” *Id.*

ONE STEP FURTHER – LIFE WITHOUT PAROLE: GRAHAM V. FLORIDA

As for the punishment, life without parole is “the second most severe penalty permitted by law,”² and is especially harsh for a juvenile offender, who will on average serve more years and a greater percentage of his life in prison than an adult offender, E.g., *Roper v. Simmons*, 543 U.S. 551, 572 (2005). A State is not required to guarantee eventual freedom to such an offender, but must impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation. *Graham v. Florida*, No 08-7412, (05/17/2010) at 16-24.

The Eighth Amendment to the United States Constitution prohibits punishment that is cruel and unusual. The Supreme Court has interpreted this prohibition to mean that punishment must be proportional to the crime for which it is imposed. *Weems v. United States*, 217 U.S. 349, 367 (1910). Embodied in the cruel and unusual punishments ban is the “precept....that punishment for crime should be graduated and proportioned to [the] offense.” *Id.* The Court went on the quote the same language in *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2649 (2008). Proportional analysis in cases involving life without parole in death penalty cases has continued to receive various courts approval. The argument has met with limited success in state courts and almost no success in federal courts. It could therefore be said that “holding that proportionality analysis should not include consideration of the defendant’s age “only a balance between the crime and the sentence imposed”. *State v. Massey*, 803 P2d. 340, 348 (Wash. Ct. App 1990).

² *Harmelin v. Michigan*, 501 U.S. 957 (1991).

Incarceration serves several goals within the American criminal justice system: deterrence, retribution, and rehabilitation. *Atiyeh v. Capps*, 449 U.S. 1312, 1314 (1981); *Harmelin v. Michigan*, 501 U.S. 957, 999 (1991); *Kennedy v. Louisiana*, 128 S. Ct 2641, 2649 (2008). The final effect of *Roper* was that many of the outstanding death penalty sentences of juveniles were reduced to life imprisonment. However, on May 17, 2010 the Supreme Court handed down yet another pivotal decision. In *Graham v. Florida*, No 08-7412, (05/17/2010), the Court held that sentencing an individual to life imprisonment without parole for a non-homicide crime committed before the defendant reached the age of 18 violates the Eight Amendment to the United States Constitution regarding cruel and unusual punishment.

The American criminal justice system already accounts for the lesser culpability and distinct developmental condition of youthful offenders. Brief of Respondent Supra Note 32 at 19, *Graham v. Florida*, No 08-7412. A life sentence without parole is especially inappropriate for a juvenile who will never have the opportunity to live as a free adult. Brief for the American Psychological Association et al as Amici Curiae Supporting Petitioners at 15-16 *Graham v. Florida*, No 08-7412, (05/17/2010); and *Sullivan v. Florida*, No 08-7621, (05/17/2010). Or, in the *Roper* Court's words, realize his "potential to attain a mature understanding of his own humanity." *Roper v. Simmons*, 543 U.S. 551, 573 (2005). Like execution, a life without parole sentence imposes a "terminal, unchangeable, once-and-for-all judgment upon the whole life of a human being and declares that human being forever unfit to be a part of civil society." Brief of Petitioner at 5, *Sullivan v. Florida*, No. 08-7621 (5/17/2010).

At the time of *Graham* decision, six jurisdictions did not allow life without parole sentences for juvenile offenders. Seven jurisdictions permitted life without parole for juvenile offenders, but only for homicide crimes. Thirty-seven states, the District of Columbia, and the Federal Government permitted sentences of life without parole for a juvenile non-homicide offender in some circumstances.

Nationwide, there were only 129 juvenile offenders serving life without parole sentences for non-homicide crimes. Because 77 of those offenders were serving sentences imposed in Florida and the other 52 were imposed in just 10 states and in the federal system. At the time, it appeared that only 12 jurisdictions nationwide imposed life without parole sentences on juvenile non-homicide offenders, while 26 States and the District of Columbia did not impose such sentences, despite apparent statutory authorization to do so.

The *Graham v. Florida*, No 08-7412, (05/17/2010) decision is the first time the Court has ruled an entire category of punishment – outside of the death penalty – unconstitutional. While juvenile advocates are already pushing to extend the Court's reasoning in *Graham* to offenders serving life without parole for their roles in killings committed at seventeen or younger. Adam Liptack, *Justices Limit Life Sentences for Juveniles*, N.Y. Times at 1, May 17, 2010.

CONCLUSION

Today, life without parole sentences have replaced death as the maximum sentence available to juvenile and mentally retarded offenders. Both execution and life without parole

sentences permanently remove an individual from society by placing that person in a prison to await his or her death, and they present similar Eighth Amendment concerns. Natalie Pifer, *Is Life the Same as Death?: Implications of Graham v. Florida, Roper v. Simmons, and Atkins v. Virginia on Life Without Parole Sentences for Juvenile and Mentally Retarded Offenders*, Loyola of Los Angeles Law Review, Vol. 43:1495, 1497 (Summer, 2010).

In light of having said all this, it is interesting to note that as far back as 1994, one of the members of the Supreme Court questioned not only his moral authority to judge – but that of the Court when he wrote:

“For more than 20 years, I have endeavored – indeed, I have struggled – along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court’s delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obliged simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question – does the system accurately and consistently determine which defendants “deserve” to die? – cannot be answered in the affirmative”. *Callins v. Collins*, 510 U.S. 1141 (1994). (*Blackman, J. dissenting from denial of certiorari*).

1. Victor L. Streib, *Death Penalty for Children: The American Experience With Capital Punishment for Crimes Committed While Under Age Eighteen*, 36 Okla. L. Rev. 613 (1983).
2. *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).
3. *Atkins v. Virginia*, 536 U.S. 304, 318-19 (2002).
4. *May v. Anderson*, 345 US 528, 536 (1953) (*Frankfurter, J., concurring*).
5. Model Penal Code, § 210.6, Official Draft and Revised Comments, commentary at 133, (1980).
6. R. Hale, *A Review of Juvenile Executions in America*, Lewiston, N.Y.: Edwin Mellon Press (1997).
7. Amnesty International, *Indecent and Internationally Illegal: The Death Penalty Against Child Offenders*, September, 2002.
8. Victor L. Strieb, *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973 – December 31, 2001*, 2002.
9. John A. Tuell, Child Welfare League of America, *Child Maltreatment and Juvenile Delinquency: Raising the Level of Awareness*, 2002.
10. *Eddings v. Oklahoma*, 455 U.S. 104 (1982).
11. Robinson, D.A. and Stephans, O.H., *Patterns of Mitigating Factors in Juvenile Death Penalty Cases*, Criminal Law Review, 28(3), 246-275 (2002).
12. John A. Tuell, Director, Child Welfare League of America, *Juvenile Offenders and the Death Penalty, Is Justice Served?*, 2002.
13. American Civil Liberties Union, *Juveniles and the Death Penalty*, May 11, 2004.
14. *Roper v Simmons*, 543 U.S. 551 (2005).
15. *Stanford v. Kentucky*, 492 U.S. 361 (1989).
16. *Penry v. Lynaugh*, 492 U.S. 302, 340 (1989).
17. Natalie Pifer, *Is Life the Same as Death?: Implications of Graham v. Florida, Roper v. Simmons, and Atkins v. Virginia on Life Without Parole Sentences for Juvenile and Mentally Retarded Offenders*, Loyola of Los Angeles Law Review, Vol. 43:1495, 1497 (Summer, 2010).
18. James W. Ellis & Ruth A. Luckasson, *Mentally Retarded Criminal Defendants*, 53 Geo. Wash. L. Rev. 414, 429-32 (1985).
19. Steven G. Calabresi and Stephanie Dotson Zimdahl, Social Science Research Network, *The Supreme Court and Foreign Sources of Law: Two Hundred Years of Practice and the Juvenile Death Penalty Decision*, April, 2005.
20. *Trop v. Dulles*, 356 U.S. 86, 78 (1958).
21. Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Review 339 (1992).
22. Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003).
23. E. Erikson, *Identity: Youth and Crisis*, 1968.
24. *See Generally*, Amicus Curia Briefs *Roper v. Simmons*, 543 U.S. 551 (2005).
25. *See, Supra* Text Accompanying Notes 143-44 *Roper v. Simmons*, 543 U.S. 551, 575-78 (2005).
26. Barry C. Feld, *A Slower Form of Death: Implications of Roper v. Simmons for Juveniles Sentenced to Life Without Parole*, 22 Notre Dame J. L. Ethics & Pub Pol'y 9, 10 (2008).
27. Robert Weisberg, NY Times, *Cruel and Unusual Jurisprudence*, A21, March 4, 2005.

28. Victor Hugo, *Histoire D'Un Crime: Conclusion: La Chute* 649 (1893).
29. Capital Punishment in Context, *The Death Penalty for Juveniles*.
30. Charles Lane, *Washington Post*, *5-4 Supreme Court Abolishes Juvenile Executions*, A01, March 2, 2005.
31. *Exparte Adams*, 955 So 2d. 1106 (Ala. 2005).
32. *Graham v. Florida*, No 08-7412, (05/17/2010).
33. *Weems v. United States*, 217 U.S. 349, 367 (1910).
34. *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2649 (2008).
35. *State v. Massey*, 803 P2d. 340, 348 (Wash. Ct. App 1990).
36. *Atiyeh v. Capps*, 449 U.S. 1312, 1314 (1981).
37. *Harmelin v. Michigan*, 501 U.S. 957, 999 (1991).
38. Brief of Respondent Supra Note 32 at 19, *Graham v. Florida*, No 08-7412.
39. Brief for the American Psychological Association et al as Amici Curiae Supporting Petitioners at 15-16 *Graham v. Florida*, No 08-7412, (05/17/2010); and *Sullivan v. Florida*, No 08-7621, (05/17/2010).
40. Brief of Petitioner at 5, *Sullivan v. Florida*, No. 08-7621 (5/17/2010).
41. Adam Liptack, *Justices Limit Life Sentences for Juveniles*, N.Y. Times at 1, May 17, 2010.
42. *Callins v. Collins*, 510 U.S. 1141 (1994). (*Blackman, J. dissenting from denial of certiorari*).