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**Special Issue:
The Criminalisation and Punishment of Children and Young People**

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Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison

Abstract

In the United States, 13- and 14-year-old children, prosecuted as adults, have been and continue to be sentenced to life imprisonment with no possibility of parole. While the United States Supreme Court recently declared in *Roper v Simmons* that death by execution is unconstitutional for juveniles, young children continue to be sentenced to imprisonment until they die with minimal scrutiny or review. A study by the Equal Justice Initiative (EJI) has documented 73 cases in which children 13 and 14 years of age have been condemned to die in prison (Equal Justice Initiative 2008). The majority lack legal representation and in many cases the propriety and constitutionality of their extreme sentences have never been reviewed. Most sentences imposed on these children were mandatory: the court could not give any consideration to the child's age or life history. Some children were charged with crimes that did not involve homicide or even injury; many were convicted for offences where older teenagers or adults were involved and primarily responsible for the crime. Nearly two-thirds are children of colour.

Young Children are Different from Older Teens

Unlike older teenagers, 14-year-olds in most States cannot marry without permission nor can they obtain a driver's licence. The law mandates that they must attend school and limits the hours they can work in after-school jobs. The law treats young adolescents differently because they *are* different. Using state-of-the-art imaging technology, scientists have revealed that adolescents' brains are anatomically undeveloped in parts of the cerebrum associated with impulse control, regulation of emotions, risk assessment, and moral reasoning. Accordingly, the neurological development most critical to making good judgments, moral and ethical decision-making and controlling impulsive behaviour is incomplete during adolescence (see: Sowell et al 2003; Giedd 2004; Gogtay et al 2004).

Young teenagers experience widely fluctuating emotions and vulnerability to stress and peer pressure without the adult ability to resist impulses and risk-taking behaviour or the adult capacity to control their emotions (see: Furby & Beyth-Marom 1992; Cauffman & Steinberg 2000; Spear 2000). At the same time, because a child's character is not fully formed, her or his behaviour will change as she or he grows up.¹ While the differences between children and adults are 'marked and well understood' (ibid:572-573) children as young as 13 are processed through the adult criminal justice system and subject to its most severe penalties. Because of their low social status in relation to adult interrogators, beliefs about the need to obey authority, greater dependence on adults and vulnerability to intimidation, juveniles are uniquely susceptible to coercive psychological interrogation techniques designed for adults, leading to false confessions and undermining the reliability of the fact-finding process (Drizin & Leo 2004). Together with their diminished understanding of rights, confusion about trial processes, limited language skills and

¹ In *Roper v Simmons* at 570 it was ruled that it would be 'misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed'.

inadequate decision-making abilities, young children are at great risk in the adult criminal justice system.

Condemned Children Share Childhoods of Neglect and Abuse

Most children who have been sentenced to die in prison for crimes committed at 13 or 14 come from violent and what are classified as dysfunctional backgrounds. Often they have been physically and sexually abused, neglected and abandoned. Many parents are sex workers, drug addicts, alcoholics and crack dealers. These children have grown up in lethally violent, extremely poor areas where health and safety were luxuries their families were unable to afford. In *Eddings v Oklahoma* (at 115-116) it was concluded that 'youth is more than a chronological fact ... It is a time and condition of life when a person may be most susceptible to influence and to psychological damage'.

During 2005, approximately 899,000 children in the 50 US States, the District of Columbia and Puerto Rico were determined as victims of abuse or neglect. More than 60 per cent of victims suffered neglect, 15 per cent suffered physical abuse, 10 per cent suffered sexual abuse and 7 per cent were victims of emotional maltreatment. In 2005 an estimated 1460 children died due to child abuse or neglect - a rate of 1.96 deaths per 100,000 children. More than 40 per cent of child fatalities were attributed to neglect, while physical abuse also was a major contributor to child deaths. Nearly 80 per cent of perpetrators of child maltreatment were parents and a further 6.8 per cent were other relatives of the child victim (US Department of Health and Human Services 2007).

Children sentenced to die in prison have in common the disturbing failure of police, family courts, child protection agencies, foster systems and health care providers to treat and protect them. Their crimes occur in the midst of crisis, often as a consequence of desperate, misguided attempts to protect themselves. The experiences of EJI's clients exemplify the extremely deprived and difficult backgrounds of children sentenced to die in prison. Many of these children were victimised by physical violence and sexual abuse inflicted by their parents and other family members. Several children endured years of sexual abuse and rape. One was sexually assaulted repeatedly from the age of four. Another boy was raped by a family member. Ashley Jones was repeatedly threatened at gunpoint by her parents, sexually assaulted by her stepfather, forced into crack houses by an addicted mother, physically abused by family members and abducted by a gang shortly before she offended.

Severe neglect is also common among children in this group. Joseph Jones grew up in Newark public housing, where his crack-addicted parents left him to cook, clean and take care of his six younger siblings. At 13, Joseph's parents took him to North Carolina and abandoned him with relatives. Quantel Lotts saw his uncle gunned down in his front yard in a poor St. Louis neighbourhood, where his mother used and sold crack cocaine out of their house. Quantel was removed from his mother's custody at age eight. He smelled of urine, his teeth were rotting, and his legs, arms and head bore scars from being punched and beaten with curtain rods and broom handles.

Fatal violence is a regular occurrence in the impoverished areas where many of these children spent their childhoods. Antonio Nuñez lived with his family in a brutally violent South Central Los Angeles neighbourhood. When he was 13 he was shot while riding a bicycle down the street from his house. His 14-year-old brother responded to Antonio's cries for help and was shot in the head and killed. Antonio would have died but for emergency surgery to repair his intestines.

Many adolescents suffer from drug and alcohol dependence that typically began in the womb and can be traced back through their families. Omer Ninham is the child of alcoholic parents and, by age 10, was drinking alcohol daily – even in the classroom, where his teachers ignored his drinking. Omer was given his first toothbrush at age 14, when he was removed from his parents and sent to a youth home. None of these children received effective or long-term services, even where their cries for help were early, frequent and unmistakable. Evan Miller suffered physical and emotional abuse so severe that he tried to kill himself when he was just seven years old. By the age of eight, he had attempted suicide several times. Ashley, Joseph, Quantel, Antonio, Omer and Evan all have been condemned to imprisonment until death for crimes at age 13 or 14.

Research has shown that juveniles subjected to trauma, abuse, and neglect suffer from cognitive underdevelopment, lack of maturity, decreased ability to restrain impulses and susceptibility to outside influences greater even than those suffered by 'normal' teenagers (Kaser-Boyd 1993). Adolescents cannot be expected to transcend their own psychological or biological capacities in order to operate with the level of maturity, judgment, risk aversion or impulse control of an adult. A 14-year-old who has suffered brain trauma, a dysfunctional family life, violence and/ or abuse cannot be presumed to function even at standard levels for adolescents. Children overwhelmed by the experiences of dysfunction and without resources to flee or seek help are not provided treatment or safe haven. Instead, in the adult criminal justice system, they are subjected to mandatory sentencing that ignores the child's circumstances and those of the offence in imposing the harshest available sentence.

Numbers and Demographics of Young Children Sentenced to Death in Prison

EJI conducted a nationwide investigation to determine how many people in the United States are serving sentences of life imprisonment with no possibility of parole for crimes committed when they were 13 or 14 years old. By reviewing court decisions, searching media reports, and collecting information from state departments of corrections and from prisoners directly, 73 people were identified as serving sentences to die in prison for crimes they committed at age 13 or 14. These 73 children sentenced to death in prison are serving their sentences in just 19 States: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Illinois, Iowa, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Pennsylvania, South Dakota, Tennessee, Washington, and Wisconsin. Pennsylvania is the most severe State in the US when it comes to sentencing 13- and 14-year-old children to die in prison. Of the 73 children sentenced to die in prison nationwide, 18 were sentenced by Pennsylvania. Florida is second, with 15 young children sentenced to die in prison. In six States – Florida, Illinois, Nebraska, North Carolina, Pennsylvania, and Washington – 13-year-old children have been condemned to death in prison.

Sentencing Children to Death in Prison Violates the US Constitution and International Law

In the United States over 2225 juveniles (aged 17 or younger) have been sentenced to life imprisonment without parole. Each case raises important legal, penological and moral issues. However, EJI believes that such harsh sentences for the youngest offenders – children who are 13 and 14 – are cruel and unusual and violate the Eighth Amendment to the United States Constitution. These children should be re-sentenced to parole-eligible sentences as soon as possible. The Eighth Amendment to the United States Constitution

prohibits ‘cruel and unusual punishments’. To determine which punishments are cruel and unusual, courts look to ‘the evolving standards of decency that mark the progress of a maturing society’ (*Roper* at 561; quoting *Trop v Dulles* at 100-101). The analysis includes measuring the blameworthiness of children against the harshness of the penalty and considering how frequently the penalty is imposed.²

A sentence of imprisonment until death is a different and harsher punishment when inflicted on a young child.³ In striking down a life without parole sentence imposed on a 13-year-old, the Nevada Supreme Court characterised it as a ‘denial of hope’ noting that ‘it means that good behaviour and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the defendant], he will remain in prison for the rest of his days’ (*Naovarath v Nevada*).

The United States Supreme Court has held:

When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity (*Roper* at 573-574).

A sentence to die in prison – whether by execution or other means – extinguishes that potential and offends the Constitution. Such sentences also violate international law. The UN Convention on the Rights of the Child, ratified by every state except the United States and Somalia, forbids this practice and 132 countries have rejected the sentence altogether (de la Vega & Leighton 2007).

The International Covenant on Civil and Political Rights (ICCPR), to which the United States became a party in 1992, prohibits life without parole sentencing for juveniles as it fails to comply with Articles 7 or 24(1) of the ICCPR (Human Rights Committee 2006). The official implementation body for the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment recently commented that life imprisonment for children ‘could constitute cruel, inhuman or degrading treatment or punishment’ in violation of the Convention (Committee Against Torture 2006). Further, the United Nations General Assembly passed by a 185-1 vote (the United States voted against) a resolution calling on all nations to ‘abolish by law, as soon as possible, the death penalty and life imprisonment without possibility for release for those under the age of 18 years at the time

- 2 In *Furman v Georgia*, 408 U.S. 238 (1972), the Court struck down Georgia’s statute ‘under which the death penalty was “infrequently imposed” upon “a capriciously selected random handful”’. *Godfrey v Georgia*, 446 U.S. 420, 438 (1980) (Marshall, J., concurring) (citing *Furman*, 408 U.S. at 309-10 (Stewart, J., 34 concurring)); see also *id.* at 439 n.9 (noting that, in *Furman*, Justices Stewart and White ‘concurred in the judgment largely on the ground that the death penalty had been so infrequently imposed that it made no contribution to the goals of punishment’). In *Coker v Georgia*, 433 U.S. 584, 596-97 (1977), the Court looked to the rarity of death sentences for rape of an adult woman in concluding that the death penalty is an unconstitutionally cruel and unusual punishment for that crime. Likewise, in *Thompson v Oklahoma*, 487 U.S. 815 (1988), a plurality of the Court determined that contemporary standards of decency did not permit the execution of offenders under the age of 16 at the time of the crime, noting that the death penalty was imposed on offenders under 16 with exceeding rarity. (*Id.* at 832-33). When *Atkins v Virginia*, 536 U.S. 304 (2002) was decided, only a minority of states permitted the execution of persons with mental retardation, and even in those States it was rare. On the basis of these indicia the Court determined that executing mentally retarded offenders ‘has become truly unusual, and it is fair to say that a national consensus has developed against it’ (*Roper*, 543 U.S. at 563 citations omitted); see also *id.* at 564: ‘*Atkins* emphasized that even in the 20 States without formal prohibition, the practice of executing the mentally retarded was infrequent. Since *Penry*, only five States had executed offenders known to have an IQ under 70’.
- 3 *Hampton v Kentucky*, 666 S.W.2d 737, 741, Ky. 1984: ‘life without parole for a juvenile, like death, is a sentence different in quality and character from a sentence to a term of years subject to parole’.

of the commission of the offence' (G.A. Res. 61/146, 31(a), U.N. Doc. A/Res/61/146, 23 January 2007).

Conclusion

Many young children in America are imperiled by abuse, neglect, domestic and community violence and poverty. Without effective intervention and help, they suffer, struggle and fall into despair and hopelessness. Some young teenagers cannot manage the emotional, social and psychological challenges of adolescence and eventually engage in destructive and violent behaviour. Sadly, many States have ignored the crisis and dysfunction that brings children into conflict with the law and, instead, have subjected them to further victimisation and abuse within the adult criminal justice system.

The imposition of life imprisonment without parole sentences on the 13- and 14-year-olds, documented in EJI's report, reveals the misguided consequences of surrendering children to the adult criminal justice system. Condemning young children to die in prison is cruel and incompatible with fundamental standards of decency that require protection for children. These sentences undermine the efforts of parents, teachers, lawyers, activists, legislators, policymakers, judges, child advocates, clergy, students, and ordinary citizens to ensure the well-being of young children while feeding the despair and violence that traumatises many US communities and young people. The denial of all hope to a child whose brain – much less his character or personality – is not yet fully developed cannot be reconciled with society's commitment to help, guide and nurture our children.

Life imprisonment without parole for young children should be abolished. States that condemn children to die in prison should immediately eliminate the practice and provide opportunities for parole to people who are currently sentenced to imprisonment until death for crimes committed at 13 or 14. Recent legal developments, international law, and medical insights on child development provide powerful support for ending life without parole sentences for young children. There is an urgent need to change current criminal justice policy and institute reforms that protect young children from death in prison sentences. The plight of the condemned children whose testimonies form the foundation of the EJI Report is not disconnected from the fate of all children, who frequently need correction, guidance and direction, but always need hope.

Bryan A. Stevenson

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