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JUVENILE LIFE WITHOUT PAROLE: EXPOSING THE PARALLELS BETWEEN
JUVENILE OFFENDERS AND THOSE WHO SENTENCE THEM

by
Autumn Elizabeth Fortenberry

A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the
requirements of the Sally McDonnell Barksdale Honors College.

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Abstract

This thesis will discuss Juvenile Life Without Parole sentencing (JLWOP) from three perspectives: (1) the evolving standard of decency as developed through relevant U.S. Supreme Court cases; (2) the cognitive and psychosocial development of adolescents that creates reduced culpability in juvenile offenders; and (3) the justifications and implications of punishment as-applied to juvenile offenders. In my fourth chapter, I argue that JLWOP sentencing disregards the humanity and transformable nature of juvenile offenders. I will then draw a parallel between the implications of a juvenile offender's underdeveloped cognitive functions on their decision-making processes and the implications of a trial judge's underdeveloped capacity for empathy to expose the dangers of leaving JLWOP sentencing to the judge's discretion as demonstrated by the most recent JLWOP Supreme Court case, *Jones v. Mississippi*. Lastly, I will propose a plan to reduce the use of JLWOP by educating decision-makers on the developmental level of adolescents and how this effects the proportionality and experience of punishments. This proposal aims to grow empathy and rationality in decision-makers so that they will begin to sentence juvenile offenders more justly.

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Introduction

In 2005, the state of Mississippi found Brett Jones, age fifteen, guilty of murder for killing his grandfather, Bertis Jones, during a dispute within their home. Following the mandatory sentencing guidelines in place at the time, the judge sentenced Jones to serve life in prison without the possibility of parole. In the decade following Jones's sentencing, several United States Supreme Court cases raised questions regarding the constitutionality of juvenile sentencing practices including mandatory life without parole. Each case questions the interpretation of the Eighth Amendment's protection against cruel and unusual punishment when applied to juvenile offenders. Two cases in particular, *Miller v. Alabama* and *Montgomery v. Louisiana*, set the stage for *Jones*.

First, in the 2012 case of *Miller v. Alabama*, the Supreme Court held that mandatory life without parole sentencing practices in juvenile homicide cases were unconstitutional. The Court argued that this practice violates the Eighth Amendment rights of juvenile offenders. With the understanding that children differ vastly from adults for the purposes of criminal culpability and sentencing, the Court held that states cannot impose life without parole sentences on juveniles without considering their particular crime and the individual characteristics of their circumstances. *Miller v. Alabama* requires courts to at least consider the implications of a juvenile offender's age and incomplete development before imposing a life without parole sentence. *Montgomery v. Louisiana* in 2016 held that *Miller* applies retroactively as a substantive rule, meaning that *Miller* applied to *Jones's* case.

In Jones's resentencing hearing, the trial judge determined that JLWOP was still the most appropriate punishment, finding that Jones's criminal conduct demanded that punishment despite Jones's capacity for reform. On appeal, Jones argued that the Supreme Court's decisions in

Miller and *Montgomery* required his sentencing judge to make a factual finding that he was permanently incorrigible as a prerequisite to imposing a JLWOP sentence. In *Jones v. Mississippi*, the Supreme Court held that sentencing a child to life without parole is constitutional as long as it is not imposed as a mandatory sentence. Imposition of a JLWOP sentence does not require a factual finding of permanent incorrigibility.

As shown in *Miller* and *Montgomery*, the sentencing of juvenile offenders demands a higher level of scrutiny than required by adult cases. The relevant cases demonstrate an evolving standard of decency under which the meaning of cruel and unusual punishment and the application of the Eighth Amendment is changing. Traditionally, sentencing judges consider the mitigating factors involved in a particular incident in order to properly decide the culpability and responsibility of an alleged offender and ultimately, the appropriate punishment to assign to an offender. Mitigating factors may include a person's intent to harm, mental capacity, personal characteristics, life history, and other circumstances under which an alleged crime occurred. Juvenile criminal cases require the consideration of these factors with the addition of the variances in an adolescent's developmental state. Because of the underdeveloped neurological capabilities of adolescents and their sensitivity to outside influence, courts should especially consider the corrigibility of adolescents. This should heavily influence the way proportionality is understood in the punishment of juvenile offenders, but it clearly does not on a state level.

In a system where retributive justice is part of the sentencing calculus, desert and proportionality carry much weight. Courts, however, should apply these values through the context of the person receiving the punishment. Aside from the reduced culpability of juvenile offenders that impacts proportionality, the subjective experience of punishment matters as well. As the research will show, the lessened cognitive development of adolescents means that they

will experience punishment more severely than their fully matured, adult counterparts. Additionally, the implications of punishment will also vary drastically for adolescents because of their malleable nature and increased capacity for rehabilitation. With such serious consequences on the line, it is imperative that decision makers and courts carefully consider the factors that set adolescents apart and mandate reduced punishment for this population.

If not cruel, JLWOP sentences are certainly unusual by global standards. Currently, the United States of America is the only country that still uses life without parole sentences for people under the age of eighteen. All other countries have deemed JLWOP too inhumane to merely consider for even the worst of crimes, and the practice has been condemned by international law (General Assembly Resolution 44/25, 1989). This sets the US apart in its treatment of children within the criminal justice system in a negative way. While over twenty-five states have eliminated JLWOP sentences altogether, the Court still finds it permissible should a court choose to impose it (Rovner and Fettig, 2021). The responsibility of progressing toward the elimination of JLWOP sentencing in the US now belongs to individual decision-makers, such as judges and prosecutors, across the country.

According to the Court's rulings *Miller* and *Jones*, sentencing authorities have the responsibility to determine whether or not to apply JLWOP sentences. Evaluating the appropriateness of JLWOP sentences requires great decision-making skills that include both rationality and empathy. However, it is apparent that many of the current decision-makers and sentencing authorities fail to consider the full scope of the issue, and they respond more directly to the crime committed than to the person being sentenced. In the current system, parallels can be drawn between the underdeveloped nature of decision-making observed by authorities the criminal justice system and the immaturity of the juvenile offenders they sentence. Both

demonstrate a blindness to the full implications of their actions which leads to unjust decisions at the expense of others. In order to influence the application of more just sentences, decision-makers should receive further education on the developmental level of juvenile offenders that impacts not only their decisions to commit a crime, but also the way they experience punishment. Gaining a more comprehensive understanding of these issues should shift the perspective of decision-makers and decrease the use of JLWOP sentences.

Chapter 1: The evolving standard of decency as observed through relevant Supreme Court cases

1.1 Defining Cruel and Unusual Punishments

The Eighth Amendment serves to ensure that the state's power to punish stays within the bounds of civilized standards. The limitations on a state's power rest on the bar on cruel and unusual punishment which largely relates to the proportionality of the crime and punishment. In *Trop v. Dulles*, the Court rationalized that maintaining a civilized system and means of punishment requires the Court to honor and respond to an evolving standard of decency. This means that what punishments are cruel and unusual will evolve over time. This involves determining whether a given punishment is cruel and unusual given the nature of the crime committed, mitigating factors, and the culpability of the offender.

Capital punishment has received the most scrutiny under the Eighth Amendment because of its unique severity and finality. In 1972, the Court examined the proportionality of the death penalty in the crimes of rape in *Furman v. Georgia*. Ultimately, this case led the Court to ban the death penalty finding that it was a cruel and unusual punishment because of its arbitrary and random application. In particular, many states did not bifurcate the guilt and sentencing phases of their trials. Most states also did not give capital juries any sentencing guidance. At no other point in history has the Court found a particular category of punishment to violate the Eighth Amendment. After the decision in *Furman*, many states passed new statutes to try to address the problems identified in *Furman*. This led to a series of cases assessing the new death penalty schemes.

The Court's decision in *Woodson v. North Carolina* held that mandatory death penalty sentences are unconstitutional. In light of the severity and nature of the death penalty, all people deserve some individual consideration of their case. This decision provided part of the basis for the Court's decision in *Miller v. Alabama*.

In *Coker v. Georgia*, the offender appealed the sentence to death for the rape of an adult woman. The death penalty was found unconstitutional as a punishment for rape (1) because this level of punishment was proven unnecessarily excessive in achieving punitive goals and (2) the punishment is disproportionate to the crime given that the offender did not take the life of the victim. The Court held that the same punitive goals could be reached by lesser punishments than the death penalty. This influenced further categorical limitations on the death penalty including the eventual prohibition of death sentences for intellectually disabled offenders, juvenile offenders, and child rape.

More recently, the Supreme Court found that JLWOP deserved heightened scrutiny under the Eighth Amendment like the death penalty. The growing cultural awareness in the differences between adult and juvenile offenders has prompted some special consideration of juvenile life without parole sentencing. A greater regard for the cognitive limitations of adolescents at-large leads to a majority consensus about the reduced culpability of a juvenile offender and the inhumanity of JLWOP sentencing as practiced at the time. Considering the inherent mitigating factors present for all juvenile offenders as a result of psychosocial and cognitive development, the Court finds it necessary to use a higher level of scrutiny when evaluating the proportionality of a punishment. *Graham v. Florida* led to the prohibition of JLWOP sentences for non-homicidal cases, and the decision was closely followed by the Court's ruling in *Miller v. Alabama* which held that mandatory JLWOP sentences are unconstitutional. The Court's

rationale for each relies heavily on the growing acceptance of the idea that children are constitutionally different from adults and should be treated as such for sentencing purposes.

1.2 Doctrine

At its core, the Eighth Amendment aims to ensure proportionality in punishment in its guarantee to freedom from cruel and unusual punishment. Since the writing of the constitution, countless shifts in culture and society have created a necessity for changes for the way in which this amendment applies in practice. The doctrine that influences this process of reevaluating the Eighth Amendment's bounds is known as the evolving standards of decency. This doctrine uses a two-part test to determine the constitutionality of a punishment. First, the Court looks to the practices of the states to determine whether a punishment is unusual. This is the objective test, which is controversial because the Court is looking to a majoritarian standard to determine the meaning of a counter-majoritarian constitutional provision. Second, the Court applies a subjective test to assess whether one or more of the purposes of punishment supports the imposition of the punishment. Curiously, the objective and subjective tests have never diverged on the issue of constitutionality.

To decide the cases appealed to it, the Supreme Court must determine the meaning and application of the Constitution. With respect to the Eighth Amendment, the definition of cruel and unusual punishment has developed in the last century and the category of punishments that fit this definition has expanded. Societal shifts in empathy and a growing understanding of cognitive processes and development call for considerations in sentencing that surpass the proportionality of the punishment to the crime or rather bring to light factors that influence the total proportionality of punishment.

The principle of differentness centers around the types of punishments or categories of offenders that deserve a higher level of scrutiny because of some factor that sets it apart from the rest. The cruel and unusual nature of a punishment is dependent on the experience of the person punished which, in turn affects the proportionality of the punishment. Firstly, the death penalty warrants a higher level of consideration because of the severity and finality of the punishment that is unparalleled by any other punishment. Secondly, the Court has brought attention to juveniles as a category of offenders that deserve higher scrutiny in sentencing because of their undeveloped cognitive abilities, lessened culpability, and increased potential for rehabilitation.

In *Roper v. Simmons*, the Court extended this understanding to acknowledge the diminished mental capacity and culpability of juvenile offenders as well in finding the death penalty cruel and unusual for juvenile offenders. Most recently, the Court applied this principle in *Miller v. Alabama* which held that mandatory juvenile life without parole sentences are unconstitutional because the imposition of such a serious sentence requires individual consideration of the characteristics of the defendant and the crime. In particular, the Court explained that the unique nature of juveniles makes the imposition of a mandatory JLWOP sentence particularly harsh because it does not allow a court to consider the mitigating evidence present, namely, the youth of the defendant.

Lastly, the objective and subjective tests of decency allow the Court to continually evaluate the impact and application of a particular punishment. Objective indicators of a given punishment's acceptability and function include legislative action, sentencing outcomes, state practices, and international standards. In *Graham v. Florida*, the Court considered that JLWOP is widely disapproved of across the globe to reach the decision to find JLWOP for non-homicidal crimes unconstitutional. Objective indicators typically expose any unusual nature of punishment.

Subjective indicators allow the Court to evaluate if a punishment fulfills some purpose, retributivist or utilitarian, in order to ensure checks on the cruelty of punishment. In all previous cases, a punishment is either supported by both objective and subjective indicators or found unconstitutional in both categories.

1.3 Relevant Supreme Court Cases

As previously discussed, the Court has taken strides in recent decades to impose some categorical limitations on the Eighth Amendment. Namely, the death penalty and juvenile sentences demand a higher level of scrutiny in practice because of the evolving standards of decency. The intersection of the two categories is of particular importance in the examination of JLWOP sentencing practices. Starting with the evaluation of the constitutionality of sentencing a juvenile offender to the death penalty, the Court began to assess the implications of an adolescent's cognitive state and decision-making capabilities on their culpability. Eventually, it became clear that life without parole sentencing, especially for an adolescent, does not differ substantially from the death penalty. Both are sentences to die in the custody of the state.

In *Roper v. Simmons*, the Court barred the imposition of death sentences on juvenile offenders. In 1993, 17-year-old Christopher Simmons committed first-degree murder and the state of Missouri sentenced Simmons to death. *Roper v. Simmons* reached the U.S. Supreme Court in 2004 following the decision in *Atkins v. Virginia*, which held that the execution of intellectually disabled persons violates the Eighth Amendment. This decision called to attention the importance of considering an offender's mental capacity to make sound decisions when assigning punishments. In response to the question of whether the execution of minors violates the Eighth Amendment, the Supreme Court held that the execution of a minor was cruel and

unusual punishment. Demonstrating the evolving standard of decency, this decision exhibits an important acknowledgment the difference between adults and children in criminal courts.

In 2010, the U.S. Supreme Court made a decision in *Graham v. Florida* that gave juvenile life without parole sentences the same heightened scrutiny previously reserved for the death penalty. At 16 years old, Terrence Graham was sentenced to serve twelve months in prison for armed burglary and attempted armed robbery. Six months after his release, Graham was convicted of armed home robbery and sentenced to serve life in prison without parole. The Court held that JLWOP sentences for non-homicide crimes qualifies as cruel and unusual punishment and therefore is unconstitutional. The decision in *Roper v. Simmons* called the court to consider the lessened culpability of juvenile offenders in comparison to adult offenders. With that decision, the Court broadened the Eighth Amendment to require consideration of the differences in the functionality of adults and adolescents and the varying impact of life without parole sentences on the two.

The decision in *Graham*, however, strongly relies on the principle of proportionality in punishment because it holds that JLWOP sentencing is only cruel and unusual for non-homicide crimes, not simply as a concept. *Graham* proscribed sentencing a juvenile offender to die in prison for non-homicide crimes thus connecting life without parole and the death penalty as applied to juvenile offenders. There appear to be some parallels between the Court's reasoning in *Coker v. Georgia* where the court held that the death penalty is a disproportionate punishment for non-homicide crimes. If acting under the understanding that JLWOP is a death sentence of sorts, then it surely follows that JLWOP sentences are disproportionate to non-homicide crimes considering the lessened culpability of juvenile offenders.

In 2010, the Court decided *Miller v. Alabama*, a case in which 14-year-old Evan Miller was tried as an adult and convicted of first-degree murder during the course of an arson. The state of Alabama sentenced Miller to life without parole as per the mandatory sentencing requirements. Miller argued that the imposition of mandatory life without parole sentences on juvenile offenders violated the Eighth Amendment. The Court's decision in *Miller v. Alabama* followed *Graham* and *Roper* by emphasizing the constitutional differences between children and adults. The decision in Miller largely centered around the importance and necessity of considering the mitigating factors in juvenile cases and the individuality of each offender when sentencing. For one, the Court noted the relevance of this deeper consideration in all capital cases. Secondly, they held that an adolescent's state of mind and development make transformability and rehabilitation far more likely for juvenile offenders, and sentencing should reflect these possibilities (Berry, 2015). Closely following the rationale in *Graham* which established the close relationship between JLWOP sentences and the death penalty, the evolving standard of decency would require that JLWOP sentences be awarded a higher level of scrutiny. The Court held that mandatory life without parole sentencing for juvenile offenders is unconstitutional. Courts should apply some individualized consideration of culpability and mitigating circumstances when considering JLWOP sentences rather than applying a blanket sentence for similar charges. In the following years, this interpretation regarding the proportionality of punishment variances between children and adults went on to influence the progression of juvenile sentencing practices.

In 2016, the Court decided *Montgomery v. Louisiana* which considered the retroactivity of the decision in *Miller v. Alabama*. Having been convicted of murder in 1963, Henry Montgomery was sentenced to life without parole at age 17. The Court ruling in *Miller v.*

Alabama prompted Montgomery to file an appeal on the basis that mandatory JLWOP is now an illegal sentence. The Court held that the decision in *Miller v. Alabama*, which states that the mandatory sentencing to life without parole for juvenile offenders is unconstitutional, applies retroactively because it is a substantive rule. These decisions uphold the idea that sentencing a juvenile offender to die in prison should be a rare occurrence that does not apply to offenders whose crimes reflect the diminished cognitive abilities of adolescents. This reflects the understanding that an adolescent's developmental brain deficits significantly influence the ability to rationally make decisions in moments of intense emotional arousal. Therefore, adolescents are less culpable than adult offenders, and this should be reflected in their sentences.

Following the decision in *Montgomery v. Louisiana*, Montgomery was granted a resentencing hearing where the court granted him life with the possibility of parole. After being denied parole in both 2018 and 2019, the parole board voted unanimously to release Montgomery in 2021 at the age of 75. The public perception and reaction to a 75-year-old man leaving prison after serving nearly six decades for a crime committed at 17 years old starkly contrasts the feelings of passion the public feels, at least in some states, toward sentencing children to excessively long prison sentences, if not to die in prison. Retrospectively, our culture seems to have an easier time understanding the significance of a sentence. One can easily see that justice has been more than served and the offender exceedingly punished for their wrongdoings to society.

Most recently, the Court heard the case of petitioner Brett Jones who was convicted of murder in Mississippi for killing his grandfather at age of 15. Following the conviction, the trial judge sentenced Jones to life without parole in accordance with Mississippi's mandatory LWOP law for juvenile offenders who commit murder. Following the decision in *Miller v. Alabama*, the

Mississippi Supreme Court ordered Jones to a resentencing hearing in which Jones was again sentenced to life without parole. The judge in the resentencing hearing asserted that he had the option to apply a lesser sentence but ultimately determined that the previous sentence remained appropriate. Jones appealed to the U.S. Supreme Court and argued that in accordance with both Miller's finding and Montgomery's assertion that the law applies retroactively, the judge must make a separate factual finding of the offender's permanent incorrigibility in order to impose a life without parole sentence to a juvenile offender. Ultimately, the Court held that a separate factual finding of an offender's permanent incorrigibility is not necessary for assigning a life without parole sentence. To satisfy the Eighth Amendment, imposition of JLWOP must merely be discretionary, not mandatory.

The Court's finding in Jones establishes a clear line of where the evolving standard of decency stops regarding the empathy and regard for a juvenile offender's developmental capabilities. This decision departed from the Court's previous emphasis on the consideration of an offender's individuality and inherent necessity for a heightened level of scrutiny in juvenile sentences. If acting on the notion that JLWOP is just as final of a sentence as the death penalty, and incorrigibility is the most important determinant, then a fact-finding requirement seems reasonable. Essentially the Court both acknowledges and refuses to acknowledge the transformative nature of adolescents and how difficult it would be to provide factual evidence of permanent incorrigibility at such a young age. It appears at this point that the primary purpose of punishment as prescribed by the Court is retribution with a primary focus on the desert principle.

1.4 Conclusion

Punishment plays an integral role in society's functioning and therefore requires constitutional limits. Over the years, the Eighth Amendment has been continually evaluated by

the Court and reinterpreted to stay consistent with the values of society. Over time, the acceptable severity of punishment has lessened which led to categorical limitations of the Eighth Amendment's protection against cruel and unusual punishment beginning with an evaluation of the death penalty's application. The societal maturation of empathy and growing understanding of the psychosocial state of adolescents called for many changes to the way the justice system treats juvenile offenders. Throughout recent cases, the Court considered the mental capacity of adolescents as they noted their reduced culpability and deemed children constitutionally different from adults. This fed into a reconsideration of the proportionality of punishment of juvenile offenders but ultimately failed to consider some key aspects of juvenile criminal behavior.

In accordance with the evolving standards of decency, the Court has made notable strides in reforming the interpretation of the constitutionality of juvenile sentencing, particularly pertaining to life without parole sentences. Nonetheless, the current standard still widely disregards the transformative nature of adolescents which should be the center of discussion on this topic. The Court failed to broaden the standard in *Jones v. Mississippi* when deciding that the discretionary requirement for sentencing a person to JLWOP relies on entirely subjective measures. Essentially, as long as a court exercises some discretion, the court does not have to make a factual finding of permanent incorrigibility as a prerequisite to imposing a JLWOP sentence. It would be nearly neurologically and psychologically impossible to determine a child to be incapable of reform and rehabilitation and is thus permanently incorrigible. A sentence comparable to the death penalty demands such a finding; yet, the Court today requires no such thing as of its last decision in *Jones*.

Chapter 2: Kids are Kids

A number of qualities differentiate children and adolescents from adults in their cognitive and behavioral capabilities. Children are easily influenced, for better or for worse, by their social environment, families, and peers to a degree that exceeds such effects in adults. Adolescents in particular go through an intensive period of rapid neurobiological development which leaves them more vulnerable to influence and less stable in maintaining rational cognitive function. When this sensitive psychological and neurological state collides with various sociological circumstances, the likelihood of maladaptive or poor behavior increases. This chapter will examine the psychological and sociological influences on decision-making, particularly applying this to criminal behavior and the culpability of juvenile offenders.

Beginning with the psychological factors, this chapter will explain how adolescents make decisions in high-risk situations and the psychosocial immaturity that leads to a lack of self-control, impulsivity, and other qualities which often cause poor decisions. The cognitive development and processing abilities of adolescents will be examined to further demonstrate the adolescent state of mind and the room for growth and improvement that exists. Sociological factors worth considering include socioeconomic status, family structures, and access to necessary positive resources among many others. The way in which sociological factors influence cognitive development will be of note. Focusing on what distinguishes a juvenile offender from any other adolescent, this chapter will go on to draw correlations between the impact of a child's socioeconomic status on their behavior and the way in which the underdeveloped child's brain makes them more vulnerable to the adverse effects of being a

person of lower socioeconomic status. The chapter will conclude with an explanation of how psychological and social factors impact a juvenile offender's culpability in a court of law.

2.1 Cognitive Development and Processing Abilities

Throughout adolescence, the period between childhood and adulthood, humans undergo significant neurobiological development that largely influences their cognitive development and processing abilities. This window of development is characterized as a Critical Period (CP) because it includes an intersection of experiential and neurobiological development that permanently shapes a person's development and behavior. The adolescent brain experiences rapid growth of axons and synapses that develop stable circuitry throughout the brain. Neurological structure is especially sensitive to a person's experiences during the CP which highlights the relevance of a person's sociological influences during adolescence. Co-occurring changes in adolescence that also impact the developmental processes include increased autonomy and independence from parental or guardian figures, sexual maturation, and peak sensation-seeking urges (Larsen and Luna, 2018).

During this time of elevated plasticity, the structure of the brain physically alters, especially in the frontal and parietal lobes. The frontal lobe controls voluntary movement as well as vital aspects of cognitive functioning including intelligence, social skills, decision making skills, emotions, and impulse control. The parietal lobe houses the sensory perception portion of the brain which captures and disseminates information related to hearing, sight, and temperature detection, to name a few (Gupta, 2017). The volume of gray matter in the frontal and parietal lobes, which allows a person to control physical and cognitive functions, peaks in pre-adolescence and declines throughout the period of adolescence. This sharp decline in gray matter is thought to be a result of the synaptic reorganization occurring during adolescence which

improves and sharpens a person's executive function (Choudhury, Blakemore, Charman, 2006). Prior to this intensive neurological restructuring, children and adolescents lack the capacity to control their cognitive processes and behavior in a manner comparable to the expected stability of adult-level processes (Larsen and Luna, 2018).

During this time of growth, adolescents may experience a disconnect between their ability to make sound decisions and their ability to act rationally in certain social contexts or moments of high emotional arousal (Steinburg, 2015). Adolescents' low psychosocial maturity impacts impulsivity and the ability to resist peer pressure, coercion, and temptation (Muller-Fabian and Delcea 2017). Maturity in decision making requires both cognitive and psychosocial processes, neither of which is sufficient without the other. Cognitive processes include reasoning, intelligence, and language skills while psychosocial maturity involves the intersection of psychological and sociological components centered around a person's temperance, responsibility, and perspective. These two variables depend upon one another to produce developmental and social maturity. Having skills in one area does not necessarily compensate for the weaknesses in another. For instance, having intelligence and good reasoning skills may not suffice if an adolescent has a reactive temperament. Additionally, this model does not always produce results consistent with initial measurements of a person's cognitive or psychosocial maturity because outcomes and behaviors are circumstantial. The nature and social context of a particular situation influence how strongly a person will sustain rational decision-making (Casey, 2011).

From an evolutionary perspective, the risk-taking behaviors exhibited by adolescents play an essential role in well-rounded development and social competence so long as the behaviors do not become maladaptive. Such behaviors allow adolescents to expose themselves to new

situations and environments while exploring the boundaries of their increasing independence. This necessary process occurs across many species and serves to adapt the individual to their environment. Adolescents, however, demonstrate an enhanced sensitivity to stressors that result in more reactive mental, emotional, and physiological responses than children or adults (Spear, 2000). The combination of a weakened cognitive and psychosocial function, an evolutionarily heightened urge for risk-taking, and an increased susceptibility to negative stress responses poses the largest risk to the adolescent. The culmination of these factors, among others, can lead to adverse behavioral outcomes such as engaging in substance use or partaking in risky behaviors that pose harmful consequences to the adolescent or others involved.

2.2 Sociological Factors

Socioeconomic status (SES) describes the sum of a person's financial, educational, and occupational status within a society. A person's SES determines not only their position within society and class, but also their access to resources and ability to meet daily needs. SES even plays a role in a person's health-related risks and cognitive development (Psaki, S.R., Seidman, J.C., Miller, M. *et al.*). Seeing as SES is a theoretical construct and many of the determinants are qualitative, creating a quantitative or objective definition of SES levels creates many challenges. Some quantifiable measures include income level, lifespan, and years of education completed, and some qualitative measures include quality of housing, family and parental relationships, quality of accessible health care and education and overall stress incurred daily. Although the qualities that contribute to a person's SES are easily identifiable, no set formula exists for creating a sum of these factors and translating them into a value that is comparable between individuals. The fluidity of factors that impact SES, such as job loss or unexpected medical expenses, also creates barriers to overall measurements. Nonetheless, breaking down each

category exposes the areas of deprivation and inequalities faced by those in a lower class (Conway DI, McMahon AD, Brown D, et al., 2019). For children in particular, the challenges and circumstances associated with low SES play a crucial role in their development, thought processes, and behavioral characteristics. Some important factors to consider include the impact of SES on psychosocial development, neighborhood and community quality, and family structures.

A child's socioeconomic status significantly influences their psychosocial development and behavior leading to a higher likelihood of juvenile delinquency. Some explanations for this correlation include strain theory, which argues that adolescents in poverty engage in deviant behavior out of necessity of resources, and the rational choice theories, which assert that adolescents in low SES standing are more likely to offend because they see little room for consequences under their current circumstances (Rekker, Pardini, Keijsers, et al., 2015). Aside from the thought processes brought on by living in a low SES household, several tangible effects of low SES can negatively influence a child's psychosocial development. Parents with lower educational backgrounds will not engage in the same types of conversations with their children as parents with higher levels of education nor will they use the same disciplinary styles. Low maternal education in particular can be linked to cognitive difficulties. Some of these may be linked to the higher likelihood of mothers of lower SES to engage in risky behaviors, such as substance use, during pregnancy, to have less access to prenatal healthcare, or to have higher risk pregnancies (de Laat, Essink-Bot, van Wassenaer-Leemhuis, et al., 2016). Lower SES also indicates less access to financial resources and disposable income that can be put toward improving child development or engaging in extracurricular activities.

Another theory, known as social disorganization theory, focuses on the relationship between the quality of a child's neighborhood and their likelihood for juvenile deviancy. It emphasizes the influence of a child's community environment on their decision-making and behavior. With the understanding that a person of low SES will usually live in a neighborhood of poorer quality with less social capital, this theory exposes another correlation between low SES and heightened risk for deviant behavior in adolescents (Rekker, Pardini, Keijsers, et al., 2015). Closely related to community and neighborhood quality, SES is a strong determinant of access to quality school systems and performance in academics. Lower quality school systems located within these communities may struggle to allocate limited funds to recreational resources and activities that improve child development and create positive outlets for stress. These school systems may even find it challenging to purchase curriculum and academic resources to promote cognitive development and growth within the classroom.

Furthermore, juvenile deviance can be linked to the quality of a parent-child relationship and family dynamics. The control theory shows that positive parent-child relationships influence prosocial behavior and lower the risk of deviance (Rekker, Pardini, Keijsers, et al., 2015). Challenges associated with lower SES often impede the development of positive parent-child relationships. Among other barriers, parents of low SES often work multiple jobs or long shifts that prevent them from spending a significant amount of time with their children and lessen their ability to supervise their children's whereabouts and activities. Additionally, lower SES brings higher levels of stress that can only be exacerbated by the responsibilities of providing for a family. Heightened levels of parental or family stress projected on a child influences juvenile delinquency. The style of parenting brought on by operating in these underprivileged circumstances also differs significantly from those of people in middle or upper classes. Whether

it is because of a lower level of education or a lack of relationship with the child, these parenting styles tend to lack clear communication regarding discipline and involve harsher consequences and the use of physical punishment (Conger and Donnellan, 2006).

The aforementioned sociological factors that influence child development and decision-making play a key role in differentiating a juvenile deviant from any other adolescents.

Adolescents have little or no control over the quality of their environments, resources, and relationships with family figures. Merely a product of their environment and its influence on their development, adolescents raised in families and communities of low socioeconomic status often are not equipped with the same skills and resources to make well-informed decisions as their peers of middle or high SES. Additionally, people of low SES are more likely to encounter situations that increase the likelihood of criminal behavior whether this is early exposure to substance use, necessity of resources, exposure to domestic violence, or unsupervised time to socialize with individuals in communities of higher criminal activity (Rekker, Pardini, Keijsers, et al., 2015).

As previously stated, in the section on psychological and cognitive development, adolescents have an innate drive to engage in risky behaviors, but their environments will determine whether or not they engage in prosocial activities, such as water-skiing and contact sports, or deviant behaviors such as theft and substance use (Steinberg). It can be concluded that a person of low socioeconomic status will have less access to resources that allow for these positive engagements. With both the understanding of the significant impact of a person's sociological environment and the transformative nature of an adolescent's brain, one may conclude that there is plenty of room for reform in a juvenile offender's behavioral responses to conflict and circumstances. When considering the factors that play a significant role in an

adolescent's decision-making capabilities, this calls to question the culpability of any juvenile offender but especially those whose sociological circumstances have negatively impacted their psychosocial development. This calls to question the culpability and rehabilitation potential of juvenile offenders and how this plays a role in ethical and just sentencing.

2.3 Culpability

Understanding the fragile state of mind adolescents operate with and their sensitivity to experiential influences leads to the conclusion that adolescents acting in this irrational state must possess some amount of diminished responsibility for their offenses. This does not mean all adolescents lack blameworthiness or responsibility for criminal action. Rather the developmental state of adolescents and its natural influence on decision-making and reactivity reduces the culpability of juvenile offenders in criminal courts. Although some adolescents may appear to be on the same level of cognitive functioning as adults, adolescents simply lack the ability to enact appropriate decision-making skills in times of high emotional arousal. The lack of future orientation and diminished perception of risk seen in adolescence reflects their cognitive limitations (Steinberg and Scott, 2003). Just as the court routinely considers self-defense, insanity, and duress of an offender, the adolescent state of mind should be a primary mitigating factor in interpreting a crime and determining appropriate sentencing for juvenile offenders.

2.4 Conclusion

Upon the initiation of adolescence, which typically aligns with the beginning of prepubescent development, adolescents enter a critical period of development in which their neurobiological structure rapidly rewires and redesigns itself in order to achieve the level of cognitive function and stability necessary for adulthood. During this window of five to seven years, adolescents become especially vulnerable to experiential influences which momentarily

affect behavior and permanently impact cognitive developmental progress. It is within this same sensitive period of time that adolescents begin to gain more autonomy, independence, and responsibility in their homes, schools, and social environments. The evolutionary drive to pursue riskier decisions persists throughout this period and drives many decisions made here; however, the types of behavior will be largely dependent on the child's environment. Sociological factors including family structures, neighborhood quality, and income levels largely determine the situations in which adolescents find themselves. Not only does socioeconomic status affect a person's perspective of the world, but it also contributes to psychosocial development and may further impede on the reduced cognitive function and decision-making capabilities of adolescents if the environment does not provide supportive relationships and resources. At the intersection of reduced cognitive function and unfortunate circumstances, poor decisions and unfavorable, or even criminal, actions arise. The aforementioned mitigating circumstances, however, must be of utmost importance when considering the culpability of a juvenile offender.

Chapter 3: Considerations of Punishment

3.1 Purposes of Punishment

The Eighth Amendment of the United States Constitution prohibits cruel and unusual punishment. The previous chapters outlined the decisions of the U.S. Supreme Court regarding juvenile sentencing, along with the psychological and sociological factors that influence juvenile culpability and decision-making from a developmental perspective. In order to fully understand the implications of punishment, one must first consider the dimensions of punishment and sentencing including the intent and justifications of punishment and the impact of sentencing on the person. From a philosophical perspective, it is also important to note the factors of punishment and sentencing that courts fail to account for such as the humanity of the offender and the tangible impacts of a given sentence.

Punishment at its core involves causing intentional harm to another person and therefore demands a justification for the harm inflicted. Generally speaking, punishment either fulfills a utilitarian or retributivist justification. Retributivists and consequentialists alike make attempts at defining when and what types of punishment may be justified within a society. While some theorists subscribe to the idea that offenders must be punished because they deserve it, others argue that punishment must serve some instrumental value to society in order to be justified. The primary differences include the retributivist's intrinsic value of punishment and the consequentialist's instrumental value of punishment. These value differences strongly influence the methods of punishment that may be justified by the two. Punishment should achieve its punitive or instrumental goals with the least harmful means possible.

3.2 Retributivism

Retributivism posits the idea that people have a moral obligation to proportionally punish the deserving and defends the thought that this practice is intrinsically morally good.

Retributivists look retrospectively at the crime committed and assign punishments that attempt to right the past wrongs rather than being concerned with future impacts and outcomes.

Retributivism strongly opposes the punishment of the innocent or the infliction of disproportionately harmful punishment. This theory requires no evaluation of net outcomes aside from proportionality because the purpose itself is to give wrongdoers in society what is proportionally deserved (Walen, 2021). Retribution's core value of desert leads to a few different interpretations and practices of retributive punishment. The justification found in retributivism can be broken down into three separate themes or purposes: revenge, just desert, and communication. Each of these looks different in practice but the overall motives and results remain similar.

Revenge

A revenge-focused theory of retribution centers around the need for suffering and vengeance in the process of punishment. This perspective of retribution calls for retaliating against an offender and making them suffer as payment for the harm they caused to another person or some aspect of society. Revenge pays little or no attention to equitable justice or restoring a balance in society. It simply seeks to give a person what is deserved for the crime committed through the necessary means. Perhaps the revenge justification reaches the most instinctive parts of humanity seeing as the drive for revenge appears in societies dating back centuries and appears culturally today even if not in the criminal justice system.

Revenge-seeking behaviors surface in various ideologies, and the practice is often rooted in a desire to assert power, establish social dominance, and reinforce the value of in-group conformity. Vengeance allows for more emotional influence and passion in decision-making which starkly contrasts the demands of the legal system to remain impartial and fair in sentencing a person. Retributivists who favor revenge tend to lend more support for harsher punishments as the bounds of revenge have no limit. In fact, the Eighth Amendment exists to prevent vengeance practices and limit the rage that might push for cruel levels of punishment because of the obvious dangers this poses to society (Gerber, 2012).

Just deserts

A retribution theory centered around just deserts aims to restore legal and moral balance within a society through fair and proportional punishment. In contrast to revenge centered retributivism that involves the state inflicting harm on an offender as return for the harms the offender committed, retributivists who value the just deserts justification see the experience of punishment as an offender's method of compensation for their wrongdoing. Although the sentence may look the same in practice, revenge calls for taking negative action toward an offender for the sake of reducing the offender to reflect the harm of the crime committed; whereas, a just deserts stance views the serving of a sentence as a way to restore justice within a community.

Retributivists with this value hold a higher regard for proportionality in sentencing as to ensure that the offender evenly repays their debts through appropriate means. Just deserts retribution stresses the importance of maintaining a fair and orderly process that rationally assigns a sentence wherein justice may be served. More emotional detachment from the sentencing process and the practice of more objective proportionality makes for a more

constructive justification and practice. Disproportionately harsh punishments may not be justified as the severity of the crime directly influences the severity of the punishment (Gerber, 2012).

Just deserts retribution also contains a parsimony principle, as it seeks to impose proportional punishments. Just deserts retribution thus requires a punishment no more than, but also no less than, what an individual deserves. An advantage of just deserts is that it can allocate punishments with regard to the nature of the crime, such that more severe punishments can be allocated to more severe crimes, and less severe punishments can be allocated to less severe crimes. What just deserts retribution cannot do is prescribe a particular cardinal value to a crime. It is not possible to suggest, for example, the number of years one deserves for an armed robbery. But one can punish an armed robbery less than one punishes a murder.

Communication

The theory of Confrontational Conception of Retributivism (CCR) holds that the purpose of punishment is for the state to communicate the liberal democracy's values to the offender. These values include (1) moral accountability, (2) equal liberty, and (3) democratic self-defense. Essentially, the state has a responsibility to hold an offender morally accountable for their wrongdoings in order to ensure equal liberty within a society and protect the integrity of the liberal democracy. Under this theory of retribution, a person receives punishment based on their desert after committing a crime. The implications of said punishment do not concern the communicative retributivist so long as the punishment effectively sends a message of condemnation to the offender. In that case, the punishment possesses some inherent goodness because it holds the offender morally accountable for his or her unlawful actions. In favor of honoring the intrinsic value of punishing the deserving, CCR rejects the utilitarian idea that in

order to justify the infliction of harm on another person, the punishment must yield some future benefit (Markel, 2012).

Having broken their obligation to society to act in a lawful manner, the offender must be subject to some punishment from the state that leads to a greater understanding. This form of retributivism is more centered around relating to the offender as an individual to effectively convey the inappropriateness of their actions by whatever means necessary. CCR pays greater attention to the offender themselves because the theory holds that the punishment will not be sufficiently enacted if the punished offender does not understand the message the state attempts to convey. As such, this theory stresses the importance of an offender's competency in receiving punishment.

3.3 Consequentialism

Consequentialist theories rely on the instrumental value of punishment alone for justification and fail to consider the value of desert. This theory finds no intrinsic value in punishing a person simply for their wrongdoings. In order to justify the intentional infliction of harm on an individual, consequentialism requires punishment to yield some benefit. The moral right or wrong of the punishment rests solely in the consequences of inflicting a certain punishment on a person. With that, consequentialists argue that a punishment cannot be justified if it fails to produce some positive or beneficial results. Under this theory, desert is not a necessary condition for the justification of punishment (Tadros, 2011).

Consequentialism cares not about the proportionality or desert of a punishment but rather concerns itself with the benefits a given punishment may have on the person punished, the public, or some other facet of society. Incapacitation, deterrence, restoration, and rehabilitation, a few of the utilitarian justifications for punishment, have their appeal. Nonetheless, this theory

holds that the punishment of the innocent may be justified. A consequentialist would agree that the state may justifiably punish an innocent person if said punishment would deter others from committing the alleged crime. Strictly utilitarian justification also allows for scenarios in which a guilty person may go unpunished if no punishment may provide a benefit to either the offender or society. While consequentialism offers the appeal of a punishment that brings about some good to either the offender or society, it both fails to require punished individuals to be deserving of punishment and sometimes allows the deserving to go without punishment.

Incapacitation

Incapacitating an offender effectively restricts certain freedoms to prevent the person from committing another crime, harming the public, or taking some other unfavorable action. Incapacitation takes the form of confinement, exile, and restrictions which is seen in practice through incarceration and restraining orders to name a couple. Although the conditions of incapacitation can fall under much scrutiny for the harms inflicted on the person punished, consequentialists justify the practice because it preserves the safety and well-being of the public or of specific members of society. While incapacitation may be the easiest benefit to achieve through punishment because of its established role in the system and consistent achievement of the intended goals, it often produces the most unjust and disproportionate consequences for a person.

In its truly utilitarian fashion, incapacitation pays greater attention to the impact of a single punishment on society as a whole than it does to the impact on the person being punished. Incapacitation may be the utilitarian justification that shows the lowest regard for the humanity and individuality of a person in sentencing, mostly when used to justify incarceration. Incarceration allows a sentencing authority to both give society peace of mind and provide

justification for punishment. Even so, this justification could, in theory, justify disproportionate and severe punishments simply because it yields a benefit to society. This practice also allows the State to justify putting the offender away and not keeping checks on the implications of the punishment on the offender's understanding of the unlawful nature of the crime.

Deterrence

Deterrence justifies punishment by ensuring that the consequence for a given action is such that it instills a certain level of fear and prevents others from committing the same crime. In order to deter, the threat of a certain punishment must be made known to the public or the group intended to deter or else it will have no effect. Furthermore, deterrence requires the punishment to be certain, severe, and swift in nature. The effect of deterrence relies on a ripple effect throughout society wherein those contemplating unlawful behavior will choose not to do so based on the promise of a severe punishment (Tadros, 2011). To an extent, punishments assigned with the intent to deter must consider some proportionality of punishment in order for it to effectively deter. Essentially, the punishment must be at least harsh enough that an offender will not justify the punishment with the personal reward or risk of committing a crime; however, the limit does not exist on how harsh of a punishment may be justified in order to deter a crime.

Like other consequentialist theories, this practice centers around producing the greatest good for society but shows less regard for the individual being punished. The primary concern with deterrence is to increase the net good in society by preventing future crimes. Deterrence-motivated punishments do not pay much consideration to the needs and mitigating circumstances of the offender nor does it consider how to positively reintegrate the offender into society. The forward-thinking aspect of deterrence focuses on other members of society and neglects to consider how the punishment will impact the person being punished. Despite its positive goal,

deterrence requires that the punishment be severe enough that it would cause a reasonable person to reconsider committing a crime. A goal of deterrence in punishment could justify severely disproportionate punishments so long as the punishment incentivizes others to not commit the same crime.

Rehabilitation

Rehabilitation reforms or restores an offender into a person who can safely and successfully reintegrate into society. This often takes place through educational programs, mental health treatment, or other skills training within the bounds of incapacitation whether incarceration or a health facility. The nature of rehabilitation in some ways contradicts the concept of punishment which is to inflict harm on a person in response to an unlawful or morally wrong action. Rehabilitation defies that and finds that removing a person from their environment and placing them in some form of incapacitation inflicts harm in itself, and this can be justified by implementing programs that yield positive outcomes for the offender and eventually for society (Brooks, 2012).

This justification has less room to disproportionately inflict harm on an individual; however, it does not evade all corruption. Rehabilitation does not offer the same amount of structured sentencing as retributivist theories do because rehabilitation concerns itself with the offender's humanity and individual challenges or deficits; whereas, retribution is more concerned with punishing an offender to the extent proportional to the crime committed. The individualized nature of rehabilitation means that its application is subject to the sentencing authority's discretion. Additionally, there are several cases in which the rehabilitation programs prove ineffective which would then pose the question of whether or not the punishment was justified if the means to the ends failed.

3.4 Mixed Theories

Of course, some subscribe to mixed theories of punishment that draw from ideas on either end of the spectrum in order to create a more balanced justification for punishment. One notable mixed theory, negative retributivism, values both desert and instrumental impacts of punishment. This theory holds that (1) a person must possess desert in order to be punished, and (2) punishments applied to a person must serve some instrumental value to the offender, society, or both. In this version of retributivism, desert is necessary but not sufficient for punishment (Brooks, 2012 pg. 96). Under the theory of negative retributivism, desert is a necessary but not sufficient condition for the justification of punishment. The utilitarian values of a prescribed punishment should also be considered. This theory both ensures that only the guilty will be punished and also requires some consequentialist consideration when assigning punishments (Brooks, 2012). There may be some intrinsic value in punishing the guilty, but some thought must be given and attempt made at creating a scenario in which punishments have some good-making feature.

Retributivism holds too high of a regard for desert in the justification of punishment while consequentialism holds not enough. Negative retributivism solves both of the significant issues in regards to the consequentialist and retributivist relationships with desert. This mixed theory strikes an appropriate balance between the two by honoring both the value of desert and the instrumental impacts within punishment. Negative retributivism stands firm in the commitment to only punish those with desert while also remaining adaptable to mitigating circumstances and aware of opportunities to act on available good-making features when assigning punishments.

3.5 Application to Juveniles

Retributivism

Retributivism values desert above all other conditions. Desert is both a necessary and sufficient condition for punishing an individual under this theory. Retributivists find intrinsic value in the harm of a person who morally deserves such harm, and they believe the harm must be proportional to the offense (Walen, 2021). By subscribing to the philosophy of taking “an eye for an eye,” retributivists can justify giving the state the power to kill an offender found guilty of murder. Under this theory, the idea of giving a guilty person a proportional punishment for what they deserve could perhaps give the state permission to commit other heinous crimes against offenders. Allowing desert alone to hold this much weight in the justification of punishment dehumanizes the offender and fails to consider the positive way in which a proper punishment could impact an offender or society.

Although some believe JLWOP sentences satisfy the requirements of desert, it actually fails to satisfy one of the primary premises of retributivism—that a punishment must be proportional to the crime committed. The philosophy of retributive justice fails to consider that creating a punishment that proportionally matches the crime committed is subjective in practice. Even if we accept the notion that one who fails to uphold their duty of self-restriction deserves a punishment equal to their wrongdoing, it still remains nearly impossible to quantify the wrongdoing in a way that allows the state to impose a punishment equal to the crime committed against an individual or society. Therefore, the punishment cannot be deemed just in an absolute sense.

Juvenile sentencing should take special consideration of proportionality because of the mitigating factors that impact an adolescent’s culpability and the differences in the impact of

various types of punishment. Richard Lippke's theory of censuring equalizing retributivism justifies imprisonment only for crimes of serious degree. In the case where Lippke finds imprisonment appropriate, the length of imprisonment must proportionately reflect the harm imposed on the victim by the offender. Lippke's theory aims to diminish an offender's life prospects to match the degree by which the victim's life prospects are diminished (Lippke, 2007). The portion of Lippke's argument that regards the role of punishment in diminishing life prospects will be of utmost importance in the consideration of sentencing juvenile offenders. Although in practice it may be difficult to measure the diminished life prospect of either the offender or the victim(s), this mixed theory of punishment offers an adequate solution to the issue of defining a point of comparison for proportionality in retributivist punishment. Even so, the application of this theory must differ vastly in juvenile criminal cases.

Juvenile offenders possess a much lower threshold for diminished life prospects. For instance, a single, childless 16-year-old male sentenced to five years in prison will have significantly lower life prospects at the completion of the sentence than a single, childless 32-year-old male sentenced to the same 5 years in prison. In the same five-year period, the 16-year-old will face difficulty earning a high school diploma, attending college, gaining job experience, or securing financial resources for his post-incarceration life in addition to harm done to proper psychological development because of incarceration. On the other hand, the 32-year-old would not face nearly this degree of harm under the same sentencing. Therefore, in order to diminish the life prospects of a juvenile offender to a proportional degree in serious crimes, the state need not apply life without parole sentencing.

Utilitarianism

Aside from restitution, each of the described justifications of punishment include some goal to respond to the crime committed and aim to produce some effect on the offender, society, or both. Incapacitation aims to protect society from further harm while rehabilitation creates pathways for offenders to find a constructive place in society. Tadros emphasizes the necessity of some “good-making” feature in order to justify the intentional infliction of harm on another person (Tadros, 2011). From a consequentialist or utilitarian perspective, JLWOP serves only one purpose: incapacitation. Sentencing a child to die in prison effectively incapacitates them for the rest of their lives and prevents them from harming anyone outside of prison walls, physically at least, but that is about as far as the utilitarian impact reaches.

As far as other utilitarian values go, including deterrence, rehabilitation, and restoration, JLWOP misses the mark. The goal of deterrence is to create a consequence so unappealing that it causes the public to conform to the standard of action prescribed by the law (Brooks, 2012). Although JLWOP by nature creates a punishment worth avoiding, the previous chapter on the neurological and psychological decision-making capabilities of adolescents supports the idea that adolescents do not possess the rationality necessary to weigh the consequences of their actions in moments of high arousal. Especially considering the circumstance under which most of the crimes occur, JLWOP likely serves little or no role in deterring future offenses and surely plays no role in reducing recidivism.

On the other hand, rehabilitation and restoration each aim to reform the offender or restore the persons or things impacted by the crime committed. Although they differ in practice, both reforming practices focus on the individual characteristics and needs of the offender aiming to help the person learn or grow from their mistakes and reintegrate into their communities as a

constructive member of society. This practice often includes education, treatment, and training programs often catered to the deficits of the offender. JLWOP sentencing eliminates the majority of these effects first and foremost because it fails to humanize the offender, a necessary part of reforming a person. Moreover, true rehabilitation and restoration effects in punishment require active participation on the part of the offender. With no prospects of leaving prison alive, it is difficult to expect a person to see any incentives for growth and change. Therefore, JLWOP negates any potential reformatory benefits of punishment. In summation, the only utilitarian role JLWOP serves is incapacitation, and this form of sentencing does so in the most inhumane and unethical way, especially since more humane alternatives achieve the same goal.

Second to the death penalty, life without parole sentences impose the strictest form of punishment. Jennifer Lackey's theory on sentencing and transformative experience argues that strict, long-term punishments, such as life sentences, are epistemically irrational as they fail to account for the fluidity of character and the impact of punishment itself. The first two premises of Lackey's argument states that (1) in order to punish, the state must have evidence, and (2) courts should consider the mental state of the offender not only when the crime was committed, but also when sentencing. Premise three of Lackey's argument emphasizes the types of transformation an offender may undergo which include developmental transformations and experientially-rooted transformations (Lackey, 2020). Juvenile offenders hold the most potential for transformation because of their lack of complete psychological and cognitive development and their malleability in areas of thought and lifestyle.

JLWOP sentencing practices rid the process of many consequentialist benefits that could stem from the process. While it may be argued that JLWOP serves an instrumental purpose by incapacitating a person who may pose a threat to society, many potential instrumental benefits go

untouched because of the impact of JLWOP. For instance, sentencing a person to die in prison rids the process of any capabilities of rehabilitating an offender and successfully reintegrating them into society as a positive contributor. It should also be noted that JLWOP sentencing likely plays no role in deterring other adolescents from committing similar crimes because of the psychological factors that influence decision making and prevent adolescents from acting soundly in instances of high emotional arousal.

Another facet of life without parole sentencing that must be brought to light is the dehumanization of offenders that often occurs when sentencing a person to die in prison with no opportunity for reconsideration. This practice neglects to acknowledge the complexity of human beings and reduces a person to the sum of one action. In doing so, the criminal justice system sends a message that this person no longer has the basic human capacity to grow, develop, and transform. Although there are rare cases where offenders cannot be rehabilitated to a degree in which they may reenter society and pose no threat to others, depriving any individual of the mere consideration of their mental state and rehabilitative progress strips a person of their humanitarian regard.

In fact, life without parole sentences not only dehumanize the offender, but also imposes inhumane conditions particularly for a juvenile offender. The argument would follow that (1) humane living conditions within a prison require some regard for human transformation capabilities and the provision of rehabilitation opportunities, (2) life without parole sentencing fails to show regard for human plasticity (3) Therefore, life without parole sentences are inhumane. Without the prospect of release, prison systems are less likely to prioritize LWOP inmates for participation in limited rehabilitative programs. Likewise, these inmates may have a hard time feeling incentivized to improve their behavior or mental state if they know that

transformation will make no difference in their life prospects. Federica Coppola's writing on humanizing prisons asserts that socio-environmental deprivation negatively impacts biological, psychological, and behavioral areas (Coppola, 2020).

3.6 The Puzzle of Incurrigibility

The term incurrigible describes a fixed thing incapable of undergoing change or reform. The definition in and of itself starkly contrasts all understandings of the psychological and biological state of adolescents. At the most fundamental level, all adolescents, and therefore all juvenile offenders, are in the process of significant, brain altering natural developments which shape perception, reaction, and interactions with one's environment. Following the conclusion of the critical brain development taking place as an adolescent, a person's thinking and reasoning skills will drastically differ. Biologically and cognitively speaking, a person at 16 years of age is not the same person 10 years later at age 26. This begs the question of whether or not a person, especially an adolescent, can ever be deemed incurrigible and how this should be interpreted in the context of justifying punishment.

The topic of incurrigibility as a consideration in sentencing has become more relevant over the last century. Most recently in 2021, the U.S. Supreme Court held in *Jones v. Mississippi* that a trial judge need not show any fact-finding investigation in order to determine permanent incurrigibility. In *Jones*, as well as in *Miller* and *Montgomery*, the court acknowledges the constitutional differences in adults and children in regards to punishment specifically regarding mental development and culpability. It is obvious that the conclusion reached in *Jones* pulls from both the retributivist need for just desert and the utilitarian regard for societal benefits. Essentially, the Court justifies the use of JLWOP in cases where the judge finds that the offender will never be able to safely reintegrate into society.

The Court finds it necessary to impose a punishment based on just desert but with consideration of the factors that make adolescents experience punishment differently. Yet, they also acknowledge their desire to yield a greater benefit to society than the individual in JLWOP sentencing by imposing indefinite incapacitation. Given the purposes of punishment, there must be some greater consideration of how the transformable nature of juvenile offenders plays a role in justifying sentencing. It is important to see that incorrigibility not only refers to the person's inability to become a lawful citizen but also alludes to their lack of transformable capability which simply cannot be the case for juvenile offenders.

3.7 Conclusion

JLWOP sentencing fails to satisfy standard philosophical justifications of punishments including retributivist, consequentialist, and mixed theories. These sentences neither offer proportional punishments nor provide any utilitarian benefits to the person punished or society. One primary concern with JLWOP sentencing is that it disregards the human plasticity that is especially present in adolescents. Because of the unique nature of adolescents' significant active brain development and receptivity to social influence, courts must consider the differences between adolescents and adults when applying appropriate sanctions. Sentencing an adolescent to die in prison with no opportunity for reconsideration both imposes cruel and unusual punishment on a person, as prohibited by the Eighth Amendment, and ignores the culpability and humanity of the person.

Chapter 4: Parallels between juvenile offenders and decision-makers in the juvenile justice system

4.1 JLWOP Sentences are Unjust

Drawing together the analysis of relevant Supreme Court cases, an examination of the knowledge of adolescents' brain development, and the philosophical justifications of punishment, I have formed the judgement that JLWOP sentences are unjust. The evolving standard of decency in juvenile criminal justice evaluated through relevant Court cases demonstrates a growing understanding of the qualities that set juvenile offenders apart from adults. Interpretations of the Eighth Amendment over recent decades call for a higher level of scrutiny and a different set of standards when sentencing individuals with reduced mental capacity. Adolescents' underdeveloped brains and reduced capacity to make rational decisions lessens their culpability. These fundamental differences mean that the same punishment for an adult will have much different implications and outcomes for an adolescent. When delving into the philosophy of punishment, I found that many justifications of life without parole fall short when applied to juvenile offenders. The underdeveloped nature of juvenile offenders and their experience of punishment drastically affects the proportionality, desert, and consequentialist benefits of many theories. With consideration of the humanity of the offender and the justifications of punishment, I find it impossible to confidently argue for the justification of JLWOP sentences. Therefore, I argue that JLWOP sentences should not be applied today in the American criminal justice system. The largest barrier to removing this practice exists in the decision-makers themselves. As such, I propose that reducing, and eventually eliminating, the

use of JLWOP sentences requires a dramatic shift in the decision-makers' perspective of juvenile offenders and the regard for their humanity.

4.2 Decision-Makers in JLWOP Cases

In accordance with the Supreme Court precedents set in *Miller*, *Montgomery*, and *Jones*, JLWOP sentences are reserved for the most severe of cases and may be applied at the discretion of sentencing authorities. This means that the legal system that interacts with and processes juvenile cases bears the responsibility for applying just sentences. That level of responsibility demands a higher level of consideration that is not apparent in the current system. The collective approach to juvenile justice by all involved determines the sentencing outcomes of juvenile cases, whether that occurs in a plea deal or at trial. The systemic lack of understanding and empathy for juvenile offenders that leads to life without parole sentencing extends far beyond the decisions made by trial judges or appellate courts. District attorneys, prosecutors, and juries each play a large role in the final outcome of juvenile cases. District attorneys and prosecutors lead the investigation portion of the legal process, determine how the case is presented at trial, and make recommendations for appropriate punishments given the information provided. Decision-makers control the narrative that surrounds a crime and steer the perception of the court toward either an understanding, humanity-focused view or a cold, distant regard for the person on trial. The current system places more focus on the crime committed than on the person sitting in front of them.

It is imperative that decision-makers adopt a more accurate understanding of the differences in juvenile offenders if they want to carry out justice. This proposal calls for more than policy change and emphasizes the need for a shift in collective perspective, not just written law. More than an education on the psychology of juvenile deviance, decision-makers need to

understand the intersections between adolescent development and the purposes and ethical considerations of punishment. Bringing these two factors together shows the depth of the issues and exposes the parallels in decision-making styles that exist between adolescents and courts. The gravity of their inconsiderate sentencing practices cannot be overstated, and decision-makers must be made aware of the deficits in their current processes. Several things are missing in the considerations of punishment, and exposing these gaps will lead to reform of practice and further evolve our country's standard of decency within juvenile punishment.

4.3 What are they missing?

Decision-makers who sentence children to life without parole demonstrate a blindness that ironically parallels that of juvenile offenders. The two are not much different in the way that they both pay a less than sufficient amount of attention to the humanity of the person most largely impacted by their decision. Both are quick to make decisions based on emotion rather than considering the totality of the situation at hand. The main difference lies in the root of their decisions. For juvenile offenders, they have some excuse seeing as their brains are underdeveloped, and they are more susceptible to outside influences. This surfaces in the decision-making processes, or more often the lack thereof, that lead to a crime. Put simply, adolescents lack the mental capacity to grasp the gravity of a single action's impact on others especially in moments of high arousal. On the other hand, decision-makers in the legal system are adults with fully developed brains who are expected to act rationally and apply a level-headed perspective of the circumstances. They are expected to analyze the cases presented with a high level of scrutiny while remaining conscious of the person on the other side of their decision. Yet, they continually make decisions that disproportionately inflict harm on juvenile offenders

because they fail to thoroughly consider the traits that differentiate juveniles from adult offenders and the way this influences the implications of a given punishment.

Especially when debating the application of, for all intents and purposes, a punishment that sentences a person to die in state custody, courts have an obligation to not only acknowledge the differences juvenile offenders possess, but to also appropriately respond by imposing a higher level of scrutiny in the decision-making process. In the same way that a juvenile offender breaks their social contract to act lawfully when they commit a crime, it could be argued that courts who impose JLWOP sentences with minimal consideration of evidence and adolescent qualities fail to uphold their duty to society to fairly apply sentencing guidelines in accordance with the Eighth Amendment. Having been trusted with the power to inflict harm on a person in response to the crimes they commit, courts have a role in society that is of utmost importance within society and should be treated as such.

Juvenile Offenders

Juvenile offenders see only the immediate consequences of their actions when they commit a crime which makes them blind to the severity and finality of their decision. In these scenarios, adolescents become more caught up in the emotion-driven response and fail to see their victim in full as a person or consider the implications of their actions on the victim and others involved. Adolescents fail to stop and rationalize their actions because that portion of their brain is not fully matured. Thrill-seeking, convenience, and heightened emotions push adolescents to act in deviant ways. Whereas the consequences of dangerous behaviors cross the mind of an adult, adolescents remain blind to the domino effect of their choices.

At a psychosocial and developmental level adolescents lack the forward-thinking skills to contemplate a decision, and the decisions are often spurred by impulsivity and peer influences.

Adolescents by nature have a self-perception of invincibility and arrogance that causes them to feel as though they can never be harmed. This spills over into the reckless and irrational decision making so often seen. When homicidal crimes are committed, these patterns of thought and behavior occur at the expense of another person's life. This is not to say that adolescents cannot tell right from wrong or that they are not responsible for their own actions, but rather to explain that juvenile offenders act in such a way that reflects their immaturity, not their true character and potential.

Decision-makers

Decision-makers in the juvenile criminal cases demonstrate an underdeveloped reasoning process. Similar to juvenile offenders, decision-makers in the legal system focus more on the crime committed than on the humanity of the offender and the impact the punishment will have on them. This approach to sentencing lacks the forward-thinking necessary for applying proportional punishments to individuals. Sentencing a child demands the capacity to understand how a given punishment will play out in a person's future and how different this will look for a child as opposed to an adult. Decision-makers act on the assumption that a child committing horrible crimes can never experience rehabilitation, and this shapes the way they navigate the legal process. Their narrow-minded perspective impedes on their ability to make fair and just decisions that consider the totality of an individual, not just one action.

Although Supreme Court precedents claim otherwise, authorities who impose JLWOP sentences fail to acknowledge and consider the inherent differences between adults and children for sentencing purposes. If they truly applied concepts related to adolescent cognitive abilities and their transformable nature that are described in relevant Court cases, then they would not sentence children to die in prison without any further reconsideration throughout their lifetimes

with such frequency. They surely would not do so without in-depth evaluation of the child at the time of sentencing and professional judgment of the child's rehabilitation potential. Their decision-making processes allude to a blindness toward the gravity of JLWOP sentencing.

Courts demonstrate some emotional and mental distance from the juvenile offenders in their decision-making processes. It is as if those within the legal system view juvenile offenders as something less than human beings because of the crimes they commit, and they attribute this perspective to the fact that it seems unnatural and scary for a child to be capable of committing such heinous acts. With that they assume that if a child can commit a crime of this nature at such a young and perceivably innocent age, there is something inherently and irrevocably wrong with that child. Even so, the opposite perspective should be true. If an adult with a rational, fully developed brain commits the same homicidal crimes, it should be more alarming than when an underdeveloped child acts irrationally at the expense of another person's life. This perspective does not discredit the severity of the crime committed by any juvenile offender but rather reiterates the idea that a child should not be reduced to a single action and assumed to have no potential for growth based on that one crime.

4.4 The Unjust System

As it stands, the United States is the only country in the world that still allows juveniles to be sentenced to life without parole. That statistic alone brings to light the need for change, but also demands some serious consideration of the damaged American justice system and culture that makes this possible. When a child commits a crime, our culture responds immediately with some shift in regard for the sanctity, innocence, and value of a child. The culture nor the justice system stops to consider how reflective a child is of their environment and the degree to which

their decisions are influenced by others. They simply jump to the conclusion that locking the child away and out of sight will pacify the issue and protect the greater interests of society.

The Court appears to have some negative feelings toward JLWOP sentencing but finds that it is constitutional for the rarest of offenders who demonstrate incorrigibility. With the Court leaving the decision of imposing JLWOP sentences to state court judges and appellate courts, the ability to regulate the fairness with which a judge evaluates a person's incorrigibility is essentially lost. Acknowledging the lessened culpability of all juvenile offenders in Supreme Court rulings does not prevent state level decision makers from applying personal biases or cutting corners in their consideration of an individual. Deeming a person incorrigible at such a vulnerable and malleable age shows both blindness to the nature of the juvenile offender and an over-inflated confidence in one's own ability to predict the person's life-long trajectory and outcomes. The mere requirement of considering alternatives to JLWOP and no need for fact-finding evidence leaves this decision in the hands of people who often have no relevant training in determining a person's potential for successful rehabilitation. Aside from that, I would argue that there is no scenario in which a sentencing authority can determine with absolute certainty that an adolescent lacks any and all capacity for change.

What needs to change?

In order to achieve a more just juvenile justice system, the decision-makers responsible for the sentencing outcomes need to adopt a different perspective of juvenile offenders. Decision makers must recognize that despite their age and education level, they are not all that different from adolescents when they choose to make decisions based on a passionate distaste for the person in front of them and a narrow understanding or regard for the consequences of their actions. In order to set themselves apart from the parallels to juvenile offenders, decision makers

need to first reevaluate and mature their own thought processes to reflect a regard for the humanity of offenders. The juvenile justice system needs drastic changes in its outcomes and interactions with offenders, and this begins with decision-makers altering their approach to each case. This will require tough criticism and introspection in order to achieve a more just and effective standard of functioning. They must shift their perspective toward seeing the person first and the crime they committed second. The two are deeply intertwined, but as it stands, it is rare for the humanity of an offender to be fully considered.

Recognizing that a person is worth more than their worst action transforms the entire criminal legal process toward one that makes decisions that are in the best interest of both the offender and the community impacted by the crime. This also leads to more proportional punishment as it considers the totality of the factors and impacts involved. With the nature of some of the crimes committed and the cultural negative regard for juvenile offenders, adopting a humanity-focused perspective requires a heightened level of maturity. Decision-makers must learn to show empathy for the person being sentenced. Person by person and case by case, the juvenile justice system will change the attitudes toward juvenile offenders and begin to develop a system that truly considers the inherent qualities of adolescents. As the perspective and culture around juvenile sentencing shifts within the system, the rate of juvenile life without parole sentencing should decline.

4.5 Proposal of Reform

I am proposing a model that aims to lessen the use of JLWOP sentences by reforming the decision-making processes and perspectives applied in the juvenile criminal justice system. This model requires changing the culture of juvenile justice from the inside out. Reforming policies only goes so far if the people in power continually allow their faulty decision-making processes

and lack of empathy to influence their interpretation of cases. In order to shift the perspective of sentencing authorities, I am proposing that programs be implemented to further educate decision-makers in the juvenile justice system on the qualities of juvenile offenders and the impact of various sentences. Decision-makers involved would include judges, prosecutors, defense attorneys, and others involved in the legal processes that lead to the application of a sentence on local, state, and federal levels. This would include primary discussions and education around the cognitive and developmental capacities of juvenile offenders. Then, this understanding would be paired with the discussions of the purposes of punishment and the implications of various sentences on juvenile offenders considering their lessened mental capacities. This process would emphasize the humanity of the offender over the crime committed. Educating decision-makers would influence the way they approach cases of severe nature and hopefully demonstrate the widely available alternatives to harsh sentencing that serve the intended punishment.

Satisfying the Goals of Punishment

This proposal does not ignore the retributive nature of the American justice system and seek to overthrow that. In fact, just deserts retribution prohibits JLWOP. As such, this proposal aims to show that the interpretation of desert and proportionality, the primary values of the system, are continually falling short in regards to juvenile sentencing because of the misguided decision making that so often occurs. The impact of an adolescent's underdeveloped brain completely disrupts the theory of proportionality and desert. In order to uphold the retributive goals justly, decision-makers must make informed decisions and intentional efforts to apply punishments that respect the humanity of the offender and consider the proportionality of a punishment in practice.

Life with parole sentencing serves the same punitive goals as JLWOP but also acknowledges the humanity of the offender and the special transformable nature of juvenile offenders that requires different approaches to punishment. The person who committed the crime as an adolescent biologically and psychologically will not exist ten years later. With the proper nourishment and growth, juvenile offenders have great potential to grow into people who successfully rejoin their communities and live fruitful lives. It is important to note that sentencing a person to life imprisonment with the possibility of parole does not mean they will ever leave prison. It simply gives the opportunity for professionals to reevaluate their mental state and determine whether or not they have been rehabilitated. There are of course the outliers that stand no chance of becoming rehabilitated to a degree in which they can safely reintegrate into society. In these cases, the offenders would continue to fail evaluations by the parole board and remain incapacitated for the rest of their lives. Instilling this understanding in decision-makers through targeted education will make strides toward eliminating the use of JLWOP sentencing and completely shifting the regard for juvenile offenders.

Expected Outcomes

The evolving standard of decency observed throughout the relevant Supreme Court cases can be further applied here as judges, district attorneys, and prosecutors take it upon themselves to adopt more progressive and open-minded ideas about the reality of juvenile offenders. The ultimate goal of reforming the thought processes of decision makers is to bring just practices to juvenile sentencing. Pushing decision makers to take a more educated and empathetic approach to their interactions with juvenile offenders and shift the narrative they attach to cases will lead to more rational and less vengeance-centered decisions. With that, the removal of juvenile life without parole sentences will closely follow, if not in law but in practice. Developing a mature,

empathetic, and rational approach to sentencing juveniles that applies forward-thinking perspectives and fully considers the transformable nature of juvenile offenders will surely lead to a lessened regard for JLWOP sentences.

This process of shifting the perspectives of decision-makers on a local, state, and federal level would take years to execute and even more time to see tangible results. However, the benefits of educating decision-makers of any level who play a role in the outcome of juvenile criminal cases will have a much larger positive effect on society the longer the practice is sustained. Just as JLWOP sentences begin with individual cases and impact numerous lives, the education of a decision-maker who eventually spares the life of one child will yield a positive impact on countless individuals. Social change of this nature cannot be solved through a single seminar given to every decision-maker, but it does begin with thoughtful discussions and education around JLWOP that sparks a shift in the cultural response to juvenile offenders.

4.6 Conclusion

Juvenile offenders and decision-makers in the juvenile justice system have more in common than meets the eye. In the current system, decision-makers are using underdeveloped reasoning to judge underdeveloped people which creates a unique parallel. They both demonstrate a blindness to the impact of their decisions on the people involved and are quick to make decisions that reflect a lack of consideration, immaturity, impulsivity, and a need to keep up with the status quo. In order to set themselves apart from children who act unlawfully in regards to their day-to-day decision making, authorities within the juvenile justice system must adopt a higher level of empathy and learn to see the offender as a person, not simply a crime. Furthermore, they must recognize that because of the adolescent developmental state, there is no

way to prove with total certainty that a child is incorrigible, especially with no fact-finding investigation.

To improve the current state of the issue, I am proposing the launch of educational programs and discussions that will grow decision-makers' understanding of juvenile offenders and influence the outcomes of juvenile justice cases. Teaching decision-makers to improve their reasoning skills and approach each individual as a person, not the crime committed, will bring more lead to more informed and just sentences that better respond to the circumstances. With a shift in perspective on individual and state levels, the standard of decency will slowly evolve to a place where juvenile life without parole is seen as cruel and unusual punishment in all scenarios.

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