Narrow majority on US Supreme Court bans juvenile death penalty

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The US Supreme Court on Tuesday struck down the death penalty for crimes committed by juveniles. The ruling affects 72 death row inmates, whose sentences for the most part will be converted to life in prison without parole.

The Court ruling upheld an earlier decision by the Missouri Supreme Court, which had overturned the death sentence of Christopher Simmons, who was convicted for a murder committed in 1993 at the age of 17.

The five-four vote on the court puts an end to one of the most gruesome aspects of the death penalty in the US, while leaving the barbaric system itself intact. It is a telling statement on the state of democracy in twenty-first century America that four of the nine high court justices dissented from the majority opinion, arguing that execution should be an option for those convicted for crimes committed when they were under the age of 18.

The narrow and restricted character of the decision is demonstrated by the fact that the five justices in the majority—John Paul Stevens, David Souter, Ruth Bader Ginsburg, Stephen Breyer and Anthony Kennedy—did not vote to overturn the most recent Supreme Court ruling on the issue, in 1989, when Kennedy sided with a majority in favor of retaining the death penalty for juvenile offenses.

Instead of declaring the 1989 case wrongly decided and forthrightly reversing it, the majority claimed that while execution of juveniles was constitutional in 1989, it had ceased to be so in 2004 because of shifting public attitudes towards such executions. This was reflected in five states forbidding such executions over the past 15 years.

The effect of this line of argument was to transform a discussion of the inherently barbaric character of the execution of juveniles—to say nothing of capital punishment as a whole—into a pettifogging dispute over how many states still permitted the execution of juveniles and how many did not. A substantial number of states still have the death penalty for juveniles on the books, but only three—Texas, Oklahoma and Alabama—have actually executed prisoners in the last decade for offenses committed before the age of 18.

The majority argued that capital punishment for juvenile offenders violates the Eighth Amendment prohibition against "cruel and unusual punishment," and that the ban was necessary to keep step with "evolving standards of decency" that for the last half-century have influenced the Supreme Court's view of what constitutes such cruel and unusual punishment.

They noted that while laws in 19 states currently allow juvenile offenders to be sentenced to death, 19 states with the death penalty set the age at 18 and the remaining 12 states outlaw capital punishment outright, making a 31 to 19 majority of states opposed to the death penalty for juveniles.

The majority also argued that three general differences between juveniles under 18 and adults demonstrated that "juvenile offenders cannot with reliability be classified among the worst offenders," and thereby eligible for the death penalty. These differences included: a lack of maturity and an underdeveloped sense of responsibility, vulnerability to negative influences and peer pressure, and the transitory personality traits of juveniles.

The decision noted that "only seven countries other than the US have executed juvenile offenders since 1990: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo and China," and that since then each of these countries has either banned the practice or publicly renounced it. The US has sent 22

juvenile offenders to their deaths since the Supreme Court voted to reinstate the death penalty in 1976.

"[It] is fair to say," the majority wrote, "that the United States now stands alone in a world that has turned its face against the juvenile death penalty." Indeed, the US has been isolated not only by its practice of executing juveniles, but for its maintenance of capital punishment as a whole. Only a handful of industrialized countries still allow it, but in the US, 949 prisoners have been sent to their deaths since the practice was reinstituted. George W. Bush alone presided over 152 executions as governor of Texas.

While the Bush administration claims to be spreading "freedom and democracy" with its illegal war against the Iraqi people, there are currently 3,455 inmates sitting on death row across America, a contradiction not lost sight of by international opinion. This pressure of world opinion, combined with growing domestic opposition to the death penalty, was certainly a factor in influencing a majority on the high court to strike down one of the more barbaric components of the death penalty system. Similar pressures were at work when the high court voted in 2002 to ban executions for the mentally retarded.

In contrast to the cramped and half-hearted arguments of the majority—afraid to say clearly that the United States is regarded throughout the world as a land of barbarism and cruelty—the dissenting right-wing justices, Chief Justice William Rehnquist, Antonin Scalia, Clarence Thomas and Sandra Day O'Connor, were unrestrained and unabashed in their defense of killing adolescents.

Writing the dissenting opinion, Scalia objected that "the views of other countries and the so-called international community take center stage" in the opinion of the majority, and that the ruling "is the justices' own notion of how the world ought to be, and their diktat that it shall be so henceforth in America."

It should be recalled that Justice Scalia has made his retrograde views on the death penalty—and his belief that government derives its moral authority from god—clear on numerous occasions. In a speech at the University of Chicago in January 2002 he commented, "Indeed, it seems to me that the more Christian a country is, the less likely it is to regard the death penalty as immoral ... for the believing Christian, death is no big deal."

He approached his dissenting opinion in Tuesday's ruling with the same vulgarity and lack of humanity. He first of all objected to including the states that outright ban the death penalty in the list of those opposing the death penalty for juveniles. "Consulting States that bar the death penalty concerning the necessity of making an exception to the penalty for offenders under 18 is rather like including old-order Amishmen in a consumer-preference poll on the electric car."

"Of *course* they don't like it," he wrote, "but that sheds no light whatever on the point at issue.... The attempt by the Court to turn its remarkable minority consensus into a faux majority by counting Amishmen is an act of nomological desperation."

Scalia then attempted to utilize the argument—so common today in cases where prosecutors seek adult prosecution of juveniles—that if the crime is "adult," then so is the offender.

After describing the details of the crime committed by Christopher Simmons in Missouri, and another murder case in Alabama involving two juveniles, he wrote: "Though these cases are assuredly the exception rather than the rule, the studies the Court cites in no way justify a constitutional imperative that prevents legislatures and juries from treating exceptional cases in an exceptional way—by determining that some murders are not just the acts of happy-go-lucky teenagers, but heinous crimes deserving of death."

Scalia, however, reserved his strongest objection to the reference in the majority opinion to the influence of international opinion on the death penalty, writing, "The basic premise of the Court's argument—that American law should conform to the laws of the rest of the world—ought to be rejected out of hand."

This outlook is of a piece with that of the Bush administration, which continues to flout international law with the torture of prisoners in Iraq, Afghanistan and elsewhere in the "war on terror," as well as the indefinite detention without charge of detainees at Guantánamo Bay and other US prison facilities.