Lesson 8

Tuesday February 20, 2024

Atkins v. Virginia (2002) and Simmons

- In Atkins, the U.S. Supreme Court holds that as of 2002 there is a "national consensus" that the execution of people with mental retardation violates the Eighth and Fourteenth Amendments to the Constitution.

- In arguments to the MoSC, Simmons' attorneys claim that the Atkins case is directly analogous to Simmons' case: there is a national consensus that the execution of juveniles violates the Eighth and Fourteenth Amendments.

- The MoSC agreed with Simmons' attorneys and set his death sentence aside in 2003.

- Because the MoSC is interpreting the U.S. Constitution in this case, the U.S. Supreme Court gets the last word if the State of Missouri chooses to appeal - which it did.

- The U.S. Supreme Court granted certiorari and arguments were made in the fall of 2004. The U.S. Supreme Court issued its decision in March 2005. By a 5-4 vote, the Court concluded that the death penalty for juveniles is unconstitutional.

Key Supreme Court Precedents

- Thompson: "no death penalty State that had given express consideration to a minimum age for the death penalty had set the age lower than 16." Moreover, "juries imposed the death penalty on offenders under 16 with exceeding rarity; the last execution of an offender for a crime committed under the age of 16 had been carried out in 1948, 40 years prior" (p. 7).

- Stanford: "The Court noted that 22 of the 37 death penalty States permitted the death penalty for 16-year-old offenders and 25 permitted it for 17-year-old offenders. These numbers, in the Court's view, indicated there was no national consensus" against the death penalty for 16- and 17-year-old offenders (p. 8).

- Penry: "the Eighth Amendment did not mandate a categorical exemption from the death penalty for the mentally retarded. In reaching this conclusion it stressed that only two States had enacted laws banning the imposition of the death penalty on a mentally retarded person... According to the Court, the two state statutes prohibiting execution of the mentally retarded even when added to the 14 States that have rejected capital punishment completely, [did] not provide sufficient evidence at present of a national consensus" (p. 8).

Trop v. Dulles (1958) and Atkins v. Virginia (2002)

- Trop: "evolving standards of decency mark the progress of a maturing society" (p. 6).

- Atkins: "We held that standards of decency have evolved since Penry and now demonstrate that the execution of the mentally retarded is cruel and unusual punishment... the Court determined that executing mentally retarded offenders has become truly unusual and it is fair to say that a national consensus has developed against it" (p. 9).

- Atkins Diminished Culpability Doctrine: "Mental retardation, the Court said, diminishes personal culpability even if the offender can distinguish right from wrong" (p. 9).

- Atkins Retribution and Deterrence Doctrine: "The impairments of mentally retarded offenders make it less defensible to impose the death penalty as retribution for past crimes and less likely that the death penalty will have a real deterrent effect" (p. 9).

- Analogy to the Simmons' case: "Just as the Atkins Court reconsidered the issue decided in Penry, we now reconsider the issue decided in Stanford."

Issues for the Court to Decide in Simmons' Case (p. 10)

- Has a national consensus against imposing the death penalty on juveniles emerged?
- Is the death penalty "a disproportionate punishment for juveniles"?
- Is Stanford v. Kentucky (1989) still a controlling precedent?
- Part III of Justice Kennedy's opinion addresses each of these issues.

Part IIIA: National Consensus (pp. 10-13)

- At the time of Atkins, 30 states (12 No DP States + 18 DP States) specifically excluded offenders with mental retardation from the death penalty.

- As of 2005, 30 states (12 NO DP States + 18 DP States) specifically exclude offenders under 18 years of age from the death penalty.

- Between Penry and Atkins, only five states had actually executed someone with an IQ less than 70.

- Since the Stanford case, six states had executed offenders for crimes committed when they were juveniles. And, from 1995 to 2005, only three states had done so.

- Indeed, the Governor of Kentucky commuted Kevin Stanford's death sentence to life imprisonment in 2003 with the statement that "we ought not be executing people who, legally, were children."

States Allowing the Death Penalty for Juvenile Offenders and Offenders with Mental Retardation

- In 1989 (time of *Stanford* and *Penry*), 20 states allowed execution of juvenile offenders and offenders with mental retardation.
- By 2002, the number of states allowing the death penalty for offenders with mental retardation had dropped to 4.
- By 2005, the number of states allowing the death penalty for juvenile offenders had dropped to 15.

Conclusions About National Consensus

- Page 11: "Though less dramatic than the change from Penry to Atkins, we still consider the change from Stanford to this case to be significant."

- In particular, on pages 11-12, the Court seems to be emphasizing the direction of change and the unanimity of that direction (no new states adopted the death penalty for juveniles; all of the change was in the direction of excluding juveniles from the death penalty) instead of the absolute numbers.

- Page 13: The state of Missouri is not able to demonstrate a national consensus in favor of capital punishment for juvenile offenders.

- Objective indicia of national consensus:

  - Death penalty for juveniles is excluded in the majority of states.

  - It is infrequently used "even where it remains on the books."

  - A consistent trend away from execution of offenders whose offenses were committed when they were juveniles.

Part IIIB: Juveniles are Different (pp. 14-21)

- The death penalty is reserved for a very narrow class of offenses and offenders: very serious crimes committed by people with the greatest degree of culpability (p. 14).

- On pp. 15-16, the Court argues that "three general differences between juveniles under age 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders."

  - Juveniles lack maturity and competence. Studies show that juveniles are disproportionately involved in risky behaviors which reflects a general tendency toward lack of experience and poor judgment in this age group. Thus, "almost every state prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent."

  - Juveniles are uniquely susceptible to "peer pressure" and other "negative influences."

  - Juveniles are more malleable and reformable than adults - thus, their character is not yet fixed.

Juveniles Cannot Be "Among the Worst Offenders" (pp. 16-17)

- If juveniles have the kinds of characteristics our society commonly attributes to them then it is not logically possible for their behavior to be "as morally reprehensible as that of an adult."

- The limitations of juveniles' cognitive and reasoning abilities "means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character."

- In addition, according to the Court, "it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Purposes of the Death Penalty (p. 17)

- Retribution: "the case for retribution is not as strong with a minor as with an adult. Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree by reason of youth and immaturity."

- General deterrence: at a minimum, "it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles." Morover, according to Kennedy, "the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence."

- Incapacitation: a trivial argument because of the alternative of life imprisonment without the possibility of parole.

Categorical Distinctions and "Line Drawing" (pp. 18-19)

- Missouri argues that the current system is designed to take into account the individual circumstances of each case - including the age of the offender. Consequently, there is no need for a categorical rule.

- The Court's view: "an unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course" (p. 19).

- Comparisons of juries and psychologists: the difficulties of diagnosing antisocial personality disorder among juveniles are well known. The Court's view: "if trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 as having antisocial personality disorder, we conclude that states should refrain from asking jurors to issue a far graver condemnation - that a juvenile offender merits the death penalty" (pp. 19-20).

- What about line drawing: "The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death penalty eligibility ought to rest" (p. 20).

Part IV of the Opinion (pp. 21-25)

- A comparison of the U.S. to other countries: "Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty" (p. 21).

- The Court emphasizes that world opinion is only a confirmatory factor; in other words, world opinion does not influence the Court's decision but is relevant for confirming that it is the right decision: "The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions" (p. 24).

- Concluding statement: "The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed" (p. 25).

The Status of Stanford v. Kentucky (1989)

- There were some references to objective indices of "national consensus" in Stanford and based on evidence presented above, these indices have changed.
- The Stanford decision "should no longer control in those few pending cases or in those yet to arise" (p. 21).
- Example of Supreme Court overruling one of its own precedents.

Summary of Supreme Court Jurisprudence

- Time and time again, the Court expresses the view that juveniles are different from adults.

- Rather than broadly affirming or disallowing key aspects of the juvenile justice system, the Court has taken a case-by-case approach to its jurisprudence in this area.

- In some areas, the Court has chosen to keep the juvenile justice process completely separate and distinct from the adult process. In other areas, the Court has required the juvenile court to become very similar to the adult court.

- Lessons of history suggest that the Court will continue to deal with juvenile justice on a case-by-case basis.