

Lesson Plan Title Here

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Subject / Lesson: Constitutional Interpretation and Roper v. Simmons

Grade Level: 9-12th grade(s)

Overview/Description: Methods of Constitutional Interpretation and judicial review

Duration: 90 minutes (or more for extension activities)

Standards:

- USG:3.1 Evaluate the Constitution as the written framework of the United States government, including expression of the core principles of limited government, federalism, checks and balances, separation of powers, rule of law, popular sovereignty, republicanism, individual rights, freedom, equality, and self-government.
- USG: 3.3 Analyze federalism and its application in the United States, including the concepts of enumerated, concurrent, and reserved powers; the meaning of the ninth and tenth amendments; the principle of states' rights; the promotion of limited government; the protection of individual rights; and the potential for conflict among the levels of government
- USG: 4.6 Explain how fundamental values, principles, and rights often conflict within the American political system; why these conflicts arise; and how these conflicts are and can be addressed.

Objectives: The student will learn how the Supreme Court uses four methods to interpret the US Constitution by looking at Roper v. Simmons (2005) to see how modernism or instrumentalism was applied with the 8th and 14th amendments.

Materials and Resources:

- Complete US Constitution:
https://drive.google.com/file/d/1tJFgY_rJpQSCsBBaSkKOBJuVpDwLOzxw/vie w?usp=sharing
- Look at Article III, 8th Amendment and 14th Amendments
<https://docs.google.com/document/d/17ARGtpaAuccnrgV3tjc8vd2u8RpSqeR-M0ZGcUyIH4k/edit?usp=sharing>
- Graphic Organizer: Four Methods of Constitutional Interpretation (you will need to white out corners after you print this to just show the 4 methods)
<https://docs.google.com/drawings/d/1RS67c9dENwp1DEaPPrAITB-DZtkD8AafHLBf8PvaLwY/edit?usp=sharing>

- Case Debate for International Law 3201G, March of 2016. Roper v Simmons (4 minutes and 29 seconds) <https://www.youtube.com/watch?v=H4TtqVnC9jk>
- Reading Roper v. Simmons Case to include facts, ruling, and dissention <https://docs.google.com/document/d/1DjoYtdT6DzYil16R6ku7Ky3G4iKY94SOxVP6yDUZd68/edit?usp=sharing>
- Create a T-Chart Chart with Pros and Cons of each side <https://docs.google.com/document/d/1tLTg6DPG4e2vF5bEWNz-1h1MJddOn5z19mEdYUdXzlc/edit?usp=sharing>
- Conduct research and create an essay arguing your side of this case

Instruction/Demonstration/Procedures: This lesson will examine method the justices use to interpret the Constitution and analyze how it is applied to a court case using the 8th and 14th amendments. The students will then take their own stand on the issues and explain why.

Essential Question: How do Supreme Court Justices apply methods of constitutional interpretation to cases?

Activities:

- Read Article III of Constitution to see how courts were created and then examine the 8th and 14th amendments.
- Read about four methods of constitutional interpretation and complete graphic organizer. you will focus on modernism and instrumentalism.
- watch a short video about the 2 sides of Roper v. Simmons
- Read about Roper v. Simmons court case and the issues the Supreme Court Justices had to decide and their final ruling.
- Read about the dissent of two of the three Supreme Court Justices and why they did not concur.
- Create a T-Chart Chart with Pros and Cons of each side
- Conduct your own research about the case.

Extension Activities:

- Take a Stand Writing Activity: Based on the information you've read, would you have concurred with the majority of justices or dissented?

OR

- Retry the case to the Supreme Court by creating both the appellate and respondent arguments

Links with Background Information:

See above

Assessments/Evaluation:

- Rubric for essay

https://docs.google.com/document/d/1fPpj0G1mbxIL0cZJkk_s7e0ZNmZqW_0WjEIEliHF3pU/edit?usp=sharing

Additional Resources:

Suggestion for Review or Closure:

- Exit Slip

Article III, Section 1.

SECTION. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

8th Amendment:

Amendment XIII. Passed by Congress January 31, 1865. Ratified December 6, 1865.

(Note: A portion of Article IV, Section 2 of the Constitution was changed by the 13th Amendment.)

SECTION 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2.

Congress shall have power to enforce this article by appropriate legislation.

14th Amendment:

Amendment XIV. Passed by Congress June 13, 1866. Ratified July 9, 1868.

(Note: Article I, Section 2 of the Constitution was modified by Section 2 of the 14th Amendment.)

SECTION 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is

denied to any of the male inhabitants of such State, [being twenty-one years of age,]* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

*Changed by Section 1 of the 26th Amendment.

Roper v. Simmons (2005)

<https://www.oyez.org/cases/2004/03-633>

Facts of the Case

Christopher Simmons was sentenced to death in 1993, when he was only 17. A series of appeals to state and federal courts lasted until 2002, but each appeal was rejected. Then, in 2002, the Missouri Supreme Court stayed Simmon's execution while the U.S. Supreme Court decided *Atkins v. Virginia*, a case that dealt with the execution of the mentally disabled. After the U.S. Supreme Court ruled that executing the mentally disabled (or "mentally retarded" in the vernacular of the day) violated the Eighth and 14th Amendment prohibitions on cruel and unusual punishment because a majority of Americans found it cruel and unusual, the Missouri Supreme Court decided to reconsider Simmons' case.

Using the reasoning from the *Atkins* case, the Missouri court decided, 6-to-3, that the U.S. Supreme Court's 1989 decision in *Stanford v. Kentucky*, which held that executing minors was not unconstitutional, was no longer valid. The opinion in *Stanford v. Kentucky* had relied on a finding that a majority of Americans did not consider the execution of minors to be cruel and unusual. The Missouri court, citing numerous laws passed since 1989 that limited the scope of the death penalty, held that national opinion had changed. Finding that a majority of Americans were now opposed to the execution of minors, the court held that such executions were now unconstitutional.

On appeal to the U.S. Supreme Court, the government argued that allowing a state court to overturn a Supreme Court decision by looking at "evolving standards" would be dangerous, because state courts could just as easily decide that executions prohibited by the Supreme Court (such as the execution of the mentally ill in *Atkins v. Virginia*) were now permissible due to a change in the beliefs of the American people.

Question

Does the execution of minors violate the prohibition of "cruel and unusual punishment" found in the Eighth Amendment and applied to the states through the incorporation doctrine of the 14th Amendment?

Ruling

Yes. In a 5-4 opinion delivered by Justice Anthony Kennedy, the Court ruled that standards of decency have evolved so that executing minors is "cruel and unusual punishment" prohibited by the Eighth Amendment. The majority cited a consensus against the juvenile death penalty among state legislatures, and its own determination that the death penalty is a disproportionate punishment for minors. Finally the Court pointed to "overwhelming" international opinion against the juvenile death penalty. Chief Justice William Rehnquist and Justices Antonin Scalia, Sandra Day O'Connor, and Clarence Thomas all dissented.

Dissent

Justice Antonin Scalia's Dissent

Today's opinion provides a perfect example of why judges are ill equipped to make the type of legislative judgments the Court insists on making here. To support its opinion that States should be prohibited from imposing the death penalty on anyone who committed murder before age 18, the Court looks to scientific and sociological studies, picking and choosing those that support its position. It never explains why those particular studies are methodologically sound; none was ever entered into evidence or tested in an adversarial proceeding. As The Chief Justice has explained:

"[M]ethodological and other errors can affect the reliability and validity of estimates about the opinions and attitudes of a population derived from various sampling techniques. Everything from variations in the survey methodology, such as the choice of the target population, the sampling design used, the questions asked, and the statistical analyses used to interpret the data can skew the results." *Atkins, supra*, at 326–327 (dissenting opinion) (citing R. Groves, *Survey Errors and Survey Costs* (1989); 1 C. Turner & E. Martin, *Surveying Subjective Phenomena* (1984)).

In other words, all the Court has done today, to borrow from another context, is to look over the heads of the crowd and pick out its friends. Cf. *Conroy v. Aniskoff*, [507 U. S. 511](#), 519 (1993) (Scalia, J., concurring in judgment).

Justice Sandra Day O'Connor's Dissent

The Court's decision today establishes a categorical rule forbidding the execution of any offender for any crime committed before his 18th birthday, no matter how deliberate, wanton, or cruel the offense. Neither the objective evidence of contemporary societal values, nor the Court's moral proportionality analysis, nor the two in tandem suffice to justify this ruling.

Although the Court finds support for its decision in the fact that a majority of the States now disallow capital punishment of 17-year-old offenders, it refrains from asserting that its holding is compelled by a genuine national consensus. Indeed, the evidence before us fails to demonstrate conclusively that any such consensus has emerged in the brief period since we upheld the constitutionality of this practice in *Stanford v. Kentucky*, [492 U. S. 361](#) (1989).

Instead, the rule decreed by the Court rests, ultimately, on its independent moral judgment that death is a disproportionately severe punishment for any 17-year-old offender. I do not subscribe to this judgment. Adolescents as a class are undoubtedly less mature, and therefore less culpable for their misconduct, than adults. But the Court has adduced no evidence impeaching the seemingly reasonable conclusion reached by many state legislatures: that at least some 17-year-old murderers are sufficiently mature to deserve the death penalty in an appropriate case. Nor has it been shown that capital

sentencing juries are incapable of accurately assessing a youthful defendant's maturity or of giving due weight to the mitigating characteristics associated with youth.

On this record—and especially in light of the fact that so little has changed since our recent decision in *Stanford*—I would not substitute our judgment about the moral propriety of capital punishment for 17-year-old murderers for the judgments of the Nation's legislatures. Rather, I would demand a clearer showing that our society truly has set its face against this practice before reading the Eighth Amendment categorically to forbid it.

Roper v. Simmons (2005)

Pros	Cons

Your Opinion:

Roper v. Simmons

Directions: Create an essay to take a stand on Roper v. Simmons.

Name: _____

Date: _____

	Yes (1)	No (0)
Discussed first point of argument		
Discussed second point of argument		
Discussed third point of argument		
Cited a direct quote and explained		
Cited a direct quote and explained		
Was message delivered?		
Did you effectively persuade viewers to believe you?		
No spelling errors		
No grammar errors		
Citation of sources		

Grade (out of 10 points): _____ or _____%

Comments:

What did you like about the argument?

What could have been done to make it better?

Four Methods of Constitutional Interpretation

Name:

Date:

Textualism, literalism, or strict construction	Original intent or original history
Fundamental Principles	Modernism or instrumentalism

