

Juveniles and the Death Penalty: Evolving Notions of American Criminal Justice

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Honor Thesis

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Abstract

“ However, Nineteen American states have laws permitting the execution of persons who committed crimes at sixteen or seventeen.”

Throughout history, there have been times when minors have been charged and executed for crimes they committed. In turn, The United States Supreme Court prohibits execution for crimes committed at the age of eighteen or younger. In this thesis we examine the trajectory of juvenile rights and how that leads to the death penalty being banned for those who commit crimes under the age of 18. The ethical and legal differences between the death penalty being applied to 17- and 18-year-olds is also examined in this thesis . It explores the changing views on adolescent guilt, crime, and how international human rights rules, societal norms, and brain development affect sentencing procedures of this kind. The analysis seeks to add to the current conversation about the death sentence by highlighting the need to take age-related considerations into account when enforcing the law.

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Chapter 1: Introduction

The Problem

How is the death penalty applied to juveniles, and who set the bar for these ramifications? Even with the Federal ban on the execution of minors The use of the death sentence on minors is still a debated topic in legal and ethical circles. Due to a perceived degree of guilt, certain governments have historically permitted the execution of people who committed crimes while still juveniles. Nonetheless, important modifications have resulted from changing views on the development of the teenage brain and a deeper comprehension of juvenile rehabilitation. The U.S. Supreme Court held in *Roper v. Simmons* (2005) that the Eighth Amendment's ban on cruel and unusual punishment applies to the execution of people for crimes committed by those who are younger than eighteen.

What is the difference between a 17-year-old and an 18-year-old in terms of getting sentenced to the death penalty? The distinction between an 18-year-old who faces the death penalty and a 17-year-old who does not, frequently depends on legal categories and changing public attitudes toward youthful guilt. The legal age of maturity, which in many countries is 18, designates a person as completely adult and accountable for their acts. However, legal institutions could not always recognize the subtle developmental differences between a 17-year-old and an 18-year-old.

Research questions:

- What is the public opinion on the death penalty?
- Is there a difference in brain development between a 17-year-old and 18-year-old?

- How is the death penalty evaluated from case to case for juveniles?
- What case determined that juveniles can't be sentenced to death?
- How does society play into age and laws with age limits?
- How is a 17-year-old, less capable than an 18-year-old?

The Importance of the Research Questions

Each research question was crafted around the topic of how much society has influence over laws and regulations that can be made. This is an important question because if society knows that their voices matter when making new laws, then a shift can happen regarding cases like *Roe v. Wade*. People can always focus on their state power and work their way up to the Supreme Court. I think that the average American doesn't know how much power they have regarding public opinion and how the branches of government consider this opinion.

Summary

To help answer these questions, I will evaluate some science behind how the human brain grows. There are seemingly different opinions on the matter, with the main finding being that the human brain grows in chunks of time and not on a yearly linear basis.

I will also be using some surveys and public opinion to vouch for why the death penalty shouldn't be used on juveniles. This will also allow me to compare the ideas of the Supreme Court and how their choices can affect the morals of society.

Chapter 2: Methodology

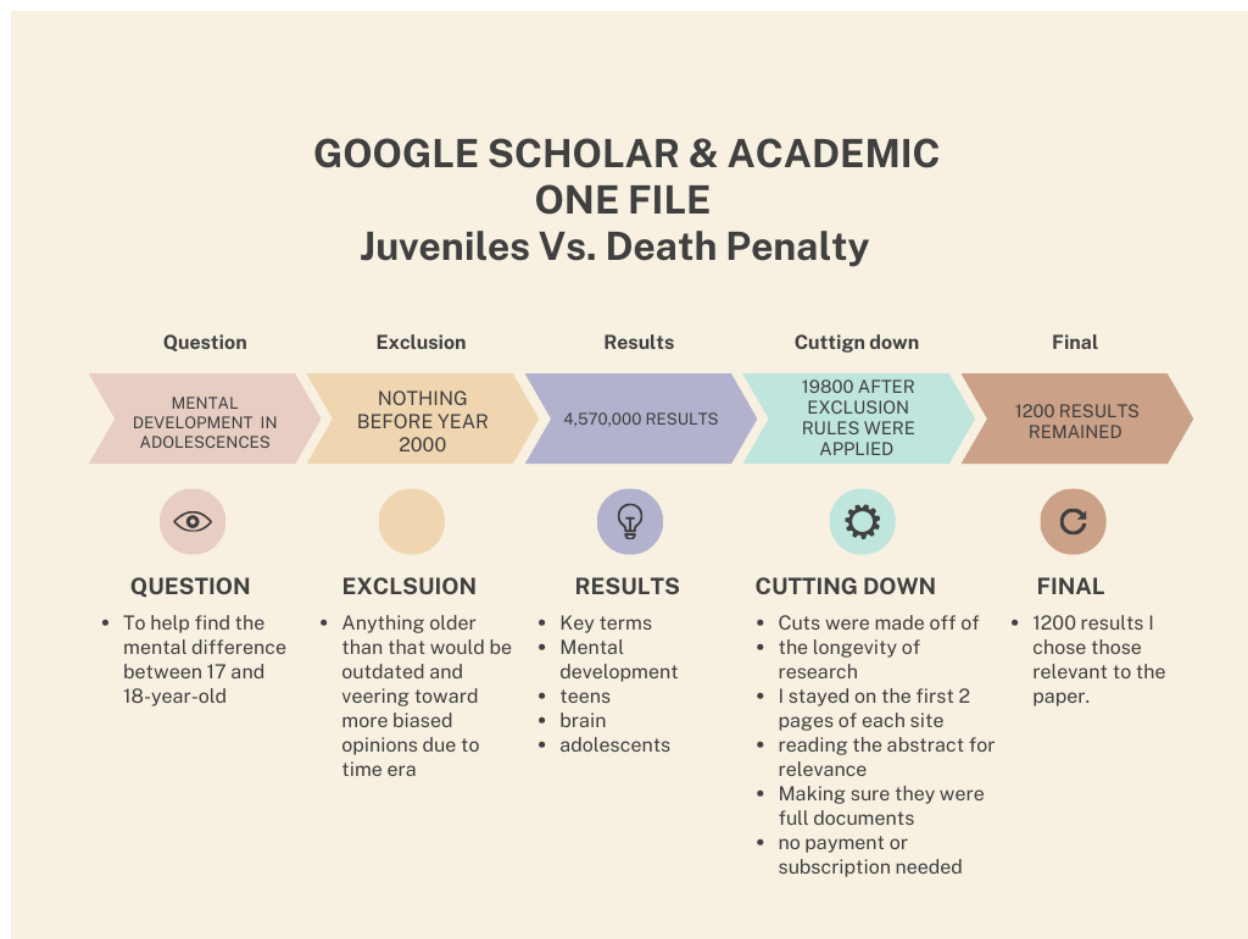


Figure 1: Methodology

The information used for this thesis was found through the means of Google Scholar, the academic database provided by the Anna Maria College library, as well as Google itself to find other information. This information was used to find things such as the case laws used in this work and other information like constitutional amendments and their meanings. In terms of the literature used through Google and the academic one file all sources have been peer reviewed and we're easy to access without the form of a payment or subscription to the service. *Figure one* above shows how the first step was to think of a research question. And then the exclusion criteria followed things being “outdated in terms of nothing before the year 2000”. Most of the key terms used were “mental”, “development teens,” “brain”,

and “adolescents”. More exclusions and cut downs were made by looking solely at the first two pages as they would be perceived as the most relevant. In terms of all other work (including the cases that were used to study the case law for this thesis) the moment Google had multiple articles that would pop up pertaining to the case. However, I would only look at a case study or notes from the case itself or its dissent. Exclusion while using Google to look up key facts and definitions followed a similar pattern to when looking at the academic one file.

Chapter 3: Literature Review

Introduction

Crime has always been a cause for concern for the general American population. From the effects of police brutality and gang activity, there is no surprise that it seems that there is an influx in crimes. In the past, the death penalty has been called upon to execute the most heinous of criminals, such as Ted Bundy and Jeffery Dahmer. But the death penalty has also been called on by political figures during times of great criminal peril with minors, including the Central Park 5. As such, it has been determined that children have their own rights when it comes to sentencing and criminal procedure. Minors also have been excluded from receiving the death penalty because of these rights and previous Supreme Court rulings. However, even with this knowledge, what is the deciding factor in sentencing a minor to the death penalty? Is there a societal difference between a 17-year-old and an 18-year-old when it comes to being sentenced to the death penalty? Or perhaps even the difference in mental capacity between a 17-year-old who commits a felony 24 hours before their birthday. What is the deciding factor of this age discrepancy, and is it justified? When considering these questions, one of the main points that one needs to evaluate is who is making the rules and justifying when and why a juvenile under the age of 17 can or cannot be sentenced to the death penalty. It is through public opinion and

previous case law that one can evaluate who, how, and when a person can be given the death penalty. What are the circumstances for receiving the death penalty at such a young age?

As far back as history goes, there has been a death punishment, extending back in the written records to the renowned passage "an eye for an eye" in Hammurabi's Code. But as laws have evolved recently, so too have the conditions surrounding the death penalty. Juveniles who commit crimes are subject to their own laws and regulations covering all offenses. A child, for instance, has the right to the majority, if not all, of the laws that apply to an adult when it comes to juvenile offense laws and their legal repercussions. The right to an attorney, the right to be Mirandized, and the Fifth Amendment rights are some examples.

Thanks to The Due Process Clause of the Fourteenth Amendment (which protects the fundamental right of parents to direct the care, upbringing, and education of their children until 18 years old (Parvis, 2010)), parents have the right to care for their child and be apart in conversations when it comes to crimes said child would commit. One major difference between a juvenile and an adult would be prosecution. Since juvenile courts aim to rehabilitate young offenders, prosecution in these settings is not considered a criminal prosecution in the sense of the Sixth Amendment. However, it was noted that this wasn't always the case they didn't have any of those rights until 1967 decision in the Re Gault ruling. This ruling found Juveniles tried for crimes should have the right of due process protected by the Fifth Amendment, including the right to confront witnesses and the right to counsel guaranteed by the Sixth Amendment (Ceresi, 1987). However, when a juvenile becomes an adult in the eyes of the law on their 18th birthday there are new, enforceable, and drastically altered duties presented. Some of a minor's freelancing behaviors are replaced by voting, the decision to enlist in the military, and bill payment.

Through research it has been found that a person's rights are also unaffected by being charged with or arrested for a crime they have committed, with the exception of the manner in which they will be prosecuted in a court of law. In terms of capital punishment for offenses committed by minors, the United States Supreme Court has decided that executions are not allowed. However, laws in nineteen states haven't been altered and still permit the death penalty for those who committed crimes when they were sixteen or seventeen years of age. Only seven states have executed minor offenders since 1989. Those states are Texas, Louisiana, Oklahoma, South Carolina, Georgia, and Virginia. The execution of juveniles has become a rare occurrence in recent years due to the Federal ban.

Case Law

Although multiple states still have it where someone under the age of 18 can be given the death penalty as a sentencing, where the sentencing came from was the next step in researching said topic. By evaluating a few case law, It was found through the case of Christopher Simmons he was one of the first reasons for the supreme court's decision on giving the death penalty to minors. However through the grape vine I was able to find that

On September 9th, 1993, 17-year-old Christopher Simmons planned and executed the murder of Shirley Crook. His plan consisted of burglary, breaking and entering, and the kidnapping of the victim. While in the middle of executing his kidnapping, he bound her, covered her eyes, drove her out of state, and threw her off the bridge (Murderpedia, n.d). Christopher Simmons was sentenced to death for the crime. During this time, he filed many appeals, all of which were denied and ignored until 2002. At this time, "the Missouri Supreme Court stayed Simmons' 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 (Oyez, n.d).” By the end of Simmons’ new ruling, it was decided in a 5-4 vote that any child who committed a crime before they were 18 could not be sentenced to the death penalty.

But prior to *Roper v. Simmons* in 1989, the U.S. Supreme Court ruled in *Stanford v. Kentucky* that offenses committed by minors (16 or 17 years old) are not exempt from the death penalty under the Eighth Amendment. Ensuring that Christopher Simmons' execution sentence is equitable and lawful. Conversely, despite the fact that *Stanford v. Kentucky* dismissed the argument that the Constitution limits the death penalty to juvenile offenders under the age of 18, a 16-year national consensus has emerged opposing the execution of those defendants. As it stands with these two Supreme Court rulings what usually happens is that the state in question let's say for example Texas who has minor death penalty sentences legal wouldn't be able to execute the child due to the more recent ruling essentially discarding the *Stanford v. Kentucky* decision.

In 2012 *Miller v. Alabama* ruled that the Eighth Amendment's prohibition against cruel and unusual punishment forbids the mandatory sentencing of life in prison without the possibility of parole for juvenile offenders. In this case it was stated children are constitutionally different from adults for sentencing purposes. While a mandatory life sentence for adults does not violate the Eighth Amendment, such a sentence would be disproportionate for children (Oyez , 2012). Why is this important? Well when evaluating all these court cases I found that throughout the time there was an evolving level of decency and understanding for the children's different levels

of comprehension in American Society. For some reason the American people had deemed it that children it didn't need to be punished as harshly as adults and needed to be rehabilitated instead.

And with each crime that they committed the notion was to help them grow.

Mental Differences

Around the world, parents have the general idea that children need guidance until the age of 18 and sometimes even beyond. It is for this reason there are laws in place to protect them from being held accountable for their actions the same way adults are. Because of the ruling in *Stanford v. Kentucky*, it's clear that it was considered constitutional to give the death penalty to minors. However, *Roper v. Simmons* now undermines that ruling and questions the differences in the mental capacity of the convicted juvenile. How can one say that there is a difference in age groups from a 17-year-old who committed capital murder and an 18-year-old who committed the same crime?

According to the “American Medical Association, the American Psychiatric Association, and the National Association of Social Workers, on behalf of Simmons, older adolescents may not yet have the ability to exercise adult impulse control because their brains have not fully matured. To put 16- or 17-year-olds to death, the brief argues, would be “to hold them accountable ... for the immaturity of their neural anatomy and psychological development” (Schaffer, 2004). “In turn, scientists are saying juveniles’ brains aren't yet fully developed in order to be held responsible or even put to death because they lack impulse control. In addition to this, the article considered other parts of the brain and how development changes throughout a person’s life. First, the article claims that during adolescence significant growth occurs early on, and the brain reaches 90 percent of its adult size by the age of 6, and a second wave takes place just before the individual hits puberty (Schaffer, 2004).

“During this time, gray matter—areas of the brain responsible for processing information and storing memories—increases in size, particularly in the frontal lobe of the brain, as a result of an increase in the number of synaptic connections between nerve cells (Schaffer, 2004).” This follows the lose it or use it hypothesis and children begin to lose the skills or lessons they no longer need or use. However, with their brain size nearly at 100% capacity the time they reach the age of six by science, there is no difference between a child and a person in their 20s.

Another important argument put forward by the AMA and others on behalf of Simmons is that adolescents rely heavily on the amygdala, an evolutionarily old area of the brain associated with "primitive impulses of aggression, anger, and fear." The assumption that children having a hard time controlling themselves seems logical because the prefrontal cortex, which interacts with the amygdala and weakens impulsivity and intestinal response by reasoning, does not fully develop until the early twenties (Schaffer, 2004).”

Something else to consider is how scientists study the mental stages of a person. Most scientists don't differentiate between the neural maturity of a 17-year-old and, say, an 18- or a 19-year-old. “In fact, most scientific work reflects the reality that the transition from adolescence to adulthood is a gradual process. While a great deal of development occurs by early adulthood, the brain's total myelination may not actually reach its maximum until roughly age 45” (Schaffer, 2004). These findings confirm the fact that there is no mental difference between a 17-year-old and an 18-year-old. They are at the same mental stages in life and have the same brain size, development, and understanding of right and wrong.

Foreign Policies Influence

In evaluating these facts, one thing can be said for certain. The differences between a 17-year-old and an 18-year-old are slim and nonexistent. When evaluating a minor as an adult, there

are a few differences that stand out to me. Both have rights, and both have the ability to discern right from wrong at the same level. This leads to the notion that it must be public opinion and concerns leading people to believe that the execution of a child 17 years of age and an ‘adult’ of 18 years of age is wrong and unconstitutional. This opinion could be based on other influences such as foreign policies and concerns. Internationally, the execution of minors is seen by many as inhumane, out-of-date and in direct conflict with the basic principles of justice. The International Covenant on Civil and Political Rights prohibits the execution of juvenile offenders. Although the United States has signed the ICCPR and therefore agrees to be bound by its standards, the United States reserves the right to execute juvenile offenders as long as our Constitution is understood to permit the practice. Of the 123 countries that currently apply the death penalty, only the United States and Iran apply the death penalty to minors. However, in the fall of 2003, Iran's judiciary began drafting a bill to raise the minimum age for the death penalty from fifteen to eighteen. The bill would also prevent people under the age of eighteen from receiving a life sentence or caning as punishment (Union, n.d). In spite of the draft Iran conducted two public executions last year, along with the execution of at least three juveniles (ages 17 and 16 at the time of the crime), though more are suspected. According to IHRNGO, the juveniles were kept in prison until they reached the age of 18 and then were executed. As a result, it’s clear that the reason the death penalty on juveniles is considered to be more barbaric in the publics’ eyes is because of the evolution of countries in terms of the rights of juveniles and how they are treated in society.

Public Opinion

As previously stated in the court ruling *Roper v. Simmons* justices have called the juvenile death penalty ‘inconsistent with evolving standards of decency in a civilized society.’ These are all the standards that have been followed by public opinion from the 1900s all the way up to current day. It is these public opinions and evolving notions of society that shape multiple legal decisions in and out of courtrooms. Since America is supposed to be for the people by the people this is no surprise. Although most Americans have historically favored the death sentence for adults, there is significant disagreement about whether or not it should be applied to child murderers. The idea that juveniles and adults have distinct developmental stages forms the foundation of the juvenile justice system. In particular, minors are less responsible for their acts, exhibit less reason, have a limited capacity for sound judgment, and are particularly susceptible to peer pressure. As a result, the traditional approach to dealing with youth criminality placed more emphasis on rehabilitation than on punishment. One is prompted to examine public sentiments regarding the application of the death penalty for minors by this perplexing combination of truth, opinion, history, and policy. While there is a lot of research on public opinion regarding the death penalty in general, there is comparatively less available that focuses on public opinion regarding whether the death sentence is suitable for minors.

Through research in public polls, it has been found that “More Americans favor than oppose the death penalty: 60% of U.S. adults favor the death penalty for people convicted of murder, including 27% who strongly favor it. About four-in-ten (39%) oppose the death penalty, with 15% strongly opposed, according to a new Pew Research Center survey (Pew Research , 2021).” Although these numbers only support the death penalty for all ages in terms of juveniles it has been found in “2001 poll conducted by Princeton Survey Research Associates revealed that while 72% of those polled supported the death penalty, only 38% supported it when applied

to “juveniles younger than 18.” And A May 2002 Gallup poll found 72% support for capital punishment in general, but that support dropped to 26% for juveniles convicted of murder, 19% for the mentally ill, and 13% for the mentally retarded (now known as “intellectually disabled”). (Death Penalty information center editore, n.d)” it can be seen through public opinion that although Americans do support the death penalty, when it comes to the execution of minors they seem to nearly drop in support by half. Making it understandable that when the supreme justices took society into consideration they were correct in inferring that people didn't agree with the execution of a juvenile.

In conclusion I don't believe that there is much of a difference between the mental capacity of a 17-year-old and an 18-year-old. Especially if the 17-year-old is say 17 and 11 months years old with 24 hours in between him and death row. Even with the ruling of Roper v Simmons and the previous ruling of Stanford v. Kentucky it's clear that it can be considered constitutional to sentence a minor under the age of 16 to capital punishment. However, due to public opinion and the emotional discourse the killing of a minor would case across the nation. Roper v. Simmons holds firm in its belief that although there is no true difference in age its not ok to kill a minor for a heinous crime. However, with crime on the rise and minors seemingly losing their minds this ruling could be overturned as quickly as before. A criticism of this case would be the fact that, at first, they tried to appeal Simmons's death sentence with the Atkins v. Virginia case which deemed the execution of mentally disabled individuals was a cruel and unusual punishment. With this on the books and Simmons' planned, calculated, and riveting murder, who is to say that even minors aren't shockingly wicked, evil, and vile? With the intention of harming the innocent and unprotected citizen of the United States of America.

Something else to note is the rise in crime that juveniles seem to be committing in recent times. For some reason after COVID there was a spike in juvenile delinquency. It's been said that nowadays in the year 2023 fifteen year old's are making up one of the highest levels of individuals getting arrested. This isn't only because of the lack of mental control but it could be due to other factors as well. There is a surprise that in places like schools where teachers are now having to physically protect themselves from students lashing out at them and each other that kids are getting arrested at record rates (Ashley & Poulisse, 2023). Unfortunately in a place like that it is unacceptable and needs to be reprimanded.

If we as a country can't pull together to agree that children need to be held responsible for their actions, and there is no mental difference between a 17- and 18-year-old. Who is to say that there won't be a criminal walking next to us that we would never see? It is for this reason I believe that children between the ages of 16 to 18 needs to be held responsible for the actions and can be sentenced to death if they commit a capital offence.

Chapter 4: Discussion

Summary

In this Senior honor thesis, I evaluated multiple sources and forms of case law that were put in place to establish a pretense as to why the death penalty age is the way that it is. After gathering information on said reason I then decided to dive into the difference is that a 17-year-old and an 18-year-old have. One of the few things that I noted was possible brain development. Which led me down a rabbit hole of the mental evaluations of someone that's to be considered a minor compared to an adult.

After that I evaluated multiple other forms of reasonings behind why someone would determine a 17-year-old a child compared to an 18-year-old. I looked at polls, articles, my own personal experience, as well as other laws to determine what the real reason is behind a death penalty being sentenced to an 18-year-old and not a 17 year old.

Conclusions

The first conclusion that I would like to draw on is that the general public does not like the idea of the death penalty as much as you would think. Although times have changed it is clear that with those times society and laws have been made due to the ideals of public opinion. It has been concurred through multiple cases that one of the main reasons America doesn't sentence people to death as often as they should is because times have indeed changed. Although there are several inmates still on death row the ideal and notion of actually murdering them anytime soon seems very far off due to public opinion. However when diving into the medical side of things it is clear and has been stated by some that there is no difference mentally between a 17 year old and 18 year old other than life experience. However the actual mental capacity of a 17 year old and 18 year old are very similar if not almost identical. It has been noted by doctors that the development of the brain takes part in chunks of time and not in a singular linear year motion as one might believe. I noted in my research and my paper that just because you can make more decisions at 18 doesn't mean that you are still legally responsible for yourself and other means. Something I would like to note about the discovery of laws being determined by public society is that this could be a real problem. If society can dictate the law in a way that would influence the choice of someone that deserves to be put to death over someone that wouldn't; who's to say that because of an emotional standpoint and not the legal law that they would change their mind. I do think that the courts are finding this separation between a person's personal morals and the law a

challenge. However, there isn't much to do about it because in during jury trials, jurors are the triers of the fact. And because of that and because of how our constitution and our judicial system operates one can always assume that sometimes with moralities can influence a sentencing or court decision period.

Limitations

I still believe that the number one limitation with this study was the lack of updated knowledge and documentation of the death penalty in terms of juveniles. Another limitation I would like to add is the fact that although there are multiple different opinions on the brain and how it develops one of the clearest things that I was able to understand is that it doesn't go in a linear line as most would say. However, having to dissect that information as someone without a medical degree was very hard and challenging period making a limitation with lack of knowledge of medicine translating medical terms into something you would understand is a challenge. If I were to do this entire study again I would perhaps choose a topic with a little more information. Or do more deep diving into parts of information that might not pertain solely to this topic but the topic of the death penalty.

Recommendations for Future Research

A recommendation for future research would be if this project were to be expanded upon in any way, I think hosting your own study on personal opinion instead of using previous polls from online would greatly help when identifying public opinion. And I would ask a plethora of people on different parts of economy, occupation, and livelihood. I would also expand on and do a poll on what do people think makes one an adult. Or I would ask them what they personally think the difference between a 17 year old and an 18 year old is. I think asking the general public these

questions would be able to give you an insight on why or how Supreme Court justices make their decisions on rulings and court cases.

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APPENDIX

#	TOPIC	DEFINITION
1	Sixth Amendment	In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation;
2	Due Process Clause	Fourteenth Amendment, which prohibits the states from depriving "any person of life, liberty, or property, without due process of law." When it was adopted, the Clause was understood to mean that the government could deprive a person of rights only according to law applied by a court.
3	Neural Anatomy	
4	14 Amendment in terms of child care	More recently, this Court declared in <i>Washington v. Glucksberg</i> , 521 U.S. 702 (1997), that the Constitution, and specifically the Due Process Clause of the Fourteenth Amendment, protects the fundamental right of parents to direct the care, upbringing, and education of their children.
5	Gray matter	The grey matter is the place where the processing of sensation, perception, voluntary movement, learning, speech and cognition takes place.
6	Frontal Lobe	The frontal lobes are important for voluntary movement, expressive language and for managing higher level executive functions. Executive functions refer to a collection of cognitive skills including the capacity to plan, organise, initiate, self-monitor and control one's responses in order to achieve a goal.
7	synaptic connections	The places where neurons connect and communicate with each other are called synapses. Each neuron has anywhere between a few to hundreds of thousands of synaptic connections, and these connections can be with itself, neighboring neurons, or neurons in other regions of the brain

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