Do Kids Belong in Prison? The Answer Will Say a Lot About What Type of Society We Are

Alan E Garfield
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The answer will say a lot about what type of society we are.

At what age can we say a youth is so bad that we should lock him up and throw away the key? That issue will be before the Supreme Court tomorrow. The court must decide whether it violates the Eighth Amendment's ban on "cruel and unusual punishments" to sentence a minor to life without the possibility of parole for a nonhomicide offense.

Joe Sullivan, one of two minors whose cases are being heard by the court, was 13 when he beat and raped an elderly woman. Certainly, Joe's crime was hideous. But does it justify sending him to jail for the rest of his life? Do we honestly believe a young teen is forever beyond rehabilitation?

Brain experts agree that minors are likely to become more law-abiding as they mature. The brain of a young teen, they explain, is wired for impulsive behavior, heavy on the gas, light on the brakes. It is only during late adolescence and early adulthood that the frontal lobes, which help restrain impulsive behavior and facilitate long-term thinking, fully develop.

Yet that we need a scientist to tell us this. Any parent knows that teenagers are impulsive and have questionable judgment.

Indeed, our society has long structured its laws in accordance with this intuition. That's why we don't allow minors to smoke, drink, vote, serve as jurors, marry without parental consent, join the army, or even buy a Playboy magazine. Yet we allow adults to do all of these things.

So how can we honestly say that Joe could never be rehabilitated? Doesn't that run counter to everything that science, our intuition and even our own laws tell us?

Well, yes. But what if we don't care? Maybe we just think some kids are so rotten they've forfeited their right to be part of society. The Supreme Court has said minors cannot be sentenced to death. But why not do the next best thing and lock them up? Forever.

This cuts to the core of what these cruel and unusual punishment cases are all about. They're not about kids like Joe. They're about us. They're about who we are, and what type of society we want to create.

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Do we want to be a society that denies 13-year-olds a second chance on life? Is retribution more important to us than mercy? Does it trouble us if these kids grew up in horrible circumstances? Or that all of the 13- and 14-year-olds currently serving life without parole for nonhomicide crimes are African-American?

Most of the world gives minors a second chance. Most every country hassigned the Convention on the Rights of the Child, which forbids giving juveniles life sentences without the possibility of parole. The two exceptions are the United States and Somalia.

But does it matter what these countries do? We are, after all, interpreting the United States Constitution, not the French Constitution. So why, as Justice Antonin Scalia has said, should we "impose foreign moods, fads or fashions on America?"

Still, isn't it a bit disconcerting that our lone ally is Somalia, a country best known for Islamic fundamentalists and pirates?

The reality is that, even in this country, most states already have stopped sentencing 13- and 14-year-olds to life without parole. So if the Supreme Court did nothing, it's possible that all states would eventually end this practice anyway. And this would happen through the will of the people, not through judicial fiat.

Yet maybe this is the type of issue where judicial intervention is warranted. Perhaps the Supreme Court needs to remind us that we have certain core values that are non-negotiable. And one of those values is the ban on cruel and unusual punishments.

That may be why the Supreme Court emphasizes that the Eighth Amendment protects "even those convicted of heinous crimes."

This might dismay some Americans. But they need to know that this protection is not for the criminals' sake but for our own. For by providing this protection, "the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons."

The court should send a clear message. Putting a minor in jail and throwing away the key for a nonhomicide offense is cruel. It ignores the youth's innate capacity to grow and mature. It is inconsistent with our commitment to respecting the dignity of all individuals.

Keeping hope alive is good for the youth. But it is also good for the rest of us.

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