

Just Deserts and Life without Parole for Juveniles: An Iniquitous Law and Policy

Rudolph Alexander, Jr., Professor, College of Social Work, Ohio State University

Abstract

Although Illinois created the first juvenile court in 1899, it, as well as subsequent states, tried juveniles as adults. While some jurisdictions were reluctant to execute juveniles, some states imposed death sentences upon juveniles. States also imposed life imprisonments or lengthy sentences upon juveniles. In the 1990s, the U. S. Supreme Court began to limit the imposition of death sentences upon juveniles, ruling the death penalty violated the Eighth Amendment prohibition against cruel and unusual. Finally, the U. S. Supreme Court held that any person under the age of 18 years old could not be sentenced to death. Later, the Court ruled that sentencing juveniles to life imprisonment without the possibility of parole constituted cruel and unusual punishment for juveniles who had not killed. This article extends this principle and argues that sentencing juveniles to life imprisonment without parole, even for murder, is cruel and unusual punishment.

Introduction

For time immemorial, the criminal justice system treated adult and juvenile offenders the same when punishments had been imposed (Fuller, 2009; Strieb, 1995). For example, in 1792, a Philadelphia official put a 12-year-old boy in jail for arson, forcing the boy to confess by denying him food and his clothing (*The Commonwealth v. Dillon*, 1792). About 1828, New Jersey claimed that a 12-year-old African American servant [sic] asked a woman to borrow a gun, and when he was refused, he bludgeoned the woman to death. Reportedly, officials told him that if he confessed, he would escape punishment. Subsequently, he was found guilty and executed (*The State v. James Guild*, 1828). In 1911, Addams (1930) recounted a brutal murder that occurred in Chicago involving six young men and boys. The four oldest males were hanged and the two youngest, who were under 17 years of age, were sentenced to the state penitentiary (Addams, 1930). In a manner, society embraced a just deserts punishment philosophy. The principle of just deserts means that juveniles who committed certain offenses are subject to the same punishment as adult offenders (Marinos, 2005).

During the Progressive Era in the 19th century, policies regarding juvenile offenders began to change, such as the creation of houses of refuge and the creation of juvenile protective associations in many major cities (Addams, 1910; Alexander, 1997; Siegel & Welsh, 2009). Spearheading this reformation in juvenile policies were women and particularly women affiliated with settlement houses or early social workers (Addams, 1930). Prior to the creation of the juvenile court, Chicago police officials who had arrested neighborhood adolescents for minor offenses took those adolescents to House Hull. Settlement house workers were instrumental in

the creation of the first juvenile court in Chicago in 1899, and the first juvenile court was located across the street from the Hull House Settlement (Addams, 1910). A settlement house worker was the first juvenile probation officer. In addition, settlement house workers in California convinced California officials to create a separate juvenile court just for girls, staffing it completely with woman professionals (Odem & Schossman, 1991). For the most part, these early juvenile courts handled juveniles who had committed minor offenses (Addams, 1910).

Despite the creation of juvenile courts in Illinois and other states, states still tried juveniles in courts as adults for serious crimes. Juveniles who were convicted of capital felonies were subject to capital punishment or life imprisonment in adult prisons (*Application of Johnson*, 1957; *Cobb v. the State*, 1962). A federal court in New Jersey decided whether a prisoner should be released, noting that in the 1940s a prisoner had been given life imprisonment at hard labor in an adult prison at the age of 14, and another 13 year old had been given life imprisonment (*Application of Johnson*, 1957). Often, life imprisonment carried with it the possibility of parole after a number of years (*The People of the State of New York, v. Joseph Lake*, 1948). Discussing the criminal history of an appellant, an Iowa Court observed that the appellant had been given a life sentence in 1922 for bank robbery but paroled in 1931 (*State of Iowa, v. Bruntlett*, 1949). In 1961, Georgia sentenced Preston Cobb, then a 15-year-old African American male who was charged with killing a White man, to die in the electric chair (*Cobb v. The State*, 1962). Upon a retrial, Cobb was convicted of murder but was given a sentence of life imprisonment (*Cobb v. the State*, 1966). Cobb's case was successfully appealed a second time, resulting in a manslaughter plea and a sentence of 18 years. Through these legal appeals, Georgia maintained Cobb at the Georgia State Prison at Reidsville, Georgia, the State's maximum security prison (Alexander 2003).

Presently, a number of states provide life without parole for juveniles (Chen, 2009; Children's Law Center of Massachusetts, 2009; *Meadoux v. The State of Texas*, 2010). Juveniles in Massachusetts who are 14, 15, and 16 and who have been charged with first degree murder are automatically tried as adults (Children's Law Center of Massachusetts, 2009). Juvenile courts in Massachusetts have no jurisdiction over these age groups, and prosecutors do not have any discretion to try those cases in juvenile court. Upon trial in an adult court, neither a juvenile's age nor his or her life circumstances have any bearing upon the trial or sentence. If convicted, the plan for these juveniles is for them to become adults and die in prison of natural causes (Children's Law Center of Massachusetts, 2009; Johnson & Tabriz, 2011). Pennsylvania has the largest number of juveniles serving life without parole, nearly 500 juveniles (Balingit, 2008).

Examining punishments for juvenile offenders, the U. S. Supreme Court slowly held as unconstitutional, based on the Eighth Amendment prohibition against cruel and unusual punishment, the execution of 15-year-old juveniles (*Eddings v. Oklahoma*, 1982), and then 16-year-old juveniles (*Thompson v. Oklahoma*, 1988) and finally 17-year-old juveniles (*Roper v. Simmons*, 2005). These rulings culminated in the holding that juveniles under 18 years of age could no longer be executed in the United States. In 2010, the U. S. Supreme Court held as cruel

and unusual punishment the imposition of life imprisonment without the possibility of parole for juveniles who have not committed murder. However, the Court suggested that life without parole might not be unconstitutional for juveniles who have been convicted of murder (*Graham v. State of Florida*, 2010). Recently, Pennsylvania officials charged an 11-year-old juvenile with killing his father's eight-month-pregnant girlfriend, and the prosecutor announced his intention to seek life imprisonment without the possibility of parole for this boy (Dolan, 2011). In 2011, the U. S. Supreme Court accepted two cases to decide whether the imposition of life without parole for two 14 year old juveniles for murder violated the Eighth Amendment prohibition against cruel and unusual punishment (Savage, 2011). One of these juveniles did not actually kill anyone but was with someone else who had actually committed the murder (Savage, 2011).

Punishing a juvenile with life without parole harkens back to a period before the Progressive Era and violates a number of social justice and human rights principles (Human Rights Watch, 2005). Among these reasons are that adolescents are different from adults and deserve less punishment than adults. The aim of this paper is to discuss the reasons why juveniles should not be sentenced to life without parole, even for murder. First, it explains the U.S. Supreme Court's key rulings on cruel and unusual punishment, professionals' expositions on adolescents' development, the theoretical basis for proportionate sentences for juveniles because of their adolescence, and the arguments for not sentencing juveniles to life without parole.

The U. S. Supreme Court and Its Key Rulings on the Eighth Amendment Prohibition Against Cruel and Unusual Punishment

Enacted in 1791, the Eighth Amendment to the U. S. Constitution forbids neither excessive bail nor cruel and unusual punishment. No initial consensus existed on what cruel and unusual punishment meant, but the U. S. Supreme Court in the 1800s ruled that executions by hanging (*Wilkerson v. Utah*, 1879), firing squad (*Wilkerson v. Utah*, 1879), and electrocution (*In re Kemmler*, 1890) were not cruel and unusual punishment. In 1910, the U. S. Supreme Court ruled for the first time that a criminal sentence constituted cruel and unusual punishment. This case involved a federal official who had falsified governmental records. He was sentenced to 15 years in prison, lifetime supervision upon his release from prison, and numerous civil disabilities (*Weems v. United States*, 1910). The Court rejected this punishment as being cruel and unusual. In another case, the military convicted a soldier of desertion and treason. His punishment included the loss of his U. S. citizenship, which the U. S. Supreme Court held was cruel and unusual punishment (*Trop v. Dulles*, 1958).

The guiding legal principle for analyzing cruel and unusual punishment is that its meaning comes from an evolving standard of decency that marks the progress of a maturing society (*Graham v. State of Florida*, 2010). That is to say, when a society, as it matures, abandons a particular punishment that was allowed centuries ago, such as drawing and quartering

a body as an execution method, the punishment becomes cruel and unusual (Lemon-Strauss, 2010). For evidence that a punishment has been abandoned, the Court looks as one key factor the number of states that have the punishment and its frequency of imposition. In the capital punishment arena, the Court has used this analysis to rule that the imposition of capital punishment of persons who have severe retardation, juveniles who commit murder at 15 years old age, juveniles who commit murder at 16 years of age, and finally juveniles who commit murder at 17 years of age were cruel and unusual punishments (Lemon-Strauss, 2010). Once the Court rules that a punishment is cruel and unusual, the states and federal government can never retrieve this punishment.

The U. S. Supreme Court accepted a case to decide if the imposition of life without the possibility of parole was cruel and unusual punishment for a juvenile who had not killed anyone. In this case, a 16-year-old juvenile pled guilty to armed burglary with an assault and attempted robbery. He was sentenced to probation but was subsequently arrested for some additional robberies. The judge revoked his probation and sentenced him to life imprisonment. Because Florida had abolished parole, this life sentence meant that this juvenile would remain in prison for the rest of his life, unless a future governor granted clemency. Terrance Jamar Graham, the juvenile in this case, argued that life without parole for him constituted cruel and unusual punishment. By a 6 to 3 vote, the U. S. Supreme Court agreed. Although the Court did not rule that Graham had to be released in the future, the Court ruled that he must be given a realistic chance to be released later (*Graham v. Florida*, 2010).

Writing for the majority in *Graham*, Justice Kennedy reported that during oral arguments, Florida admitted that a 5-year-old child could be sentenced to life without parole under Florida law. Further, Justices Stevens, Ginsburg and Sotomayor noted that Justice Thomas “would not rule out a death sentence for a \$50 theft by a 7 year old” (*Graham v. Florida*, 2010, p. 2036), but the Justices in the majority rejected these notions as violative of the prohibition against cruel and unusual punishment. Moreover, the majority observed that there are traditionally four criminological purposes of punishment—retribution, deterrence, incapacitation, and rehabilitation—and life without parole for a juvenile offender who had not killed anyone contradicted all four purposes of punishment.

As recounted by the U. S. Supreme Court, retribution is a legitimate reason to punish, but it must be directly connected to the personal culpability of the individual. Society has the right to express its moral outrage at a crime and to seek the balancing of what was done to the victim, but retribution is less powerful for a minor than it is for an adult. Deterrence with juveniles does not occur like it perhaps does with adults, according to the Court. Incapacitation does not justify life without parole because the majority of former inmates commit new crimes within three years of release. Further, child psychologists cannot differentiate juveniles whose crimes occur because of immaturity and juveniles whose crimes reflect fixed incorrigibility. According to the Court, “a life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity” (*Graham v. Florida*, 2010, p. 2029). Finally, rehabilitation,

though controversial, is not possible for juveniles who have been sentenced to life without parole because it makes an irrevocable decision about a juvenile's value and place in society. In many states, prisoners with life sentences are excluded from participating in many rehabilitation programming. Such a decision is not appropriate for a juvenile who has not killed due to his or her capacity to change and imperfect moral culpability, according to the U. S. Supreme Court.

Professionals' Expositions on Adolescent Development

When the U. S. Supreme Court considers cases with significant social ramifications, interested organizations provide the Court with arguments and professional knowledge in amici curiae briefs or friends of the Court. In *Graham*, the National Association of Social Workers, the American Psychiatric Association, the American Psychological Association, and Mental Health America together filed an amicus brief, giving the Court knowledge about adolescents' brain development and thought processes (Amicus Brief for the American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Mental Health America, *Graham v. State of Florida*, 2008 U. S. Briefs 7412; 2009 U. S. Ct. Briefs LEXIS (2009)).

In their amicus brief, these professional organizations recapped research in developmental psychology and neuroscience about adolescents and juveniles. They summarized this literature in support of their brief opposing life without parole for *Graham*. They wrote that compared to adults, juveniles differ in several important respects. Juveniles, both young and older adolescents, are less able than adults to control their impulses and use self-control. Moreover, juveniles are less able than adults to contemplate various appropriate responses for life situations and maturely consider the risks and rewards of choosing certain actions. Juveniles, thus, do not consider the consequences of their risky and potentially hazardous behaviors. Simply, they do not contemplate the future. When juveniles are in precarious situations, they are less able to retract themselves from these situations as adults can do. Because of lesser cognitive development, research further shows that juveniles are more vulnerable to peer pressures and negative influences. Juveniles are constantly evolving in their development and identity, and their character is not inextricably fixed, even it is apparently antisocial at arrest. In sum, research shows that most juveniles desist from antisocial behavior as they become older adults (Amicus Brief for the American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Mental Health America, *Graham v. State of Florida*, 2008 U. S. Briefs 7412; 2009 U. S. Ct. Briefs LEXIS (2009)).

The Justifications for not Sentencing Juveniles to Life Without Parole for Homicide

The mental health community filed an amici brief arguing that society should not sentence a juvenile to life without parole for non homicide offense, repeating much of what it argued in capital cases involving juveniles. However, the developmental reasons espoused by the mental

health community should be expanded to include severe child abuse and trauma (Steinberg, 2009). For example, several British professionals have studied brain development using neuro-imaging following abuse and neglect during childhood. These studies created a new branch of science called developmental traumatology. These studies determined that the areas of the brain that were impacted by childhood abuse and neglect were critical in arousal control and executive function. They note that many adolescents who are seen by forensic professionals suffer in respect to deficits in key brain development functions due to abuse and neglect that have occurred in their childhood (Gralton, Muchatuta, Morey-Canellas, & Lopez, 2008).

In the United States, a large proportion of children experiences severe abuse and neglect (Alexander, 2010). For example, a teenager got into a violent conflict with his girlfriend and her family. He snatched his four-month-old son and ran out of the house with the baby. As he ran with the baby, he intentionally and repeatedly threw the baby on the pavement, killing the baby. Allowing him to plead guilty to aggravated murder, the prosecutor stated that he decided not to seek the death penalty because this teenaged father had had a very horrific upbringing. The prosecutor stated that he did not believe that a jury would return a death sentence after hearing about the teenager's upbringing (Futty, 2011a). Given the heinous crime, this offender had to have suffered unimaginable abuse that would mitigate this type of crime and there was strong evidence to support his abuse. The judge sentenced him to 25 years to life, although the baby's family had pleaded for life without parole (Futty, 2011c).

However, the primary reason that juveniles should not be sentenced to life without parole comes from the theory expressed by von Hirsch. Under von Hirsch's version of just deserts, juveniles should not be punished like adults are punished even when juveniles commit the same crimes. Drawing upon the literature, von Hirsch cited three reasons: (1) juveniles' less culpability; (2) juveniles' experiencing punishment more intensely than adults, which are referred to as the punitive bite; and (3) society's view that adolescence is a period of testing and society's view that adolescence is different. A burglary committed by a 15-year-old juvenile and a 35-year-old adult creates identical harm to the victim. The victim's losses, including the loss of security and privacy, are not lessened because a juvenile committed the burglary rather than an adult. However, the juvenile behaves with less personal responsibility, which makes the offense less severe.

One might question why a juvenile's burglary would be less serious. One explanation is that because of juveniles' cognitive development, juveniles have less capacity to assess and appreciate the negative effects of their crimes. Put another way, juveniles have less ability to empathize. An adult might not exhibit empathy too, but not generally because of the lack of cognitive development. Typically, the adult does not care about the harm being done. Moreover, if one views juveniles as deserving lesser punishment, then it must be that society has different normative expectations. As explained by von Hirsch, undeveloped juveniles "cannot reasonably be expected to have a fully fledged comprehension of what people's basic interests are and how typical crimes affect those interests—because achieving this kind of understanding

is a developmental process” (von Hirsch, 2001, p. 225). To appreciate how burglarizing someone’s house impacts a victim’s sense of security, more than just taking a stereo, requires a high degree of moral sophistication.

Further, children experience punishment differently than adults, and punishment is more onerous for children. Adolescents have undeniable special interests, and punishments are more severe because they impede these special interests. First, there are developmental interests. For the most part, adolescents between the ages of 14 and 18 need critical opportunities and experiences. Adolescents require suitable schooling and opportunities for learning, a somewhat nurturing family environment, access to suitable role models, and attachments to trusted friends and associates. These are not merely preferences but are necessary interests. Adolescents need these interests in order to mature sufficiently and to have socially productive lives. Punishments are more severe when they impede these interests. When the punishment is incarceration, it “tends to stunt learning opportunities, provides a hostile rather than nurturing atmosphere, offers few role models or destructive ones; and fosters attitudes of distrust.” (von Hirsch, 2001, p. 228). For this reason, if a punishment is more severe or onerous for adolescents, then the punishment should be reduced.

The third reason for treating juveniles more leniently when imposing punishment is that society, informed by science and education, has had since the 19th century a history of tolerance for juveniles. Adolescence is a special time when society expects juveniles to begin learning to demonstrate autonomy and breaking from parental authority. When a juvenile does make decisions, some of those decisions are going to be poorly made and cause harm to society. Punishment thus should not be so crippling that it would make it more difficult when they become adults. von Hirsch (2001) states that “in punishing less, it is hoped that we will preserve better the young person’s opportunities and prospects less—and thus permit him or her to live freely as adults, carrying fewer burdens from his earlier mistakes” (p. 230).

von Hirsch (2001) provided a justification for lesser punishments for juveniles, consisting of juveniles being less culpable, greater punishment bite, and society’s greater tolerance in correcting juveniles. His proposition employed using as a comparison a juvenile who committed burglary and an adult who committed burglary and why the punishments should be different. However, von Hirsch’s perspective could apply to the most serious crime that a person can commit—murder. The U. S. Supreme Court has incrementally scaled back capital punishment for juveniles until it finally forbade the ultimate punishment for juveniles less than 18 years of age. Then, the Court decided that sentencing juveniles to life without parole for a non-homicide was cruel and unusual punishment and violated the Eighth Amendment to the U. S. Constitution.

An example involving rape provides a comparison consistent with von Hirsch’s position. A 43-year-old male met a 15-year-old troubled girl and provided her with a place to stay, money, a fake identification, and marijuana. He then convinced her to engage in prostitution. When the young woman informed the man that she no longer wanted to engage in prostitution, her pimp raped her. He was subsequently convicted of rape and sentenced to life without parole (Boone,

2010). Suppose the pimp was a 16-year-old juvenile male. Although the harm to the victim is still the same, a 16-year-old juvenile pimp should not receive life without parole if he was convicted of the rape of a 15-year-old girl. This is not to say that a juvenile pimp who has raped should not be severely punished, but the punishment should be less than what an adult pimp would receive.

Simply, juveniles experience more punishment in prison than adults. In penological studies, references are made to the “pains of imprisonment” (Allen, Latessa, & Ponder, 2010), but these pains are greater for juveniles. Justice Kennedy astutely noted in *Sullivan* that life without parole for a 16-year-old juvenile is greater punishment than a life without parole for an adult who is more than 50 years old. If the normal life expectancy is 72, a juvenile will have to serve 56 years compared to an adult 22 years before a natural death. Another aspect of this greater punishment bite is that juveniles in adult prisons are subject to sexual abuse and are often raped in prison (Allen, Latessa, & Ponder, 2010; Austin, Johnson, & Gregoriou, 2000).

Several professionals have discussed the sexual assault of juveniles in adult prisons. Soering (2004) reported that a 16-year-old juvenile was charged with malicious wounding and tried as an adult and imprisoned in an adult institution. Infected with HIV during a sexual assault while incarcerated, he intentionally infected other prisoners while becoming a prostitute in prison. Originally named Tony, he asked his fellow prisoners to call him Tonya (Soering, 2004). Alexander (2003) recounted that numerous juveniles were incarcerated at the Georgia State Prison at Reidsville, Georgia, a maximum security prison. Many of these juveniles were not convicted of violent offenses and one was there at 15 years of age for burglary (Alexander, 2003). One juvenile was stabbed in the neck and died after an older prisoner attacked him in an attempt to force the juvenile to submit to a sexual relation or to become the older prisoner’s “boy” (Alexander, 2003). An ombudsman in Ohio related to a class on juvenile delinquency that numerous juveniles at one of Ohio maximum security prisons, Lucasville, Ohio, were forced to become prostitutes for an older prisoner. These juveniles had to follow this older prisoner around on the prison yard. If a prisoner wanted one of the juveniles, he would simply pick one out and pay the older prisoner. Some juveniles, to prevent them from being exploited in adult prisons, are segregated, and the isolation causes severe mental health issues (Austin, Johnson, & Gregoriou, 2000). In short, juveniles experience greater punishment bite as von Hirsch stated.

Sentencing juveniles to life without parole is a retreat from the enlightened principles established during the progressive era and constitutes another justification against this punishment. Since the child saving movement in the 19th century and the creation of Juvenile Protective Associations, children and juveniles garnered understanding and tolerance that they were not fully formed adults. Juveniles were also recognized as experiencing difficulties because of their adolescence. Early child advocates recognized that the change of society from rural to urban produced stresses on adolescents (Jacoby, 1925). Groves (1925) stated rural life served adolescents better than urban life and that the family situation in urban areas produced tension and upheaval in the family. The socializing process consisted of two elements—the

changing of persons and the changing of the social environment (Groves, 1925). Healy (1925) stated that the environment is important in understanding how it impacts behavior and that the same environment can have differential impacts on individuals. Differences occur due to innate differences in individuals and previous experiences that shaped mental associations and mindset. As an example, Healy noted in the school environment, one child may be miserable but another child strives. This difference is caused by biological characteristics, size, health, energy, special mental equipment, disabilities and ambitions. Even in the same family environment, a parent's abusive behavior can have differential impacts on the children in the family. A sensitive child, experiencing the abuse, builds up significant repressions and mental conflict. The other child may not be affected in such manner (Healy, 1925). According to Healy (1925), "whether or not we accept various theories and interpretations of environmental influences, we have had to concede that surroundings and circumstances are always part of the situation involved in conduct" (p. 43).

Reflecting this belief and knowledge, another settlement house worker, Julia Lathrop, sought to save Russell McWilliams, a 17- year-old boy, who robbed passengers on a streetcar and killed the motorman. McWilliams pled guilty and was sentenced to die in the electric chair in Illinois. Julia Lathrop, as revealed by Jane Addams, wrote an editorial about McWilliams, stating that "such a sentence pronounced against a boy of that age is against public policy. "Condemning to death so young and undeveloped a person is a profound miscarriage of justice" (Addams, 1935, p. 219). Lathrop ignited a national campaign against capital punishment for juveniles and garnered the support of numerous professionals, including the head of the Juvenile Protective Association, to save McWilliams. Through subsequent appeals, McWilliams went on trial three times with each trial resulting in a death sentence. From one appeal, the Illinois Supreme Court instructed the trial court that further testimony should be heard on mitigation as well as aggravating factors in deciding McWilliams' fate. The Illinois appellate court also stated that McWilliams' youth should entitle him to special consideration in determining his sentence (Addams, 1935). Lathrop underwent surgery and she declared that following her surgery and recuperation, she intended to visit McWilliams. However, she did not get an opportunity to visit McWilliams because she died on April 15, 1932. Shortly after Lathrop's death, the Governor of Illinois commuted McWilliams' sentence to 99 years. Another Governor, Adlai Stevenson, on November 15, 1950, further commuted McWilliams' sentence from 99 years to 57 years. McWilliams was paroled on January 31, 1951 and discharged on February 10, 1956 (D. Short, email communication, February, 25, 2011). In effect, McWilliams served about 25 years in prison.

Julia Lathrop stated that executing juveniles is a profound miscarriage of justice. Equally, sentencing juveniles to life without parole even for murder is a social injustice. Some prosecutors will say that life imprisonment for juveniles is only given for the worst of the worst, such as contended by a Colorado prosecutor in a nationally acclaimed documentary on life without parole for juveniles (Bikel, 2007). However, this was not the case as one juvenile in

Colorado received a life sentence without parole for being an accessory to murder, and another juvenile received life without parole for an unintended homicide because he was attempting to rob an individual who was seeking to buy a gun. He was guilty of felony murder, which meant life without parole. Many countries have abolished felony murder because of its unfairness, but the United States maintains it (Bikel, 2007). Human Rights Watch (2008) studied juveniles sentenced to life without parole in California and other states and found that nearly 60 percent of them are first time offenders. Examining just California, Human Rights Watch (2008) reported that 45 percent of the juveniles sentenced to life without parole had not killed anyone and was with someone else who killed while engaged in a felony.

In 2009, law enforcement arrested 7,193 persons for murder or manslaughter and 656 of these arrests were juveniles or persons under 18 years of age (Federal Bureau of Investigation, 2010). Thus, juveniles accounted for 9% of the arrests for murder and manslaughter. Most of these 7, 193 arrests for murder and manslaughter do not lead to either a death sentence or life imprisonment. As stated earlier, Florida abolished its parole system, and prisoners are required to serve at least a minimum 85 percent of their time. Nonetheless, prisoners who have been convicted of murder or manslaughter served an average of 19.1 years (Florida Department of Corrections, 2011). In 2008, California paroled 21 prisoners who had been convicted of first degree murder, and they had served an average of 374 months or over 31 years (California Department of Corrections and Rehabilitation, 2009).

Juveniles, while not sentenced to life without parole, still would be severely punished. For example, a judge sentenced a teenage gang member for killing another alleged gang member and wounding a second person. The judge imposed a life sentence with parole eligibility after 54 years (Futty, 2011b). Currently in her 30s, a woman in California was serving life without parole which was given to her when she was a juvenile. She has been punished and she is sustaining losses that she will not be able to ever retrieve. Former Governor Arnold Schwarzenegger commuted her life without parole sentence to 25 years to life just days before he left office. She is currently 33 years old and has served 16 years in prison, but now she has a chance to get out of prison (Boman & Cole, 2011).

A week after, the U. S. Supreme Court heard arguments in *Graham*, the Criminal Law Society and Criminal Law Brief co-hosted a panel discussion on November 19, 2009 at the Washington College of Law (WCL) in Washington, D.C. between opponents and proponents of sentencing juveniles to life without parole. Among the proponents was Scott Burns, Executive Director of the National District Attorneys Association. He opined that victims of grave crimes committed by juveniles should not be forgotten and that these victims needed to see juveniles severely punished in order to attain closure (Swaney, 2009). The word closure is often heard during executions and victims' impact statements. However, no research has ever documented that an execution produces closure for victims or life without parole. If executions or life without parole produces closure, then this closure is only provided to a very small group of victims because most homicides do not lead to either an execution or life without parole. In

2009, law enforcement arrested over 7,000 persons for homicides but only a very small minority received death sentences or life without parole.

Conclusion

The primary thesis of this article is that juveniles should not be sentenced to life imprisonment without the possibility of parole. Although the U. S. Supreme Court has ruled that life without the possibility of parole for non-homicide is cruel and unusual punishment, this article argues that such a sentence is unjust even for homicide. To its credit, Colorado, which implemented life without parole for juveniles after widespread media attention on juveniles arrested for murder, later abolished this sentence and gave juveniles a chance at parole (Bikel, 2007). However, the law was not made retroactive, and those juveniles who had been sentenced to life without parole had their sentences stay the same (Bikel, 2007).

As previously stated, most homicides do not result in either sentences of death or life without parole. While a person may be given a life sentence, many of these individuals are eventually released. Juveniles deserved to be given an opportunity to be released for the three reasons that von Hirsch articulated—their moral culpability, greater punishment bite, and society's enlightened view that adolescence is a growing period. Juveniles who are sentenced to life imprisonment are punished for their acts, but they, if circumstances justify it, should be given an opportunity to experience liberty. A juvenile who has been sentenced to life imprisonment at 16 years of age and released at 50 has served a significant amount of time and has sustained losses that can never be recreated or restored. He or she has been severely punished.

The argument that juveniles should not be sentenced to life imprisonment without the possibility of release is not based as much on legal arguments surrounding cruel and unusual punishment. Instead, it is based on the fact juveniles are different from adults and deserve less punishment. Moreover, numerous juvenile offenders have experienced extreme abuse from their families and their social environments, which early child advocates noted. Some juveniles are severely maladjusted due to their background, such as the teenaged father who killed his infant son by throwing him on the street. For aggravated murder in Ohio where a life sentence is given, a judge may impose life with parole eligibility in 20 years, 30 years, or never. Just because a person is eligible for parole does not mean that he or she will be paroled. This Ohio teenager who killed his child had to be separated from other jail detainees and the same will likely be done in adult prison. While some judges and observers like to point out individuals who have had tough backgrounds and later become socially responsible citizens, all individuals are not the same as child advocates articulated in the 1920s. Some adolescents have a more difficult time overcoming abuse and neglect. Difficulties impact individuals differentially. Julia Lathrop was a strong advocate against executing juveniles and if she were alive today, she probably would be against juveniles being sentenced to life without the possibility of parole or release.

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