Life without Parole Sentences for Juveniles is Inhumane and Morally Wrong

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The United States Supreme Court, currently, is adjudicating two petitions from incarcerated prisoners from the State of Florida who were sentenced to life without parole when they were, respectively, thirteen (a mentally disabled youth, Joe Sullivan) and a sixteen year old youth (Terrance Graham). Neither were convicted of homicide or a felony-murder crime, although they were convicted of, respectively, sexual battery and armed robbery. The Court will be determining whether a life-sentence without parole for a juvenile who has not been convicted of homicide or a felony-murder crime constitutes a disproportionately cruel and unusual punishment under the Eighth Amendment to the United States Constitution. In 2005, the Court ruled that the death penalty for juveniles was unconstitutional under the Eighth Amendment (Roper versus Simmons). In 2002 (Atkins versus Virginia), the Court had also outlawed the death penalty for mentally disabled offenders.

Both opponents of life-sentence without parole for juveniles and supporters have appealed to the reasoning of Roper versus Simmons to make their case. Among the amici briefs in favor of the petitioners are arguments against life without parole sentences for juveniles from several Catholic organizations (The American Catholic Correctional Chaplains Association; The Archdiocese of Los Angeles). Currently, according to a study by Florida State University, 109 prisoners in the United States are serving life-sentences without parole for non–homicide offences, committed as juveniles. 77 of them are in Florida.
State Legislative Efforts to Outlaw Life Sentence Without Parole for Juveniles

A number of states are considering abolishing life-sentence without parole for juveniles, including cases which involved homicide and felony murder charges. A bill proposing to reform the sentence of life without parole for juveniles is now pending before The California Assembly (SB399 was approved by the Senate and has passed the Assembly public safety committee. It awaits appropriations consideration and a floor vote in the Assembly). The California Catholic Conference is on record as supporting SB399. The California Catholic Conference is also on record as supporting SB999 (a 2008 bill that proposed to eliminate life sentences without the possibility of parole for juveniles in California. This bill required a 2/3’s vote and did not pass). California has 250 prisoners who were sentenced to life-sentences without parole for crimes committed when they were juveniles. Nationally, the number runs to 2,574.

Of the 2.4 million inmates in America, 140, 610 are serving life sentences, with 41,095 not eligible for parole. In sharp contrast, in 1984 there were only 34,000 inmates serving life sentences. This spike in life sentences has stemmed from various responses to a perceived rise in crime in the early 1990’s. States passed habitual offender laws (three or two strikes and you are out!); mandated mandatory minimum sentences which lessoned judicial discretion in sentencing and put sentencing decisions more in the hands of legislators and prosecutors. States passed laws which facilitated the transfer of juvenile offenders to adult courts, or vested jurisdiction over certain juvenile offenders directly in adult court without any transfer procedure.
Political rhetoric of the 1990’s, at times, referred to juvenile offenders as ‘super predators’ and mouthed slogans such as “adult crime, adult time” in urging harsher penalties for juveniles. Every state permits life sentences with parole for juveniles. Forty-four states permit life-sentences without parole for juveniles; but just 38 of these currently have juvenile offenders serving life without parole sentences. In some cases of felony murder, passive accomplices, e.g. ‘look-outs’, in armed robberies who had no idea a homicide was going to occur and did not directly wield any weapon have received life-sentences without parole.

**Children are Different**

There are no juvenile offenders serving life without parole sentences outside of the United States. The argument against life sentences without parole for juveniles parallels, to some extent, the argument of the majority in *Roper versus Simmons*. Children are different. Juveniles have not developed in the same way as adults. They are more given to impulsivity, recklessness and are more susceptible to peer pressure. They are inherently less responsible (which does not mean entirely un-responsible) than adults. Neuroscientists have shown that brain regions and systems responsible for foresight, self-regulation, risk assessment, responsiveness to social influences continue to mature until young adulthood. Children and juveniles under 16 can not legally drive an automobile, buy cigarettes or alcohol, get married and can work only limited hours after school. All these recognize relevant differences in development and responsibility between adolescents and adults. Criminal sentencing should likewise do so.
In short, minors need to be considered differently than adults in sentencing due to differences in brain development, emotional maturity and their greater capacity for rehabilitation. As Alison Parker, Deputy Director of the U.S. Program at the NGO, Human Rights Watch, has put it: “Children are different than adults. They need to be punished for serious crimes but the punishment they receive needs to acknowledge their capacity for rehabilitation and life without parole does not do that”.

Paradoxically, prisoners sentenced as juveniles to life-sentence without parole are actually less eligible for limited spaces in GED programs, substance abuse programs etc. Many California youth said they were barred by the state from attending various educational or rehabilitation programs offered in prison. They have a lower priority for inclusion than prisoners who are eligible, eventually, for parole.

As one such prisoner told Human Rights Watch interviewers:” It makes you feel that life is not worth living because nothing you do, good or bad, matters to anyone. You have nothing to gain, nothing to lose. You are given absolutely no incentive to improve yourself as a person. It is hopeless.” Without much doubt, many of the adolescents sentenced to life without parole have in common disturbing prior failures of their families, police, family courts, child protection agencies, foster-systems and health care providers to treat and protect them.

No one knows how the Supreme Court will rule in the cases before it about life-sentence without parole for juveniles who have not committed homicide crimes. The Court has been very wary about overruling sentences in non-capital cases (It has only clearly done so once, in its 1983 Solem decision) as disproportionate and has, generally, respected state sentencing policies. In a 1991 decision, Harmelin, the Supreme Court
upheld a first time adult offender’s sentence to life in prison without parole for possessing over 600 grams of cocaine. In the *Harmelin* case, Justice Anthony Kennedy applied the proportionality test to non-capital crimes. He set out five principles for the test: “The primacy of the legislature; the variety of legitimate penalogical schemes; the nature of our federal system and the requirement that proportionality be guided by objective factors”. Kennedy added that “The Eighth Amendment does not require strict proportionality between crime and sentences.”

At issue, in the current court, is whether an offender’s age is a relevant issue in determining proportionality and whether a sentence, precisely because of a defendant’s age, violates the Eighth Amendment. Yet, even if the Court determines that, in some cases, life without parole for juveniles in non-homicide crimes is, technically, still constitutional, it will, nonetheless, remain inhumane and immoral.

**A Catholic Resource to Help Us Think Through the Issues**

Ten years ago, the US Catholic Bishops published a thoughtful national pastoral letter, *Responsibility, Rehabilitation, Restoration: A Catholic Perspective on Crime and Criminal Justice* (November 15, 2000). That latter remains germane to the issue of life sentences without parole for juveniles and, more generally, to our current penal justice system. Reflection on life-sentencing without parole for juveniles raises a host of larger issues about the criminal justice system, as it now operates in the United States. The United States incarcerates more people per capita than any other country in the world. Our prisons are overcrowded, rehabilitation programs are limited. Often enough, we are merely warehousing convicts. In *Responsibility, Rehabilitation, Restoration* the bishops call for a new national dialogue on crime, corrections, justice and mercy, responsibility
and treatment, protecting and rebuilding local communities, truly confronting crime but without vengeance. The bishops state that “We wish to stand in solidarity with crime victims”.

They aver that “The status-quo is not really working—victims are often ignored, offenders are often not rehabilitated. Many communities have lost their sense of security’. Far from being lenient on crime, the bishops note that “a fundamental moral measure of the criminal justice system is how it responds to those harmed by crime”. Often victims are not adequately heard and healed. Yet not all victims ask for cruel and harsh punishments. Societal responses to crime have not been healthy. “Our society seems to prefer punishment to rehabilitation and retribution to restoration, thereby indicating a failure to recognize prisoners as human beings”. True restorative justice looks to victims, perpetrators (who must be held responsible for their crimes) and the security of communities.

On the question, at issue, about punishment for juveniles, the US Bishops said the following: “We cannot support policies that treat young offenders as though they are adults. The actions of the most violent youth leave us shocked and frightened and, therefore, they should be removed from society until they are no longer dangerous. But society must never respond to children who have committed crimes as though they are somehow equal to adults, fully formed in conscience and fully aware of their actions. Placing children in adult jails is a sign of failure not a solution”.

The Florida judge who sentenced 16 year old Terrance Graham to life-sentence without parole claimed that the youth was simply unredeemable, beyond rehabilitation or deterrence and, thus, incapacitation was the only option. Lawyers have argued, however,
that it is difficult, if not impossible, in the case of juveniles to discriminate between those who can turn their lives around and those who are, perhaps, not really open to treatment. As the bishops note in Responsibility, Rehabilitation, Restoration: “Not all offenders are open to treatment but all deserve to be challenged to turn their lives around”.

Moreover, as Columbia law Professor Jeffrey Fagan has noted, there is a wide swathe for error of judgment on the part of judges and juries. He cites “The inability of judges and juries to accurately render individualized assessments about a teenager’s immaturity and developmental deficits which attenuate his or her culpability. Mandatory juvenile life sentences without parole can occur when culpability remains low”. The same risks the Supreme Court noted in Roper and its earlier Atkins cases can be found in life sentence without parole for juveniles: inflated culpability assessments, false confessions, ineffective assistance of counsel. Joe Sullivan’s court appointed lawyer, for example, did not even raise the issue of competence at trial, even though his client is mentally retarded. The lawyer’s bar license was later suspended, for other reasons, and has not been reinstated.

**No Danger to Society by Alternate Sentencing**

Nor would overturning the possibility for life-sentence without parole lead to diminished deterrence of youth crime. Even some states e.g. Texas and Colorado which do not allow juvenile life-sentence without parole have stipulated a forty year minimum, before the possibility (which, of course, does not mean it will be granted) of parole. Even forty years may be harsh but the law can stipulate a decent minimum before any parole possibilities. As Jeffery Fagan has also argued: “What extra benefits to crime control or to retributive justice do we gain from a sentence of life without parole for an immature
juvenile than we now gain from sentences of 40 or 50 years. The answer, given the reality and severity of prison, is nothing at all”

In the two Florida cases before the current Court, sentencing juveniles to life without parole has no penalogical value. The sentence incapacitates a juvenile, before he or she has reached adulthood, for his or her entire adult life, in other words, until death. Life without parole sentences preclude any genuine chances for successful rehabilitation. Such sentences are particularly harsh for first time offenders. As an example of retributive justice, the sentence is disproportionately harsh for a juvenile offender. Nor is it likely to have serious deterrent effects. Other juvenile offenders are unlikely to be deterred by the punishment. Juveniles, frequently, do not consider fully or deeply the consequences of their choices and actions.

A Thoughtful District Judge’s Reflections

In a remarkable posting in a publication of the Martin Marty Center for The Advanced Study of Religion at the Divinity School of the University of Chicago, a U.S. District Judge for the Northern District of Illinois, Joan Gottshall, reflects on the nineteen amici curiae briefs, filed by Moslem, Jewish, Buddhist, Mormon, Catholic and Protestant groups, in favor of the plaintiffs for the Florida cases now before the Supreme Court. Judge Gottshall notes that these diverse religious voices, nevertheless, speak with one voice on issues of punishment for crimes.

Central to each of the faith traditions are the values of mercy, forgiveness and compassion and the link between these values and justice. The religious brief states: “In short, these religious texts make clear that each of these three values—mercy, forgiveness and compassion—must guide inter-personal and societal relations and are to
serve as the bedrock principles for a just and fair society”. Gottshall mentions that she found in the religious briefs a voice and a claim “rarely heard in contemporary culture [that] the duty of a judge, and of a society in imposing judgment, is to make adequate provision for these values.”

All of the diverse religious traditions recognize the distinction between children and adults in questions of culpability and punishment. They also point to an important theme of the weak and vulnerable—which includes youth—especially, having a special entitlement to compassionate treatment. The religious brief argues that life prison without parole for juveniles is unjust because it fails to recognize the potential for juveniles to grow, develop and be rehabilitated. In so doing, such sentences—the religious briefs claim—contravene a fundamental concept of rehabilitation found in diverse religious traditions. As the religious brief states it: “Just punishment must allow for the offender to be rehabilitated and restored to the community when possible.” Judge Gottshall concludes: “In the context of contemporary public discourse, the importance of the arguments of these amici curiae cannot be overstated. Their insistence on the religious centrality of mercy, forgiveness, compassion and rehabilitation and the relevance of these values in our system of justice, is a message rarely heard.”

Conclusion

We, the California Catholic Bishops, join our voices to those of these religious amici curiae. We do so because we feel that the issues raised by the sentencing of juvenile offenders to life sentences without parole may help us, together, finally, perhaps, to hear that voice the judge concludes is rarely heard in our contemporary society, not
just in our churches, synagogues, mosques but in discussions about what kind of criminal justice system we as a decent people want really to endorse and enact in our midst.