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The juvenile damned

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After a one-day trial in 1989, Joe Sullivan was found guilty and sentenced to life in prison without the possibility of parole. He was 13 years old.

Sullivan's case arose in Florida, which forbids anyone that age from driving, voting, marrying without judicial consent or even riding a bicycle without a helmet. These prohibitions rest on the sound logic that teenagers are still children — too immature and impulsive to be trusted with such grave responsibilities and weighty choices. But when it comes to breaking the law, Florida inexplicably abandons this reasoning. If the transgression is considered sufficiently serious, the child is tried as an adult.

That is what happened to Joe Sullivan. Then it got worse. Following his conviction for the noncapital offense of sexual battery, the judge imposed the kind of punishment reserved for the most violent, incorrigible and irredeemable felons: permanent incarceration in an adult prison. With that sentence, Sullivan took his place among the juvenile damned, a tiny class of child offenders locked up for life in this country with no hope of release. There are a total of nine 13-year-olds in this group. When 14-year-old offenders are added, the number rises to 73.

Sullivan's lawyers, a team led by Bryan Stevenson of the Equal Justice Initiative, hope to reduce that number to zero. On Nov. 9, the U.S. Supreme Court, which has agreed to hear Sullivan's case, will decide whether a life-without-parole sentence for someone younger than 18 amounts to cruel and unusual punishment under the Eighth Amendment. The Court will also hear the companion case of Terrance Lamar Graham, who received a life-without-parole sentence for a noncapital offense at the age of 17. Because the punishment was imposed at a probation violation hearing, Graham was sentenced to die in prison without the benefit of a trial, a jury or proof beyond a reasonable doubt.

Boiled down to its essence, the petitioners' position is that a ruling in their favor is a logical extension of the Court's 2005 decision in *Roper v. Simmons*, which outlawed the death penalty for children younger than 18 years of age on identical grounds. In a 5-4 decision authored by Justice Anthony Kennedy, the Court declared: "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 obtain a mature understanding of his own humanity."

A STRONG, PERSUASIVE ARGUMENT

Sullivan and Graham's argument — that adherence to *Roper's* teachings requires the abolition of life-without-parole sentences for adolescents — is strong and persuasively presented. A punishment is "cruel" if it is excessive and therefore contravenes the "basic precept of justice that punishment for crime should be graduated and proportional." A punishment is "unusual" if it is implemented so rarely "that a national consensus has developed against it." The petitioners have shown, relying in large part on empirical data, that permanently depriving adolescents of their liberty is both cruel and unusual.

In *Roper*, the Court found that capital punishment for juveniles was cruel in part because the inherent immaturity of child offenders makes their conduct "not as morally reprehensible as that of an adult." The Court noted that juvenile offenders have difficulty appreciating the long-term consequences of their actions and controlling their impulses. The short-sightedness and impetuosity of teenagers, combined with their greater susceptibility to the influences of their peers and their inability to extricate themselves from dangerous or negative surroundings, mean that juveniles have a "diminished capacity" that makes them less blameworthy — and thus less deserving of retribution — than their adult peers. Additionally, young adolescents are a work in progress — trying on and

discarding a number of identities in the fraught and complicated process of growing up. Their adult selves may bear little physical or emotional resemblance to the angry, destructive teenagers they once were, undercutting the argument that they must be permanently removed from society.

The findings of neuroscientists and developmental psychologists lead to the same conclusion when applied to life-without-parole sentences for juvenile offenders like Sullivan and Graham: They are cruel within the meaning of the Eighth Amendment. Anyone who has ever raised a teenager, befriended one or been one knows the extent to which that teenager can be self-involved, present-oriented, misguided and overly influenced by a peer group. But it is also true that upwards of 90% of them outgrow it. An amicus brief filed by former juvenile offenders, who grew up to be a U.S. senator, an assistant U.S. attorney, a best-selling author and a Tony-nominated actor, makes this point powerfully. Life-without-parole sentences, had they been handed down in those cases, would have made these accomplished and productive lives impossible. By disallowing the great probability that young offenders will grow and change profoundly and for the better, life-without-parole sentences are not only pitiless, but are excessive in a way that the Eighth Amendment forbids.

The Court in *Roper* found that the death penalty for juveniles was unusual because 30 states outlawed it and even where it was "on the books," it was seldom used. Similar statistics hold for life-without-parole sentences for 13- and 14-year-olds. The data assembled by Sullivan's lawyers demonstrate that only six states have 13-year-old offenders serving life-without-parole sentences, and only 12 additional states have 14-year-olds doing so. When one looks beyond our borders to the practices of other nations — as the Court did in *Roper* — the numbers become even starker: "The United States," Sullivan's lawyers wrote, "stands alone in sentencing children to die in prison without hope of ever winning release."

It is time the Court put an end to this shameful practice by applying *Roper* to life-without-parole sentences for juveniles. Our evolving standards of decency demand nothing less.

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