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Is Relying on Foreign Law Impeachable?

“By what conceivable warrant can nine lawyers presume to be the authoritative conscience of the Nation?” So asked an incredulous Justice Antonin Scalia in dissent to the latest outrage by the U.S. Supreme Court.

Five activist justices (not even nine) imposed their personal social preference on every American voter, state legislator, congressman, and juror. Adding insult to injury, the supremacist five used foreign laws, “international opinion,” and even an unratified treaty to rationalize overturning more than 200 years of American law and history!

Justice Anthony Kennedy’s majority opinion in *Roper v. Simmons* is a prime example of liberal judges changing our Constitution based on their judge-invented notion that its meaning is *evolving*. He presumed to rewrite the Eighth Amendment.

The murder involved in this case was particularly heinous. Christopher Simmons persuaded a fellow teenager to help him commit a brutal murder after assuring him they could “get away with it” because they were both under age 18.

Simmons met his pal at 2 a.m. and they broke into Shirley Crook’s home as she slept. Simmons and his fellow teenager bound her hands, covered her eyes with duct tape, put her in her own minivan, and drove to a state park. There they hog-tied her hands and feet together with electrical wire, wrapped her entire face in duct tape, and threw her body from a railroad trestle into the Meramec River. Mrs. Crook drowned helplessly, and her body was found later by fishermen. Showing no remorse, Simmons bragged about his killing to his friends, declaring that he did it “because the bitch seen my face.” He confessed quickly after his arrest and even agreed to reenact the crime on video.

A jury of his peers listened to his attorney’s argument that his immaturity should reduce his punishment; the jury observed Simmons’ demeanor at trial and heard from a slew of witnesses. After an exhaustive trial and full consideration of age as a factor, the jury and judge imposed the death sentence as allowed by Missouri law. Nothing in the text or history of the Eighth Amendment denies Missouri juries and state legislatures the right to make this decision.

The Supreme Court’s main argument was the “trend” since 1989 that seven countries (Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, Congo, and China) have banned juvenile capital punishment. To force the United States to follow the lead of those seven countries, Justices Kennedy, Ginsburg, Breyer, Stevens and Souter changed U.S. law and overturned the laws of Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, Utah and Virginia, all of which allow the death penalty for a 17-year-old who commits a particularly shocking murder. Only four U.S. states have legislated against the juvenile death penalty since 1989 (but none of them was executing juveniles anyway).

The supremacist five claimed that most other countries don’t execute 17-year-olds. However, most other countries don’t have capital punishment at all, so there is no distinction between 17- and 18-year-olds. Furthermore, most other countries don’t allow jury trials or other Bill of Rights guarantees, so who knows if the accused ever gets what we would call a fair trial? Over 90% of jury trials are in the United States, and we certainly don’t want to conform to non-jury-trial countries.

The five supremacist justices must think they can dictate evolution of the meaning of treaties as well as of the text of the Constitution. They cited the United Nations Convention on the Rights of the Child, which our Senate year after year has refused to ratify. They also cited the International Covenant on Civil and Political Rights, which we ratified only with a reservation specifically excluding the matter of juvenile capital punishment. The Court accepted *amicus* briefs from Mikhail Gorbachev and from 48 foreign countries.

