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Sending children to prison for life

Our laws make allowances for juveniles' immaturity; judges should too

By Bernard Harcourt

This term, the U.S. Supreme Court will hold oral arguments in two cases, *Sullivan vs. Florida* and *Graham vs. Florida*, that will decide whether it's cruel and unusual punishment to sentence a 13-year-old or a 17-year-old to life in prison without the possibility of parole. The court should follow its prior reasoning in *Roper vs. Simmons*, a 2005 ruling that held the juvenile death penalty unconstitutional, and similarly draw a bright line at 18 years of age for imposing life sentences without parole.

The extreme rarity with which sentences of life in prison without parole are imposed on juveniles -- particularly younger juveniles -- shows that this punishment is out of step with American values and society. In the United States, only Joe Sullivan in Florida is serving a life-without-parole sentence for a non-homicide offense, committed at 13. That qualifies as "unusual" under any definition of the word.

The other case on this issue to be heard this term, also from Florida, involves a conviction for armed burglary, again not a homicide. Yet Terrance Graham, who was 17 at the time, was given the maximum sentence that a juvenile convicted for murder would receive.

To be sure, we might not always seek legal guidance abroad. But in this case, the international comparisons are telling. No country other than the United States incarcerates children for life without parole. We were the lone "no" vote against the 2006 U.N. General Assembly resolution calling on all nations to abolish such life sentences. Somalia is the only other nation that has not ratified Article 37 of the U.N. Convention of the Rights of the Child, prohibiting juvenile life-without-parole sentences.

The tough-on-crime rhetoric of "lock 'em up and throw away the key" is entirely inappropriate in the case of children. Children's brains, bodies and personalities are still in the process of growing and changing. And many experts in neuroscience and psychology believe that the same changeability that makes young people vulnerable to negative influences and peer pressure also makes them good candidates for reform and rehabilitation.

In all other areas, we recognize their vulnerabilities. Because of the relative immaturity and irresponsibility of minors, every state in the nation restricts them from voting, serving on juries, purchasing alcohol or marrying without parental consent. States further restrict young adolescents from activities that require more mature judgment, such as driving and consenting to sexual activity. In fact, the state of Florida, where Sullivan and Graham are incarcerated for life, does not even permit adolescents to get their ears pierced without parental consent.

So why should minors be treated like adults when it comes to sentencing?

Ironically, the same laws that are intended to protect children from exploitation and their own immature judgment -- including restrictions on driving, working and leaving school grounds -- prevent young teens from escaping an abusive parent, a violent household or a crime-ridden neighborhood. As the Supreme Court observed in the 2005 Roper decision, "juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment."

Juvenile offenders should be given the opportunity to have their sentences reviewed later in life. Parole authorities are equipped to determine whether adolescents have served a significant portion of their sentences, have been rehabilitated and pose no threat to others, and to decide whether they deserve the chance to complete their sentences in the community. As is true with adult offenders, juvenile offenders do not have a right to parole release; they should, however, have the right to be considered for that opportunity.

Under the best of circumstances, criminal sentencing is susceptible to mistakes. The better option is to sentence serious juvenile offenders to life sentences with the possibility of parole, and provide the hope that will encourage them to continue their education and take advantage of programs in prison to rehabilitate and reform themselves. It is cruel and unusual to pass a final judgment on a person whose character and identity are still forming.

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