Juvenile Life Without Parole and Court-Generated Social Change

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Generating Social Change: The Court and JLWOP

Evan Miller was 14 years old when he was convicted of murder in the course of arson. He had beaten his neighbor, Cole Cannon, with a baseball bat to within inches of life in his Alabama trailer, then set it on fire.[1]

Miller, Cannon, and Colby Smith, a friend of Miller's, had spent the night smoking marijuana and drinking together in Cannon's trailer.[2] When Cannon passed out, Miller and Smith snuck $300 from his wallet and split it between them.[3] Cannon woke up when they tried to slip the wallet back into his pocket. When he realized what they had done, he attacked the two boys.[4] Smith was the first to hit Cannon over the head with a baseball bat, later handing the bat over to Miller, who issued repeated blows before throwing a sheet over Cannon's head and proclaiming, "I am God. I have come to take your life," and beating him some more.[5]

Miller and Smith fled the scene, returning soon afterward to cover up the evidence.[6] They lit two fires. Cannon died from his injuries and smoke inhalation.[7] Miller was arrested, transferred from juvenile to adult court, convicted, and condemned to the mandatory minimum sentence of life without the possibility of parole.[8]

The minimum sentence prevented the Court from individualizing Miller's punishment.[9] They couldn't consider the fact that Miller had been taken from his alcoholic, drug addicted mother and abusive stepfather and moved from foster home to foster home from an early age.[10] They couldn't consider the fact that he'd already begun using drugs and alcohol as a coping mechanism, or that he'd attempted suicide four times, or that at his first attempt, he was six years old.[11] They also couldn't consider the fact that the reason Cole Cannon had come over to the trailer in the first place was to

[1] Miller v Alabama, 4.
[2] Ibid.
[3] Ibid., 5.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Ibid., 4.
[11] Ibid.

make a drug deal with Miller's mother.[12] Because the judge had transferred him to adult court, they couldn't consider the fact that he was only 14 years old and characteristically naïve, impressionable, and immature, lacking virtually any positive influences in his life.[13]

Miller was sent to prison for life without parole, but his case became the face of the movement to eliminate mandatory life without parole sentences for juveniles. In 2012, the Supreme Court ruled in *Miller v. Alabama* that mandatory life without parole sentences for juveniles violate the 8th amendment of the Constitution and are considered "cruel and unusual punishment".[14]

While *Miller v. Alabama* (2012) and *Montgomery v. Louisiana* (2016) may have the potential to revolutionize juvenile criminal justice reform, scholars have yet to conclude how much power the courts really have in creating social change. Some, like Gerald Rosenberg, believe that the courts matter very little in producing social change, as they lack both freedom of decision and action.[15] Conversely, Michael McCann believes that the courts play an all-important role in bringing about social change through exposure, education, and precedent.[16]

But before social change can stem from Court decisions, legal doctrine must evolve. While some believe that public opinion, the makeup of the justices, or the litigants arguing cases before the Court play the most important roles in legal change, Lee Epstein and Joseph F. Kobylka purport that strategic legal arguments are the most important components of creating legal change.[17] William Eskridge, author of *Equality Practice*, believes that this change should happen in a step-by-step process, allowing the law to evolve incrementally to avoid harsh backlash from opponents.[18] **In the case of mandatory juvenile life without parole, the Court has generated social change by**

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[12] Ibid.
[13] Ibid.
[14] Miller v Alabama.(2012).
[15] Rosenberg, Gerald N. *The Hollow Hope: Can Courts Bring about Social Change?* 2nd ed. Chicago: University of Chicago, 1991, 10.
[16] McCann, Michael W. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press, 1994.
[17] Epstein, Lee, and Joseph Fiske. Kobylka. *The Supreme Court and Legal Change: Abortion and the Death Penalty*. Chapel Hill: University of North Carolina Press, 1992.
[18] Eskridge, William N. *Equality Practice: Civil Unions and the Future of Gay Rights*. New York: Routledge, 2002.

making incremental progress[19] through independent, well-argued legal precedent,[20] which has acted as a catalyst of action for social movements, legislation, and the generation of public support.[21]

There are 2 main schools of thought regarding the power of the Court. The first, laid out by Gerald Rosenberg, is pessimistic in its analysis of the possible impact of the Court on social change. In his view, the courts may have the ability to contribute to social change, but not without overcoming certain limitations which ". . . will seldom exist . . . [due to the] limited nature of constitutional rights, the lack of judicial independence, and the judiciary's inability to develop appropriate policies and its lack of powers of implementation."[22]

The first judicial constraint asserts that, "the bounded nature of constitutional rights prevents courts from hearing or effectively acting on many significant social reform claims, and lessens the chances of popular mobilization."[23] It is for this reason that legislation, executive action, or other political acts can trample certain entitlements, or quasi-rights which society has become used to or expects from their government, but which are not guaranteed in the Constitution.

Constraint two maintains that "the judiciary lacks the necessary independence from the other branches of the government to produce significant social reform"[24], because of seemingly "undemocratic" appointment, not election, of justices, in conjunction with the historical cession of the courts to the majority opinion.[25]

Constraint three asserts that, even when the Court has clear Constitutional language to back rulings and the freeing environment in which to act independently, the Constitution grants the court no power to implement its decisions, ensuring that it remains dependent on the other branches.[26] As Alexander Hamilton articulated in Federalist 78, the Court "can take no active resolution whatever. It may truly be said to

[19] Ibid.
[20] Epstein and Kobylka, *The Supreme Court and Legal Change.*
[21] McCann, *Rights at Work.*
[22] Rosenberg, *The Hollow Hope*, 10.
[23] Ibid., 13.
[24] Ibid.
[25] Ibid.
[26] Ibid., 21.

have neither FORCE nor WILL, but merely judgment"[27]; even when the court is granted the power to rule, it has no power whatsoever in making these decisions come to fruition. *Brown v. Board of Education* (1954) made an example of the Court's powerlessness of action; the federal government was forced to send troops to Little Rock, Arkansas, in order to ensure integration.[28] So it was not ultimately the power of the court that led the social shift in desegregated schooling, Rosenberg argues, but the power of the executive that implemented the law by force.

Albeit a much less scathing review of court power, *Eyes on the Prize*, a documentary series following the Civil Rights movement of the 1950's and 1960's, spends little time on *Brown v. Board of Education* (1954) and focuses instead on the passage of the 1964 Civil Rights Bill and the social changes demanded by the public in the form of sit-ins, marches, and rallies.[29] Clearly, the documentary fails to see *Brown* as important as some others analyses do, and instead believes that *Brown* exemplifies the courts' failure to enact change in the way that other branches can.

While these conditions seem debilitating to court effectiveness, Rosenberg does concede that there are certain conditions that can be met to overcome the barriers imposed by the views of the Constrained Court. The first asserts that cooperation and incentives offered by other actors could make court rulings effective.[30] Condition two stresses that significant social reform can arise when other actors levy costs on those who refuse to comply with the courts' rulings.[31] Third, the "courts may effectively produce significant social reform when judicial decisions can be implemented by the market,"[32] which is usually met when a ruling does not force existing institutions to change to comply with the rulings.[33] The last condition maintains that rulings may be effective when external political actors manipulate court decisions to acquire more resources or for personal gain, related or unrelated to the order at hand.[34]

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[27] Ibid.,14.
[28] Ibid.,15.
[29] *Eyes on the Prize*. United States: PBS, 1987.
[30] Rosenberg, *The Hollow Hope*, 33.
[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] Ibid.,35.

These conditions are so infrequently met that even such a high-profile case as *Brown* could not meet them. In his analysis of the case, Rosenberg points out that desegregation actually did not take place in the immediate wake of the ruling. In fact, only 1.2 percent of black children went to integrated Southern schools *10 years* after the decision came down.[35] In comparison, the rate of black children attending school with white children skyrocketed to upwards of 35 percent in only four years following the passage of the Civil Rights Amendment of 1964.[36] Essentially, Rosenberg is certain that the desired result of the case, namely the de facto integration of schools, would have occurred just after the ruling if courts could produce social change without overcoming his defined constraints. Rosenberg makes the harsh claim that "The numbers show that the Supreme Court contributed virtually *nothing* to ending segregation of the public schools in the Southern states in the decade following *Brown.*"[37]

While Rosenberg points to *Brown* as a failure of the Court to enact social change, Michael McCann, author of *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*, argues that the court is not only much more powerful than the Constrained View admits, but that it may be more effective than any other institution of government, enjoying unparalleled freedom from public opinion.[38] He defends the effectiveness of the court system based on the multifaceted and nuanced avenues it utilizes to create social change. McCann argues that a limited number of winning cases in the judicial branch is enough to stimulate change. "Where most critics emphasize that winning in court tends to make little difference in actual social relations, I contend that equity activists derived substantial power from legal tactics despite only limited judicial support . . . both the wage reform movement and its rights-based claims continued to draw power from legal conventions in creative ways."[39]

McCann views the law as a malleable tool, and proves his point predominantly through qualitative data analysis of interviews, questionnaires, analysis of media coverage, and other like methods, which he uses to determine the Court's effects on

[35] Ibid., 52.
[36] Ibid., 51.
[37] Ibid.,52.
[38] Ibid., 22-23.
[39] McCann, *Rights at Work*, 4.

activists, lawyers, and volunteers.[40] This method allows him to investigate the stories *not* of the many, but of the few who take it upon themselves to push for social change through the courts. After all, the courts act as an avenue through which the minorities can seek justice. McCann maintains that the majority need not be involved in the process of social change through the courts. Instead, action of individuals is inspired by litigation, creation of pertinent legal language, and step-by-step legal gains in the form of favorable rulings.[41] McCann recognizes the enormous importance that litigation can have in setting small amounts of precedent one case at a time, echoing the legal tactics used by Charles Houston and his team of equality lawyers during the Civil Rights movement of the mid twentieth century,[42] and William Eskridge in his book *Equality Practice.*[43]

The inspiration generated by Court rulings is still alive today in cases of racial injustice. According to NPR, the decedents of Homer Plessy and Howard Ferguson of the *Plessy v. Ferguson* (1896) case, as well as a descendent of Oliver Brown of *Brown v. Board of Education* (1954), founded the Plessy and Ferguson Foundation and the Brown Foundation to continue to spread awareness of the importance of these historical cases.[44] Where Rosenberg would argue that this matters little in actual social change, McCann would hold this as an example of how just two court cases, from over 115 and 60 years ago respectively, continue to affect activists.

Just as *Plessy* and *Brown* continue to impact civil rights work today, McCann points to the thousands of interviews he conducted for *Rights at Work* to disprove the assumed ineffectiveness of equal pay court cases. He maintains that while the majority of Americans might not have changed or even known about court rulings, the small percentage of activists who followed the cases were hugely impacted.[45] Numerous cases, like *AFSCME v. Washington* (1985), sparked mobilization: "Years after the fact, a large majority of the activists whom I interviewed credited the Washington State decision [that enforced comparable worth for AFSCME workers] and other early cases as primary

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[40] Ibid.,17-18.
[41] Eskridge, *Equality Practice,* 195
[42] *The Road to Brown.* Directed by Mykola Kulish. Produced by Mykola Kulish. By Mykola Kulish, William A. Elwood, and Steven A. Jones. California Newsreel, 1990.
[43] Eskridge, *Equality Practice.*
[44] Michel Martin. "Descendants Of Civil Rights Titans Plessy, Brown Carry The Torch." NPR. January 26, 2010. Accessed February 21, 2016. http://www.npr.org/templates/story/story.php?storyId=122949668.
[45]McCann, *Rights at Work,* 54-56.

educational cues that generated their own initial personal interest and involvement in the cause."[46] In fact, in the year after *AFSCME v. Washington* (1985), 20 states joined the campaign for wage equity.[47] As another activist told McCann, "You would be amazed at how many women and men have been interested in the sex discrimination lawsuit. There is a great deal of pride there. . . . [The] lawsuit made clear what is happening. It has been not only a good organizing tool; it is an educational one, because it explains to us why we are where we are and why we have to move forward, and that is very important."[48] In short, the impact of the courts may not have spread in the most immediate or efficient way, but it did inspire potential activists *personally*, prompting increased involvement that undoubtedly led to the success of cases to follow.[49]

These small court rulings caught not only the activists' attention, but also that of the media. In fact, court cases in reference to pay equity received up to 10 times more media coverage than any other avenue of political action—comprising legislation, labor strikes, electoral campaigns, and others—and received over two times the amount of coverage than all of these factors combined.[50] Cases were covered by such high-profile publications as "*The New York Times, Washington Post, Los Angeles Times . . . Newsweek, Business Week, and Barron's*."[51]

This media attention was "top-down" and geared not towards the general public, but toward "potential movement activists"[52] and elites. This is exemplified in the scholarship and campaigns at universities such as Yale,[53] and the great participation from rank and file union members.[54] In the words of a union lawyer McCann interviewed, "We don't start lawsuits just so that people will join a union. But when we talk to people we explain that a strong litigation program will be part of it. . . . . The thing about litigation is that it shows that a union is active and offensive and willing to fight for people's rights . . . especially on a powerful issue like comparable worth."[55] This selective exposure to

[46] Ibid.
[47] Ibid., 57.
[48] Ibid., 73.
[49] Ibid., 56.
[50] Ibid., 59-60.
[51] Ibid., 53.
[52] Ibid., 63.
[53] Ibid., 77-78.
[54] Ibid., 77.
[55] Ibid., 79.

those who would care about pay equity became '. . . a catalyst to other forms of political activism."[56]

It is this kind of testimony that ~~leads me to believe that the evidence~~ clearly demonstrates that Rosenberg starkly underestimates the Court's ~~complete~~ power in creating social change. Most basically, Rosenberg fails to recognize the fact that, at the very least, court cases encourage attorneys and activists, who exert pressure, and movitate (sometimes independently, at other times, because of foment around these issues) ~~often~~ spur the legislative and executive branches to take action. It is obvious that the courts cannot act alone, but to deduce that the courts do not matter at all in the process of social change is not backed by the facts ~~in full~~.

Rosenberg gives no credit to the importance of legal precedent in furthering a cause. This step-by-step legal approach, in which litigants seek Court recognition incrementally, is outlined and championed in William Eskridge's *Equality Practice*.[57] He argues that this is the most efficient and effective way for the Court to influence social change because Court rulings that jump too quickly into a new legal reality, like Hawaii's approval of gay marriage in *Baehr v. Lewin* (1993), create such a harsh backlash from opposing interest groups that the progress can easily be reversed.

But, before there can be social change as a result of Court rulings, there must be change in the legal doctrine that makes up these rulings. According to Lee Epstein and Joseph Kobylka, this legal change, or the "court created shift in (or reversal of) a particular prevailing legal doctrine,"[58] is not created by the political makeup of Supreme Court justices, the political climate in which decisions are made, or even the types of litigants who present their claims to the Court, but rather " . . . the law and legal arguments as framed by legal actors that most clearly influence the content and direction of legal change."[59] It was these legal arguments, namely, the use of precedent, specific legal language, and scientific evidence, that convinced the Court to act as it did in abolishing mandatory sentences of juvenile life without parole.

Juvenile Life Without Parole: A Case Study

[56] Ibid., 81.
[57] Eskridge, *Equality Practice*, 3.
[58] Epstein, *The Supreme Court and Legal Change*,5.
[59] Ibid., 8

Just as it took a Supreme Court ruling to desegregate schools, it took another Court ruling to end mandatory sentences of juvenile life without parole (hereafter JLWOP). In the last four years, the court has ruled twice, deciding first that mandatory JLWOP sentences violated the "cruel and unusual punishment" clause of the 8th amendment in *Miller v. Alabama* (2012),[60] and later mandating that the ruling be applied retroactively to cases preceding *Miller,* in which the defendants were minors at the time of their convictions.[61] These cases follow long lines of precedent, which have attempted to clean up the mess of criminal justice legislation, which began at the end of the 20th century. By making incremental progress through step-by-step precedent[62] in which well-argued legal arguments[63] influenced the direction of Court rulings, the Court has acted as a catalyst for change, inspiring the continuation of more cases, interest group action, legislative backing, and growing public support. [64]

The late 1980's and 1990's proved to be turning points in criminal justice reform, especially pertaining to juvenile crime.[65] In a study conducted by John DiIulio of the University of Pennsylvania, huge increases in juvenile crime were projected into the 21st century; these crimes would be committed by a particular class of offenders he called "super predators".[66] He predicted that these sociopathic, drugged-up, un-reformable kids would kill in unprecedented numbers and wreak havoc on communities across the United States, creating a "blood bath of teenage violence," according to fellow researcher James Fox of Northeastern University. These "super predators" would spike violence to two to three times the current rate, and be even more destructive than past generations of teen offenders through repeated re-offense.[67] More scholarship followed, riddled with titles like "The Coming of the Superpredators", in which offenders were painted as "fatherless, godless, and jobless"; ~~Diulio~~DiIulio predicted that up to half of these offenders could be young, black males.[68]

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[60] Miller v. Alabama (October, 2012).
[61] Montgomery v. Louisiana (January 2016).
[62] Eskridge, *Equality Practice.*
[63] Ibid.
[64] McCann, *Rights At Work,* 48.
[65] Ibid.
[66] Ibid.
[67] Ibid.
[68] Ibid.

This scholarship petrified the public, who pressured the political community to take action.[69] Representatives like Newt Gingrich purported that "no violent crimes were juvenile" and that any child to commit murder, rape, or the like was *not* a child, but an adult.[70] ~~45~~ Forty-give states passed legislation that cracked down on crime and allowed for the transfer of juveniles to adult court where they were sentenced as adults.[71] It was during this period that the spike in JLWOP sentences expanded dramatically.[72]

The problem with the panic arose not long after, when the predictions of increased crimes did not come to fruition; in fact, juvenile crimes *dropped* dramatically where predictions projected spikes. ~~Diulio~~DiIulio soon realized that his predictions "were off by a factor of 4," essentially proving the hypothesis to be little more than a myth.[73]

While ~~Diulio~~DiIulio and other scholars were able to retract their predictions and admit to their error, which included signing an amicus brief in *Miller v. Alabama* (2012) that admitted to the inaccuracies and complete myth-hood of the predictions, legislation and political practice could not be reigned in as easily.[74] As a result, we are still dealing with the aftermath of excessively harsh sentencing practices, overcrowded prisons, and irreversible damage to juvenile lives.[75] This incorrect scholarship contributed at least in part to the fact that the United States now imprisons more citizens than any other industrialized nation, including China, and while it makes up 5% of the world's population, it is home to 25% of the world's incarcerated population.[76]

In order to reverse the policies enacted during the 1980's and 90's, the importance of incrementalist rulings[77] as a legal tactic in combating JLWOP cannot be overstated. Similar to the Eskridge's argument in *Equality Practice*, the Court's step-by-step approach led to the train of precedent that continues to revolutionize juvenile criminal justice; *Miller* and *Montgomery* are merely the next steps in the incremental legal

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[69] Ibid.
[70] Ibid.
[71] Ibid.
[72] Ibid.
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Maraniss, David, and Robert Samuels. "Yes, U.S. Locks People up at a Higher Rate than Any Other Country." Washington Post. Accessed April 19, 2016. https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/.
[77] Eskridge, *Equality Practice.*

process, which has focused on determining the culpability of the offender and proportionality of crime to punishment.

This trail of incremental precedent begins with *Atkins v. Virginia* (2002), establishing the execution of mentally retarded individuals to be in conflict with the 8th amendment's prohibition of "cruel and unusual punishment"[78], as those without full mental capacity are not completely responsible for their crimes and therefore cannot be charged as such.[79] Juvenile culpability was then questioned in *Roper v. Simmons* (2004). In a 5-4 decision, the Court concluded that juveniles, who are not characteristically the same as adults, do not bear complete responsibility for their crimes and cannot be sentenced to death for these crimes without violating the 8th amendment.[80]

Similarly, the Court based *Miller*'s ruling on past cases involving proportionality of crime to punishment.[81] The Court referenced *Kennedy v. Louisiana* (2008), in which a death sentence was found to be a disproportionately harsh punishment for child rape.[82] The Court also considered " . . . mismatches between the culpability of a class of offenders and the severity of a penalty"[83] in *Miller* in deciding that no crime, no matter the severity, could be proportional to mandatory life without the possibility of parole, a virtual death sentence,[84] if committed by a minor. Similarly, and most pertinently, the Court cited the ruling of *Graham v. Florida* (2010), in which JLWOP sentences for juvenile non-homicide offenses were determined to be unconstitutional.[85]

To discern the importance of continued litigation, I conducted an interview with Philadelphia attorney Joanna Yisser Adjoian, cofounder of the Youth Sentencing and Reentry Project. She believes that litigation will continue, possibly abolishing the transfer of juveniles to adult court or JLWOP completely.[86] This claim is backed by events

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[78] U.S. Const. amend. VIII.
[79] "Atkins v. Virginia." Oyez. Accessed April 22, 2016. https://www.oyez.org/cases/2001/00-8452., Miller v. Alabama (October, 2012).
[80] "Roper v. Simmons." Oyez. Accessed April 22, 2016. https://www.oyez.org/cases/2004/03-633., Miller v. Alabama (October, 2012).
[81] Miller v. Alabama (October, 2012).
[82] "Kennedy v. Louisiana." Oyez. Accessed April 22, 2016. https://www.oyez.org/cases/2007/07-343., Miller v. Alabama (October, 2012).
[83] Miller v. Alabama (October, 2012), 2.
[84] Ibid.,12.
[85] "Graham v. Florida." Oyez. Accessed April 22, 2016. https://www.oyez.org/cases/2009/08-7412., Miller v. Alabama (October, 2012).
[86] "Joanna Visser Adjoian." Online interview by author. April 19, 2016.

transpiring even now: the American Civil Liberties Union (ACLU) filed a suit on April 6, 2016 in Maryland, asking for the Court to acknowledge the unconstitutionality of imprisoning minors without "a meaningful chance at parole."[87] This includes juveniles sentenced to life *with* the chance of parole, as no Maryland minor to receive this sentence has actually been given parole for the past 20 years.[88] This case, if it reaches the Supreme Court, will continue to build on the incremental progress of the precedent it follows in banning juvenile life without parole.

Because precedence played such an important role in abolishing mandatory juvenile life without parole sentences, the ability for the Court to create social change is indisputable. The law of the Court dictates the powers of sentencing institutions, and therefore changes the cultural practice of incarcerating juveniles for life at such high rates. While citizens can break laws by their own volition, only sentencing judges and juries can enact juvenile life without parole sentences. These judges and juries will be unable to sanction punishments, like mandatory JLWOP, that the Supreme Court has deemed unconstitutional, thereby changing not only the sentencing practices of minors, but also their societal perception, and even their place in society upon possible release.[89]

These cases have succeeded before the Supreme Court because of the effective arguments upon which they are based. Presenting the scientific consensus of the difference between juvenile and adult brains has been one such successful strategy. These studies have shown that juveniles and adults are not inherently equal, and that "youth is more than a chronological fact,"[90] when comparing maturity, vulnerability to outside pressures, and development of character[91] to adults. While the court maintains that youth is in itself a mitigating factor,[92] other elements affect large proportions of juvenile offenders— for example, one study found that, overall, 32% of juvenile-lifers are special education students, 39% have diagnoses of mental health disorders, 32% have one or more substance abuse problems, 56% have been maltreated, and over 40% have been

[87] Owens, Donna. "Maryland ACLU Fights For Juveniles Facing Life Without Parole." NBC News. Accessed April 22, 2016. http://www.nbcnews.com/news/nbcblk/maryland-aclu-fights-juveniles-facing-life-without-parole-n553691.
[88] Ibid.
[89] "Joanna Visser Adjoian." Online interview by author. April 19, 2016.
[90] Miller v. Alabama (October, 2012),13.
[91] Ibid., 8.
[92] Ibid.,13

affected by more than one of these problems.[93] The pliability and immaturity of juvenile minds means that the percentage of juvenile offenders who lack the ability to be rehabilitated or "develop entrenched patterns of problem behavior"[94] is small; in other words, juvenile offenders can oftentimes be rehabilitated and become assets to their communities outside prison walls.

Mandatory minimum sentences of life without parole meant that any mitigating factors could not be taken into consideration when sentencing juveniles, and " . . . prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham*'s (and also *Roper*'s) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[95] By employing scientifically-backed arguments, litigants convinced the Court that taking the child's home life, mental capabilities, context of upbringing, and emotional health into sentencing[96] was imperative in serving justice by allowing for individualized evaluation of the juvenile and crime in question.

Because the facts presented to the Supreme Court have not reached the audience of the public en masse, many Americans maintain "tough on crime" stances, regardless of the myth-hood upon which such legislation was based. Cindy Sanford, a JLWOP activist and adoptive mother of a juvenile-lifer with whom I conducted an interview, believes that it will take more than Court cases to change the way the public views juvenile criminals.[97] Sanford was a self-proclaimed "tough on crime" proponent who, before her personal experience with a juvenile-lifer, believed what she says many Americans believe now: that criminals cannot change.[98] She insists that education is vital, and that while it is the truth of juvenile crime that will change "the hearts and minds"[99] of the public, the

[93] Mallett, Christopher A. "Juvenile Life without the Possibility of Parole: Constitutional but Complicated." *Children and Youth Services Review* 35, no. 5 (February 2013): 743-52. Accessed February 28, 2016.
[94] Ibid., 8.
[95] Miller v. Alabama (October, 2012), 12.
[96] Ibid.,14.
[97] "Cindy Sanford." Telephone interview by author. April 17, 2016.
[98] Ibid.
[99] Ibid.

Court decisions spur individuals to get behind criminal reform movements.[100] Each step the Court makes encourages more and more support of juvenile criminal justice reform.

Specific legal language also augmented the success of scientifically backed arguments. Cases succeeded before the Supreme Court by making claims backed in explicit legal language that attempted to clear up some of the ambiguous Constitutional wording. By arguing for " . . . evolving standards of decency that mark the progress of a maturing society,"[101] litigants were able to influence the Court into continuing the progress that precedent had started. This strategy of influencing the Court through " . . . the law and legal arguments as framed by legal actors [to] influence the content and direction of legal change"[102] has clearly been effective in furthering case law, shown through the successful precedent of *Atkins*, *Roper*, *Kennedy*, *Graham*, and now *Miller* and *Montgomery*, and their impact on later rulings.

Joanna Visser Adjoian emphasized the importance of case precedent, scientific support, and repetitive legal language in her evaluation of the progress of JLWOP.[103] The work of the Court is not theoretical, but affects hundreds of juveniles across Philadelphia, a city home to 300 of the 500 juvenile lifers in Pennsylvania, a state which sentences more juveniles to life without parole than any other state or even *nation* in the world.[104]

With over 6 years of experience in juvenile life without parole, Adjoian maintains that a shift away from the "tough on crime" mentality of the late 1980's and 1990's is taking place now, with the help of interest groups and organizations, media coverage, legislative action,[105] and most importantly, the progression of case law,[106] which were instrumental in creating an incremental approach to eradicating juvenile life sentences.[107] Groups like the Equal Justice Initiative, the Campaign for Fair Sentencing, and the Justice Roundtable continue to lead the fight for juvenile criminal justice reform.[108] Following the Supreme Court's rulings, 16 states have abolished JLWOP, with South

[100] Ibid.
[101] Epstein, *Equality Practice* 42.
[102] Ibid., 8.
[103] "Joanna Visser Adjoian." Online interview by author. April 19, 2016.
[104] Ibid.
[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] Owens, "Maryland ACLU Fights For Juveniles . . ."

Dakota and Utah passing legislation just this year.[109] Clearly, Court rulings act as catalysts, or inspiration, for interest groups and state governments to act.

The independent action of some states toward juvenile criminal justice reform does not negate the need for Supreme Court and federal rulings. As Cindy Sanford pointed out, the states with the largest numbers of juvenile lifers have "dug their heels into the ground"[110] and been much more resistant to change, like Pennsylvania and Louisiana.[111] The Court, therefore, is still imperative in the fight for equal protection of juveniles across state borders.

The assertion that the Court has no effect on social change is unfounded by the facts when applied to juvenile life without parole. Not only have the most recent Court cases received positive rulings and been implemented successfully, but the precedent of past cases played vital roles in the most recent rulings in *Miller* and *Montgomery*, cases which will become the next steps in incremental legal change. The Court's impact on juvenile life without parole is unparalleled; by banning mandatory minimum sentences, which took away all agency of the Court to consider a child's history, family circumstances, mental illnesses, etc. during the sentencing period, countless juvenile offenders will now be seen as individuals, with their home lives, mental capacities, and personal histories taken into consideration.[112] When the Court gradually upholds a standard that legitimizes the inherent differences between juveniles and adults, allowing for consideration of mitigating factors in juvenile sentencing, society will inevitably begin to adopt the same mindset.

"In preparing this work, I have read the Saint Joseph's University Academic Honesty Policy and I have abided by its terms."
Hannah Salamon

[109] Ibid.
[110] "Cindy Sanford." Telephone interview by author. April 17, 2016.
[111] Ibid.
[112] Miller v. Alabama (October, 2012).