

Handout 3 (alt): Evaluating Opinions – *Roper v. Simmons*

In 2005, the Supreme Court decided a case about the Eighth Amendment. The Eighth amendment prohibits “cruel and unusual punishments.” Christopher Simmons, a 17-year-old, was convicted of murdering a woman and was given the death penalty. Simmons appealed his death sentence, arguing to the Court that it was “cruel and unusual punishment” to execute a person under the age of 18. The Supreme Court had to decide whether to ban the death penalty for juveniles.

The excerpts below are paraphrased from the Supreme Court justices’ opinions in this case. Read each excerpt and decide whether it represents an Originalist (O) approach or a Living Constitutionalist (LC) approach to interpreting the Eighth Amendment’s ban on “cruel and unusual punishments.”

_____ A lot of America’s history is the same as England’s history—some of our laws are based on theirs. When interpreting some parts of the Constitution, we should therefore consider what legal scholars in England in the 1700’s would have thought about the meaning of words.

_____ In 1791, when the Eighth Amendment was written, the execution of a 7-year-old would not have been considered “cruel and unusual punishment.” America’s standards of decency have changed since then and we can no longer read the Eighth Amendment as allowing something like that.

_____ In a previous case, the Supreme Court said that executing mentally retarded people was “cruel and unusual” because most of the states agreed that it was wrong. There is now evidence that most of the states agree that it’s wrong to execute juveniles. Therefore, executing juveniles might also be “cruel and unusual.” Thirty states don’t allow the death penalty for people under 18. Twelve of those states have no death penalty at all and the other 18 still have the death penalty but don’t allow the execution of juveniles.

_____ The justices in the majority think that the meaning of the Constitution has changed in the past 15 years. The Court ruled 15 years ago that it was not “cruel and unusual” to execute juveniles. The majority is not saying that the ruling 15 years ago was wrong, but that the meaning of the Constitution has changed in that time. It finds that there is now an agreement among most states that the execution of juveniles is wrong, even though nothing has actually changed since the ruling 15 years ago.

_____ The majority has decided that its own judgment matters more than the judgment of the people who were elected to write laws. Judges should not use their own judgment, or the opinions of foreign courts, to determine what is morally right for the Nation.