***Stanford v. Kentucky* (1989)**

492 U.S. 361 (1989)

The Supreme Court granted certiorari in two consolidated cases, Stanford v. Kentucky and Wilkins v. Missouri, to decide whether the Eighth Amendment precludes the death penalty for individuals who commit crimes at 16 or 17 years of age. The facts are presented in Justice Scalia's opinion below.

Opinion of the Court: Scalia, Kennedy, O'Connor, Rehnquist, White.

Concurring opinion: O'Connor.

Dissenting opinion: Brennan, Blackmun, Marshall, Stevens.

MR. JUSTICE SCALIA delivered the opinion of the Court.

These two consolidated cases require us to decide whether the imposition of capital punishment on an individual for a crime committed at 16 or 17 years of age constitutes cruel and unusual punishment under the Eighth Amendment.

The first case … involves the shooting death of 20-year-old Baerbel Poore in Jefferson County, Kentucky. Petitioner Kevin Stanford committed the murder on January 7, 1981, when he was approximately 17 years and 4 months of age. Stanford and his accomplice repeatedly raped and sodomized Poore during and after their commission of a robbery at a gas station where she worked as an attendant. They then drove her to a secluded area near the station, where Stanford shot her point-blank in the face and then in the back of her head. The proceeds from the robbery were roughly 300 cartons of cigarettes, two gallons of fuel and a small amount of cash. A corrections officer testified that petitioner explained the murder as follows: "'|H]e said, I had to shoot her, [she] lived next door to me and she would recognize me.… I guess we could have tied her up or something or beat [her up] … and tell her if she tells, we would kill her.… Then after he said that he started laughing.'" …

After Stanford's arrest, a Kentucky juvenile court conducted hearings to determine whether he should be transferred for trial as an adult under Ky. Rev. Stat. § 208.170.… The statute provided that juvenile court jurisdiction could be waived and an offender tried as an adult if he was either charged with a Class A felony or capital crime, or was over 16 years of age and charged with a felony. Stressing the seriousness of petitioner's offenses and the unsuccessful attempts of the juvenile system to treat him for numerous instances of past delinquency, the juvenile court found certification for trial as an adult to be in the best interest of petitioner and the community.

Stanford was convicted of murder, first-degree sodomy, first-degree robbery, and receiving stolen property, and was sentenced to death and 45 years in prison. The Kentucky Supreme Court affirmed the death sentence, rejecting Stanford's "deman[d] that he has a constitutional right to treatment" … Finding that the record clearly demonstrated that "there was no program or treatment appropriate for the appellant in the juvenile justice system," the court held that the juvenile court did not err in certifying petitioner for trial as an adult. The court also stated that petitioner's "age and the possibility that he might be rehabilitated were mitigating factors appropriately left to the consideration of the jury that tried him." …

The second case before us today … involves the stabbing death of Nancy Allen, a 26-year-old mother of two who was working behind the sales counter of the convenience store she and David Allen owned and operated in Avondale, Missouri. Petitioner Heath Wilkins committed the murder on July 27, 1985, when he was approximately 16 years and 6 months of age. The record reflects that Wilkins' plan was to rob the store and murder "whoever was behind the counter" because "a dead person can't talk." While Wilkins' accomplice, Patrick Stevens, held Allen, Wilkins stabbed her, causing her to fall to the floor. When Stevens had trouble operating the cash register, Allen spoke up to assist him, leading Wilkins to stab her three more times in her chest. Two of these wounds penetrated the victim's heart. When Allen began to beg for her life, Wilkins stabbed her four more times in the neck, opening her carotid artery. After helping themselves to liquor, cigarettes, rolling papers, and approximately $450 in cash and checks, Wilkins and Stevens left Allen to die on the floor.

Because he was roughly six months short of the age of majority for purposes of criminal prosecution, … Wilkins could not automatically be tried as an adult under Missouri law. Before that could happen, the juvenile court was required to terminate juvenile court jurisdiction and certify Wilkins for trial as an adult under § 211.071, which permits individuals between 14 and 17 years of age who have committed felonies to be tried as adults. Relying on the "viciousness, force and violence" of the alleged crime, petitioner's maturity, and the failure of the juvenile justice system to rehabilitate him after previous delinquent acts, the juvenile court made the necessary certification.

Wilkins was charged with first-degree murder, armed criminal action, and carrying a concealed weapon. After the court found him competent, petitioner entered guilty pleas to all charges. A punishment hearing was held, at which both the State and petitioner himself urged imposition of the death sentence. Evidence at the hearing revealed that petitioner had been in and out of juvenile facilities since the age of eight for various acts of burglary, theft, and arson, had attempted to kill his mother by putting insecticide into Tylenol capsules, and had killed several animals in his neighborhood. Although psychiatric testimony indicated that Wilkins had "personality disorders," the witnesses agreed that Wilkins was aware of his actions and could distinguish right from wrong.… On mandatory review of Wilkins' death sentence, the Supreme Court of Missouri affirmed, rejecting the argument that the punishment violated the Eighth Amendment.…

The thrust of both Wilkins' and Stanford's arguments is that imposition of the death penalty on those who were juveniles when they committed their crimes falls within the Eighth Amendment's prohibition against "cruel and unusual punishments." Wilkins would have us define juveniles as individuals 16 years of age and under; Stanford would draw the line at 17.

Neither petitioner asserts that his sentence constitutes one of "those modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted." … At that time, the common law set the rebuttable presumption of incapacity to commit any felony at the age of 14, and theoretically permitted capital punishment to be imposed on anyone over the age of 7.…

Thus petitioners are left to argue that their punishment is contrary to the "evolving standards of decency that mark the progress of a maturing society," *Trop v. Dulles*, … (1958).… They are correct in asserting that this Court has "not confined the prohibition embodied in the Eighth Amendment to 'barbarous' methods that were generally outlawed in the 18th century," but

instead has interpreted the Amendment "in a flexible and dynamic manner." … In determining what standards have "evolved," however, we have looked not to our own conceptions of decency, but to those of modern American society as a whole.…

"[F]irst" among the "objective indicia that reflect the public attitude toward a given sanction'" are statutes passed by society's elected representatives.… Of the 37 States whose laws permit capital punishment, 15 decline to impose it upon 16-year-old offenders and 12 decline to impose it on 17-year-old offenders. This does not establish the degree of national consensus this Court has previously thought sufficient to label a particular punishment cruel and unusual.…

Petitioners make much of the recently enacted federal statute providing capital punishment for certain drug-related offenses, but limiting that punishment to offenders 18 and over.… That reliance is entirely misplaced. To begin with, the statute in question does not embody a judgment by the Federal Legislature that *no* murder is heinous enough to warrant the execution of such a youthful offender, but merely that the narrow class of offense it defines is not. The congressional judgment on the broader question, if apparent at all, is to be found in the law that permits 16- and 17-year-olds (after appropriate findings) to be tried and punished as adults for *all* federal offenses, including those bearing a capital penalty that is not limited to 18-year-olds.… Moreover, even if it were true that no federal statute permitted the execution of persons under 18, that would not remotely establish—in the face of a substantial number of state statutes to the contrary—a national consensus that such punishment is inhumane, any more than the absence of a federal lottery establishes a national consensus that lotteries are socially harmful. To be sure, the absence of a federal death penalty for 16- or 17-year- olds (if it existed) might be evidence that there is no national consensus *in favor* of such punishment. It is not the burden of Kentucky and Missouri, however, to establish a national consensus approving what their citizens have voted to do; rather, it is the "heavy burden" of petitioners … to establish a national consensus *against* it.…

Having failed to establish a consensus against capital punishment for 16- and 17-year-old offenders through state and federal statutes, … petitioners seek to demonstrate it through other indicia, including public opinion polls, the views of interest groups and the positions adopted by various professional associations. We decline the invitation to rest constitutional law upon such uncertain foundations. A revised national consensus so broad, so clear and so enduring as to justify a permanent prohibition upon all units of democratic government must appear in the operative acts (laws and the application of laws) that the people have approved.

We also reject petitioners' argument that we should invalidate capital punishment of 16- and 17-year-old offenders on the ground that it fails to serve the legitimate goals of penology. According to petitioners, it fails to deter because juveniles, possessing less developed cognitive skills than adults, are less likely to fear death; and it fails to exact just retribution because juveniles, being less mature and responsible, are also less morally blameworthy. In support of these claims, petitioners … marshall an array of socioscientific evidence concerning the psychological and emotional development of 16- and 17-year-olds.

If such evidence could conclusively establish the entire lack of deterrent effect and moral responsibility, resort to the Cruel and Unusual Punishments Clause would be unnecessary; the Equal Protection Clause of the Fourteenth Amendment would invalidate these laws for lack of rational basis.… But as the adjective "socioscientific" suggests (and insofar as evaluation of moral responsibility is concerned perhaps the adjective "ethicoscientific" would be more apt), it

is not demonstrable that no 16-year-old is "adequately responsible" or significantly deterred. It is rational, even if mistaken, to think the contrary. The battle must be fought, then, on the field of the Eighth Amendment; and in that struggle socioscientific, ethicoscientific, or even purely scientific evidence is not an available weapon. The punishment is either "cruel *and* unusual" (i.e., society has set its face against it) or it is not. The audience for these arguments, in other words, is not this Court but the citizenry of the United States. It is they, not we, who must be persuaded. For as we stated earlier, our job is to *identify* the "evolving standards of decency"; to determine, not what they *should* be, but what they *are*. We have no power under the Eighth Amendment to substitute our belief in the scientific evidence for the society's apparent skepticism. In short, we emphatically reject petitioner's suggestion that the issues in this case permit us to apply our "own informed judgment," … regarding the desirability of permitting the death penalty for crimes by 16- and 17-year-olds.

We reject the dissent's contention that our approach, by "largely return[ing] the task of defining the contours of Eighth Amendment protection to political majorities," leaves " '[c]onstitutional doctrine [to] be formulated by the acts of those institutions which the Constitution is supposed to limit' " … When this Court cast loose from the historical moorings consisting of the original application of the Eighth Amendment, it did not embark rudderless upon a wide-open sea. Rather, it limited the Amendment's extension to those practices contrary to the "evolving *standards* of decency that mark the progress of a maturing *society*." … It has never been thought that this was a shorthand reference to the preferences of a majority of this Court. By reaching a decision supported neither by constitutional text nor by the demonstrable current standards of our citizens, the dissent displays a failure to appreciate that "those institutions which the Constitution is supposed to limit" include the Court itself. To say, as the dissent says, that "it is for *us* ultimately to judge whether the Eighth Amendment permits imposition of the death penalty," … —and to mean that as the dissent means it, *i.e.*, that it is for *us* to judge, not on the basis of what we perceive the Eighth Amendment originally prohibited, or on the basis of what we perceive the society through its democratic processes now overwhelmingly disapproves, but on the basis of what we think "proportionate" and "measurably contributory to acceptable goals of punishment"—to say and mean that, is to replace judges of the law with a committee of philosopher-kings.…

We discern neither a historical nor a modem societal consensus forbidding the imposition of capital punishment on any person who murders at 16 or 17 years of age. Accordingly, we conclude that such punishment does not offend the Eighth Amendment's prohibition against cruel and unusual punishment.

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL, MR. JUSTICE BLACKMUN, and MR. JUSTICE STEVENS join, dissenting.

I believe that to take the life of a person as punishment for a crime committed when below the age of 18 is cruel and unusual and hence is prohibited by the Eighth Amendment.… The rejection of the death penalty for juveniles by a majority of the States, the rarity of the sentence for juveniles, both as an absolute and a comparative matter, the decisions of respected organizations in relevant fields that this punishment is unacceptable, and its rejection generally throughout the world, provide to my mind a strong grounding for the view that it is not constitutionally tolerable that certain States persist in authorizing the execution of adolescent offenders. It is unnecessary, however, to rest a view that the Eighth Amendment prohibits the execution of minors solely upon a judgment as to the meaning to be attached to the evidence of

contemporary values outlined above, for the execution of juveniles fails to satisfy two well-established and independent Eighth Amendment requirements—that a punishment not be disproportionate, and that it make a contribution to acceptable goals of punishment.…

JUSTICE SCALIA forthrightly states in his … opinion that Eighth Amendment analysis is at an end once legislation and jury verdicts relating to the punishment in question are analyzed as indicators of contemporary values.…

JUSTICE SCALIA'S approach would largely return the task of defining the contours of Eighth Amendment protection to political majorities.… The promise of the Bill of Rights goes unfulfilled when we leave "[c]onstitutional doctrine [to] be formulated by the acts of those institutions which the Constitution is supposed to limit," … as is the case under Justice Scalia's positivist approach to the definition of citizens' rights. This Court abandons its proven and proper role in our constitutional system when it hands back to the very majorities the Framers distrusted the power to define the precise scope of protection afforded by the Bill of Rights, rather than bringing its own judgment to bear on that question, after complete analysis.…

Proportionality analysis requires that we compare "the gravity of the offense," understood to include not only the injury caused, but also the defendant's culpability, with "the harshness of the penalty." … In my view, juveniles so generally lack the degree of responsibility for their crimes that is a predicate for the constitutional imposition of the death penalty that the Eighth Amendment forbids that they receive that punishment.…

Under a second strand of Eighth Amendment inquiry into whether a particular sentence is excessive and hence unconstitutional we ask whether the sentence makes a measurable contribution to acceptable goals of punishment.… The two "principal social purposes" of capital punishment are said to be "retribution and the deterrence of capital crimes by prospective offenders." … Unless the death penalty applied to persons for offenses committed under 18 measurably contributes to one of these goals, the Eighth Amendment prohibits it.…

"[R]etribution as a justification for executing [offenders] very much depends on the degree of [their] culpability." … I have explained … why I believe juveniles lack the culpability that makes a crime so extreme that it may warrant, according to this Court's cases, the death penalty; and why we should treat juveniles as a class as exempt from the ultimate penalty. These same considerations persuade me that executing juveniles "does not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts." … A punishment that fails the Eighth Amendment test of proportionality because disproportionate to the offender's blameworthiness by definition is not justly deserved.

Nor does the execution of juvenile offenders measurably contribute to the goal of deterrence. Excluding juveniles from the class of persons eligible to receive the death penalty will have little effect on any deterrent value capital punishment may have for potential offenders who are over 18: these adult offenders may of course remain eligible for a death sentence. The potential deterrent effect of juvenile executions on adolescent offenders is also insignificant. The deterrent value of capital punishment rests "on the assumption that we are rational beings who always think before we act, and then base our actions on a careful calculation of the gains and losses involved." … As noted, "[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent." … Because imposition of the death penalty on persons for offenses committed under the age of 18 makes no measurable contribution to the goals of either

retribution or deterrence, it is “nothing more than the purposeless and needless imposition of pain and suffering,” … and is thus excessive and unconstitutional.