



Extra Legal

Kid Row: The Case Against Sentencing Juveniles to Life Without the Possibility of Parole

*By Eliza Lockhart-Jenks**

In June 2012, the United States Supreme Court acknowledged that adults and juveniles—even those convicted of major offenses—are fundamentally different and entitled to different sentencing standards.¹ In *Miller v. Alabama*², the Supreme Court decreed that courts must consider mitigating factors in a juvenile’s life when the juvenile faces a possible sentence of life without parole (LWOP); in other words, *mandatory* LWOP sentences will no longer apply to minors.³ Before this decision, state legislatures could and, in many cases, did mandate LWOP sentences for certain crimes, regardless of the offender’s age.⁴ In *Miller*, the Supreme Court held that the failure to consider

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¹ *Miller v. Alabama*, 132 S. Ct. 2455, 2465 (2012) (“[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. . . .” (quoting *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010))).

² 132 S. Ct. 2455 (2012).

³ *Id.* at 2460.

⁴ See, e.g., IOWA CODE § 902.1 (2012) (“Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a class “A” felony may be rendered, the court shall enter a judgment of conviction and shall commit the defendant into the custody of the director of the Iowa department of corrections for the rest of the

mitigating factors, including age, when sentencing a juvenile to LWOP constitutes cruel and unusual punishment under the Eighth Amendment.⁵

The *Miller* ruling was one more in a series of decisions that recognizes juveniles' and adults' different levels of culpability.⁶ Age and other mitigating factors must now be considered when sentencing a juvenile in a first-degree murder case.⁷ However, a court still has the option of issuing an LWOP sentence to a minor if, after considering age and other mitigating factors, it determines that such a sentence is appropriate.⁸ I will argue that this is *never* appropriate under the current philosophy that guides our criminal justice system, and that as a result, juveniles should be categorically protected from sentences of LWOP.⁹

The goals of imprisonment in the United States can be summarized in three words: punishment, deterrence, and rehabilitation.¹⁰ In Part I of this article, I will show that the goal of punishment is not reached (or, rather, is exceeded) when a juvenile serves a sentence of life without the possibility of parole. In Part II, I will argue that these sentences do not further the goal of

defendant's life."). While the Iowa code makes an exception to this mandatory sentence in cases where the offender is under 18, that exception does not apply for a charge of first-degree murder. *Id.*

⁵ *Miller v. Alabama*, 132 S. Ct. at 2475.

⁶ *See Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010) (finding that a sentence of life without parole for juveniles in non-homicide cases was unconstitutional); *see also Roper v. Simmons*, 543 S. Ct. 551, 578 (2005) (categorically outlawing the death penalty for juveniles).

⁷ *Miller v. Alabama*, 132 S. Ct. at 2475.

⁸ *Id.* at 2469 ("Because that holding [banning mandatory sentences of life without parole] is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles . . .").

⁹ In *Graham v. Florida*, the Court found that a life sentence without the possibility of parole in a non-homicide case was categorically cruel and unusual punishment when applied to juveniles. 130 S. Ct. at 2030. The same reasoning applied in *Graham* should extend to all juvenile cases.

¹⁰ *Graham v. Florida*, 130 S. Ct. at 2028-30 (2010) (listing incapacitation as a goal of punishment and arguing that permanent incapacitation of a juvenile presupposes that the juvenile is "incorrigible" and will forever be a danger to society). I have omitted that goal here because I believe that an assumption of incorrigibility runs counter to the goals of rehabilitation as well and so any argument as to incapacitation, with reference to juveniles serving life sentences, would be redundant.

deterrence. And, in Part III, I will demonstrate that sentences of life without parole thwart the goal of rehabilitation.

Part I: Punishment

Sentences of LWOP result in disproportionate punishment for juvenile offenders. In *Graham v. Florida*¹¹, the Supreme Court emphasized the realistic implication of an LWOP sentence issued to a juvenile versus an adult offender, saying; “[u]nder this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.”¹² In other words, a juvenile, who is, as I will argue, less morally culpable for his actions could potentially serve a much harsher sentence than an adult convicted of the same crime, simply by virtue of his age when sentenced.

A sentence of LWOP is typically reserved as punishment for what society deems to be the most morally reprehensible crimes, such as first-degree murder. As the Supreme Court has repeatedly ruled, “juvenile offenders *cannot* with reliability be classified among the worst offenders. A juvenile is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as that of an adult.”¹³ Generally, for a sentence of first-degree murder and a subsequent LWOP sentence, states require a mens rea of premeditation or malice aforethought.¹⁴

¹¹ 130 S. Ct. 2011 (2010).

¹² *Id.* at 2028.

¹³ *Id.* at 2026 (internal quotation marks omitted) (emphasis added); *cf.* *Roper v. Simmons*, 543 U.S. at 569 (“Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.”).

¹⁴ *See, e.g.*, FLA. STAT. § 782.04 (2013) (stating that, in order for someone to be convicted of murder, the killing must have been “perpetrated from a premeditated design.”); CAL. PENAL CODE § 189 (West 2012) (requiring that first degree murder be “willful, deliberate, and premeditated.”); IOWA CODE § 902.1, *supra* note 5. Federal law is no different. A charge of first degree murder must allege an “unlawful killing of a human being with malice aforethought.” 18 U.S.C.

Based on a growing understanding of juvenile brain development, I argue that juveniles lack the requisite brain capacity to meet the mens rea requirement for murder in the first degree.

The parts of the brain governing “impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable” continue to develop into a person’s early 20s.¹⁵ Indeed, the prefrontal cortex, which governs the executive functions of reasoning, anticipating consequences, and impulse control, does not develop until fully develop until late adolescence. This has led researchers to argue that, “the [juvenile] brain does not have the biological machinery to inhibit impulses in the service of long-range planning.”¹⁶ This indicates that juveniles do not possess the ability to form the intent required to sustain a charge of first-degree murder and, as such, the resulting punishment of LWOP does not fulfill the goals of the sentencing scheme.

In light of this understanding, a sentence of LWOP is *harsher* for a juvenile than it is for an adult who commits the same crime. A juvenile will serve a longer sentence than an adult for the same crime, simply by virtue of his age. This is true even though a juvenile is not mentally developed enough to be held to the same level of responsibility as an adult for the crimes he commits.

§1111. For purposes of this article, I am disregarding arguments related to felony murder or use of weapons of mass destruction, which could result in a first-degree murder sentence without the premeditation requirement.

¹⁵ Declaration of Ruben C. Gur, Ph.D at 15, *Patterson v. Texas*, 536 U.S. 984 (2002) *available at* http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Gur_affidavit.authcheckdam.pdf.

¹⁶ Daniel R. Weinberger, *A Brain Too Young For Good Judgment*, N.Y. TIMES, Mar. 10, 2001, at A13 *available at* <http://www.nytimes.com/2001/03/10/opinion/a-brain-too-young-for-good-judgment.html>.

Part II: Deterrence

Due to their limited brain development, juveniles are less receptive to the deterrent effect of punishment than adults may be. There are two types of deterrence: general and specific.¹⁷ The theory of general deterrence asserts that when one person is punished for committing a crime, others, who may be prone to committing the same crime, will be deterred from doing so by witnessing the consequent punishment.¹⁸ Specific deterrence asserts that a person who commits a crime and is punished will be deterred from repeating the crime by the prospect of more punishment.¹⁹

Using magnetic resonance imaging (MRI), scientists have determined that a juvenile's frontal lobe—the portion of the brain utilized in reasoned decision-making—is not fully developed.²⁰ As a result, juveniles rely more on the amygdala—the portion of the brain that controls impulsive and aggressive behavior—in decision-making.²¹ As the brain develops, the ability to make decisions using foresight and long-range planning also develops.²² Juveniles have not yet fully developed these abilities and “[b]y virtue of their immaturity . . . have less developed capacities than adults to control their impulses, to use reason to guide their behavior, *and to think about the consequences of their conduct.*”²³ If young people can't effectively envision the consequences of their actions, both general and specific deterrence are ineffective and cannot be held up as credible justification for a sentence of LWOP.

¹⁷ See David M. Altschuler, *Tough and Smart Juvenile Incarceration: Reintegrating Punishment, Deterrence and Rehabilitation*, 14 ST. LOUIS U. PUB. L. REV. 217, 218 (1994-1995).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ HUMAN RIGHTS WATCH/AMNESTY INT'L, *THE REST OF THEIR LIVES; LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES* 47(2005) [hereinafter *THE REST OF THEIR LIVES*].

²¹ *Id.* at 49.

²² *Id.*

²³ *Id.* at 45 (emphasis added).

Part III: Rehabilitation

A sentence of LWOP runs completely counter to the goal of rehabilitation.²⁴ LWOP discounts any possibility of rehabilitation because the person in question will never leave prison. This sentencing scheme discounts the idea that rehabilitation is a goal of punishment.²⁵ That denial becomes particularly problematic as applied to juveniles, who have not had the chance to become fully-formed adults.

It has been demonstrated that a juvenile's traits are not fixed or well-formed. Consequently, juvenile behaviors often are not predictive of adult personalities or traits.²⁶ Juveniles are still growing up and "a sentence of life [in prison] negates that reality, treating child offenders as though their characters are irrevocably set."²⁷ In fact, many judges have expressed discomfort with sentencing juveniles to sentences of life without parole because doing so forecloses the idea that the juvenile could be rehabilitated.²⁸

Most importantly, research suggests that, because of the difference in how juveniles make decisions, versus the way adults do, juveniles have "a great potential to reform and rehabilitate as their brains mature and their personalities develop."²⁹ Sending a juvenile to prison for LWOP strips him of the opportunity and the motivation to grow up; to learn, to reform and become a good citizen.

²⁴ In fact, in *Graham v. Florida*, the lower court sentenced the juvenile, Graham, to LWOP in part *because* the court concluded that Graham was incapable of rehabilitation. 130 S. Ct. at 2020.

²⁵ *Graham v. Florida*, 130 S. Ct. at 2030 ("The penalty [LWOP] forswears altogether the rehabilitative ideal.").

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, 19-20 (2008).

²⁷ THE REST OF THEIR LIVES, *supra* note 21, at 45.

²⁸ *Id.* at 92.

²⁹ Johanna Cooper Jennings, *Juvenile Justice, Sullivan, and Graham: How the Supreme Court's Decision Will Change the Neuroscience Debate*, 2010 DUKE L. & TECH. REV. 006, ¶ 10 (2010).

Conclusion

Juveniles should be categorically banned from being sentenced to LWOP, regardless of the crime. A sentence of LWOP punishes a juvenile in a harsher manner than an adult, does not have the desired deterrent effect, and forecloses the possibility of rehabilitation. A categorical ban on LWOP sentences would allow for juveniles sentenced to life imprisonment to receive periodic reviews. It is important to note that such a ban would allow for these periodic reviews and, if such reviews deemed it necessary, could still result in a juvenile spending the rest of his life in prison.³⁰ This type of sentencing scheme serves as an easy compromise between critics and proponents of juvenile LWOP. A review system allows for the goals of punishment to be fulfilled and for the possibility of rehabilitation, while still acknowledging that longer sentences may be appropriate for some juveniles.

Committing a juvenile to life in prison without the possibility of parole does not meet, and in fact can be a barrier to the stated goals of our criminal justice system. A categorical ban on sentences of life in prison without the possibility of parole for juveniles would better serve both juvenile offenders and society by making it possible to rehabilitate and reform juveniles who—without the ability to comprehend the future implications of their actions—have violated the law.

³⁰ Graham v. Florida, 130 S. Ct. at 2030 (“The Eighth Amendment does not foreclose the possibility that persons convicted...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.”).
