

BEYOND THE OPINION: THE RHETORICAL FOUNDATIONS OF *ROPER V. SIMMONS*

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Amid growing polarization and declining public trust in the U.S. Supreme Court, understanding how judicial authority is rhetorically constructed has become increasingly urgent. This paper analyzes *Roper v. Simmons* (2005) to show how judicial rhetoric reveals competing assumptions about the Court's legitimacy. Drawing on Stephen Toulmin's model of argumentation, particularly his concept of implicit backings, the analysis demonstrates how Justice Kennedy's majority opinion and Justice O'Connor's dissent rest on contrasting visions of judicial authority. Kennedy frames the Court as a moral guide, grounding its legitimacy in "evolving standards of decency," scientific research, and international norms. O'Connor instead underscores judicial restraint, precedent, and deference to democratic processes. By uncovering these implicit backings, the paper argues that the Court's power depends not only on strategic legal reasoning but also on rhetorical framing and moral positioning. Situating *Roper* within broader trends of judicial polarization, the paper illustrates how rhetorical strategies shape constitutional interpretation and public perceptions of the Court.

INTRODUCTION

On September 9, 1993, seventeen-year-old Christopher Simmons and fifteen-year-old Charlie Benjamin broke into the home of Shirley Crook. They bound, gagged, and threw her into the Meramec River near St. Louis, where fishermen found her body later that day. The evidence of first-degree murder was overwhelming. Simmons had boasted to friends beforehand that he could commit the crime without facing the death penalty because of his age. Simmons was convicted of murder and sentenced to death.

Simmons attempted to appeal on the grounds of ineffective assistance of counsel and argued for alternative sentences due to his troubled background and impulsiveness. His efforts were rejected until a significant Supreme Court case opened a new window for his appeal. In *Atkins v. Virginia* (2002), the Supreme Court overturned the death penalty for intellectually disabled people, offering a new avenue for marginalized individuals (in Simmons' case, youth offenders) to appeal their sentence. On August 26, 2003, in *State Ex Rel. Simmons v. Roper*, the Supreme Court of Missouri

held that “a national consensus has developed against the execution of juvenile offenders,” citing the Eighth Amendment’s prohibition against cruel and unusual punishment. The state appealed, and in 2005, the U.S. Supreme Court, in a 5–4 decision in *Roper v. Simmons*, struck down the juvenile death penalty nationwide, commuting Simmons’ sentence to life without parole.

This landmark 5-4 decision not only set a critical precedent in juvenile justice but also highlighted deeper ideological and institutional tensions within the Court—divides which have only deepened in recent years. Since the contentious and controversial confirmation of Justice Brett Kavanaugh in 2018 and the subsequent overturning of *Roe v. Wade*, the Supreme Court has faced a crisis of public confidence, with approval ratings reaching historic lows. Increasingly, the Court is seen not just as a legal institution but as a political battleground, with its decisions viewed through the lens of partisanship rather than unbiased neutrality and commitment to the rule of law.

In this polarized climate, understanding how justices justify their authority, through legal reasoning and rhetorical strategy, has become more important than ever before because the language they use not only interprets the law but also frames national values and political discourse. The legitimacy of the law depends on how the Court can justify its opinions to an already skeptical public audience. In an era in which social media and news sites instantly dissect decisions in real time, the role of language in judicial decision-making plays an increasingly important role in society.

Though the Court’s polarization had not yet reached current levels in 2005, *Roper* illustrates how and when ideological factors became more explicitly visible, reflected in both the language of the justices as well as appeals to moral authority, legitimacy, and public perception. At first glance, *Roper* appears to be a straightforward legal battle over the Eighth Amendment and the cruel and unusual punishment clause. However, closer examination reveals a significant rhetorical struggle over what kind of institution the Supreme Court ought to be. Justice Anthony Kennedy, writing for the majority, framed the ruling around the concept of “evolving standards of decency,” arguing that modern moral consensus had rendered the juvenile death penalty unconstitutional. Justice Sandra Day O’Connor, in dissent, cautioned against such sweeping moral judgments by unelected justices, emphasizing judicial restraint and state sovereignty. These opposing opinions raise questions that remain relevant today: Should the Supreme Court act as a moral guide, reflecting and reinforcing progressive societal values? Or should it remain tied to historical precedent and democratic deference, preserving its legitimacy through consistency and restraint?

This paper uses Stephen Toulmin’s model of argumentation as a lens through which to read and comprehend *Roper* and other court cases. I focus on Toulmin’s concept of implicit backings, or the unstated assumptions that undergird a justice’s reasoning. While much legal scholarship focuses on the logical content of judicial opinions, rhetorical analysis reveals the deeper, often hidden values that justices

use to legitimize their positions. I argue that the Court's authority is not simply rooted in legal reasoning but is carefully constructed through rhetorical appeals to tradition, morality, and public consensus. This reveals that judicial power rests in both legal interpretation *and* persuasive narration of the Court's role in American democracy.

THE VOICES OF THE COURT: JUSTICE ANTHONY KENNEDY AND SANDRA DAY O'CONNOR

Justice Anthony Kennedy joined the Supreme Court on February 18, 1988, appointed by Republican President Ronald Reagan. Justice Kennedy was primarily a conservative justice but was often regarded as the Court's pivotal "swing vote," especially after Justice O'Connor's retirement in 2006. Kennedy sided with the conservatives in rulings approximately 75% of the time. Importantly, however, Kennedy also sided with the liberal side of the court on issues such as abortion and same sex marriage, highlighting his nuanced perspective on social issues.

Regarding capital punishment, Kennedy offered diverse rulings. In *Glossip v. Gross* (2015), Kennedy upheld lethal injection but authored a different opinion in *Roper* and *Kennedy v. Louisiana* (2008), which ruled against the death penalty in cases where no death occurred. Generally, Kennedy's position on death penalty jurisprudence tended to be left leaning, as he was "the primary architect of the court's proportionality doctrine that led to exemptions from the death penalty for offenders

with intellectual disability, juvenile offenders and nonhomicide offenders" (Steiker and Steiker 2018).

Justice Sandra Day O'Connor, also a Reagan appointee, joined the Supreme Court on September 21, 1981, as the first woman Supreme Court justice. O'Connor was a moderate conservative, valuing federalism—the division of power between national and state governments—and judicial restraint. Although Justice O'Connor was seen as slightly more conservative than Justice Kennedy, she maintained some liberal views, most famously in *Planned Parenthood v. Casey* (1992). This case famously upheld women's constitutional right to an abortion and issued a judgment that restored the undue burden standard when evaluating state-imposed abortion restrictions. O'Connor became a critical swing vote as the Court became more conservative over time. She rarely agreed with more conservative Justice Clarence Thomas, where she often found herself writing her own, separate concurring opinions on cases in which she sided with Thomas (Greenburg 2007).

With regards to capital punishment and Eighth Amendment jurisprudence, O'Connor was a large proponent of granting states autonomy over death penalty practices. Unlike her liberal colleagues, O'Connor did not support blanket protections against vulnerable groups, instead relying on specific and circumstantial facts when considering "evolving standards of decency." O'Connor frequently disagreed with protections for young offenders, dissenting in *Roper* as well as writing in *Thompson v. Oklahoma* (1988), against the categorical exclusion

of offenders under 16 despite a likely national consensus; in *Stanford v. Kentucky* (1989), she was the swing vote upholding execution for offenders over 16, a decision later overturned in *Roper*.

Both justices occupied the Court's ideological center during this critical period in Supreme Court criminal jurisprudence. Kennedy saw the Court as a moral guide aware of global and scientific trends, while O'Connor saw it as a constrained legal body bound to precedent, restraint, and deference to democratic principles. These differences make them ideal subjects for rhetorical analysis because they are not opposites; rather, even at the so-called "center" of the court, small differences in ideology make a world of difference. Through the lens of Toulmin's model of argumentation, we are better able to understand the implicit assumptions that shape these judicial opinions.

SUPREME COURT RHETORIC

The increased polarization of the judiciary in recent years has shed light on the importance of understanding the language and content of Supreme Court rhetoric. Justices do not strictly interpret the law; rather, they strategically use language to persuade the public, frame values, and construct the legitimacy of the Court and its role in American life.

The foundation for persuasion dates to founding thinkers like Aristotle, who claimed that values and "common knowledge" are often added by an argument's recipient. In *On Rhetoric*, Aristotle notes that speakers often do more than argue explicitly; instead, they appeal to

the audience's understanding by not only using logic to make arguments, but by appealing to shared values and social truths that are deemed to be widely acceptable by the audience.

Aristotle's classic perspective on rhetoric has influenced contemporary scholars to explore how Supreme Court rhetoric functions to both make legal decisions and persuade its audience of its decision-making process. Scholars such as Robert A. Furgeson explore the difference between "truth" and the final decision in judicial reasoning, noting that judicial rhetoric often departs from strictly fact-based, doctrinal reasoning in favor of broader public justification. In this sense, judges are tasked with a seemingly impossible job of persuading multiple audiences, including elite legal minds, the general public, and future courts. Furgeson observes that judges often give seemingly clear opinions, which conceal complex and disputed legal reasoning.

Scholars have also investigated how the Court's use of language shapes the public's perception of justice. Glenda Conway writes that justices, rather than using specific quotes from individual litigants, rely on rhetorically motivated paraphrasing to further their own argumentative goals. She writes, "instead of offering exact wordings of litigants' positions, quoted from written depositions or oral arguments, Court justices typically cast such positions into third-person dependent clauses" (488). These phrases, such as "he asserted that..." or "she claimed that..." allow room for justices to cast their own ideological views into an opinion and shape the way language is used to persuade a broader public audience. As Conway

states, “In a judicial opinion, significantly, how characters look and speak occurs within the context of the Court’s acceptance or rejection of their arguments. That is, such characterizations happen both within... and in the Court’s language” (490). In this way, the Court effectively shapes how arguments are understood, emphasizing certain perspectives while silencing others.

This understanding of judicial rhetoric has led scholars to take a closer look at how Supreme Court opinions are structured in terms of technicalities and logic, as well as the persuasion, authority, and deeper assumptions involved. For example, in Stephen Toulmin’s model, an argument requires a warrant connecting evidence to the conclusion, but also a backing that makes the warrant practical and appropriate. G. Thomas Goodnight points out that the connection between a warrant and backing is not simply automatic. Rather, Goodnight asserts that judges make what is called a “legitimation inference,” which seeks to explain *why* a backing fits a specific case, especially in the context of the argument. As he explains, “the authority, even the basic reasonableness, of an argument depends to a great extent on whether the proper choice of backing has been made and communicated” (42). In other words, the persuasiveness of an argument depends on whether the writer or speaker successfully connects their reasoning to a context-specific and credible backing that makes the warrant both meaningful and acceptable. In Supreme Court opinions, justices commonly rely on broad underlying values in society that are rarely universal. Thus, the justices’

ability to persuade relies on presenting these values as having constitutional importance and meaning.

In sum, scholarship reveals that Supreme Court opinions, while on the surface appear to be constructed using formal legal logic, are deeply supported by and embedded within rhetorical strategies. As demonstrated, Justices use techniques such as strategic paraphrasing, carefully selected backings, and implicit assumptions to assert both the Court’s moral and institutional authority in American life.

UNCOVERING HIDDEN VALUES USING TOULMIN’S MODEL OF ARGUMENT

To analyze the ideological tensions within *Roper*, this paper uses Stephen Toulmin’s model of argument, an argument structure and analytic approach which he lays out in *The Uses of Argument*. Toulmin developed this model in response to what he saw as a divergence between “the practical business of argumentation” and “the corresponding analyses of them set out in books on formal logic” (147). Essentially, this divergence is between real-world argumentation, which focuses on persuading people in specific contexts, and formal logic, which strips arguments down to abstract rules, ignoring how they are used in practice. The model is split into six distinct components of argument: claim, data, warrant, backing, rebuttal, and qualifier.

Each component plays an important role in how an argument is both constructed and understood. The *claim* is the central point or

conclusion that the speaker is trying to prove. The data (also called the grounds) is the facts, evidence, or observations that support the claim. In Toulmin's words, the data are "facts we appeal to as foundation for the claim." (97). The *warrant* connects the data (grounds) to the claim. In this sense, the warrant is a metaphorical "bridge" that explains why the data is relevant when trying to support the claim.

To demonstrate the roles that each component plays, I apply these first three components to a simple argument about skipping class.

I should not skip class today. The professor is reviewing material that is likely to be on the final exam. After all, going to a class where exam material is going to be covered improves performance on that exam.

In this argument, the claim is clear: *I should not skip class today*. What is the data (grounds) that is supporting the decision? The point that *the professor is reviewing material that is likely to be on the final exam*. What makes the grounds relevant to the claim? The warrant that *attending class when important content is being reviewed will help me succeed on the exam*.

These three components are rarely sufficient for the "practical business of argument," as Toulmin puts it; real arguments are often more complex because they involve unstated assumptions, values, and circumstantial factors that shift whether a claim is accepted or rejected.

The following includes the three additional components in Toulmin's model.

(Claim) *I should not skip class today.*
(Data/Grounds) *The Professor is reviewing material that is likely to be on the final exam.* **(Warrant)** *After all, going to a class where exam material is going to be covered improves performance on that exam. Academic success is important and requires active engagement with the content of the course. Most likely, if I want to do well on the test, I should be there, unless I am too sick to be there and/or the lecture will be recorded for me to watch later.*

As the example demonstrates, a warrant alone may not be sufficiently compelling for an audience. In fact, the audience may need additional reasons to be persuaded. This motivation is often found in the underlying value or judgment that explains *why* the warrant is relevant and important to the argument. This is what Toulmin calls the *backing*. As Toulmin writes, the backing is the "credentials used to certify the assumption expressed in the warrant" (45). In other words, the backing provides the deeper justification for why the warrant should be accepted, explaining *why* the warrant makes sense, by appealing to things like commonly held values, trusted sources, and shared ideologies. In the example argument above, the backing is the underlying assumption that *doing well in school matters and requires active engagement with the content of the course*. On a deeper level, the backing highlights a broader system that prioritizes achievement and personal responsibility for success. The backing assumes that academic success is valuable *in and of itself*, to measure both individual capabilities as well as provide an entryway to future

opportunities. This value of effort and interest in academic pursuits is what undergirds the warrant, providing a shared belief that attending class is necessary for meaningful learning and achievement. Without this shared value, the argument would be less effective in supporting its claim.

These four components—claim, data, warrant, and backing—are the heart of most arguments. The two additional components—qualifier and rebuttal—may be included in more complex arguments. The *qualifier* expresses the strength of the claim and whether the claim can be universal, or if it is “likely” or “probably” true, etc. For instance, some claims are “usually” true but not “universally” true, and so this is the distinction expressed by the qualifier. Finally, the *rebuttal* addresses and deals with possible counterarguments and objections to the argument. In Toulmin’s words, the rebuttal “recognizes certain conditions under which the claim will not hold good or will hold good only in a qualified or restricted way” (45). In the example argument, the qualifier suggests that the claim is not absolute: *I probably should not skip class, and likely if I want*

to do well, I should be there. Finally, the rebuttal addresses potential exceptions to the claim, or in this case, if *I am too sick to be there or the lecture will be recorded and can be watched later.* Figure 1 shows Toulmin’s model expressed as a diagram.

This example, while simple, reveals the importance of the warrant and the backing for understanding arguments. While the claim and the data are often explicit and relatively clear, the warrant is essential for connecting the two, and the backing gives the warrant *credibility*. In this case, the decision not to skip class depends on the underlying assumption that academic success is both valuable and achievable through effort. This assumption is not stated outright, but it is essential to the argument’s persuasiveness. In judicial opinions, this kind of implicit backing often carries the ideological weight of the decision. Justices may cite laws, precedents, or data, but their reasoning ultimately rests on assumptions about the Court’s role, the meaning of justice, or how constitutional principles should evolve. By analyzing the implicit backings and warrants that justices rely on to construct arguments, we are

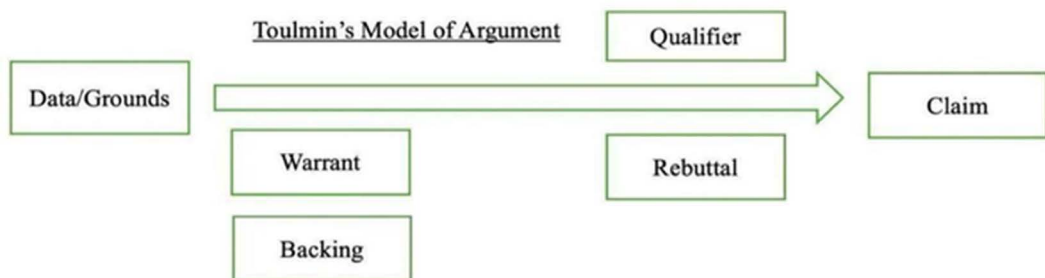


Fig. 1. Model of Toulmin’s Model of Argument

better able to understand how legal arguments are grounded not just in logic or precedent, but in contested beliefs regarding values, morality, and the institutional role of the Court in American society.

ROPER V. SIMMONS: TWO ARGUMENTS ON THE JUVENILE DEATH PENALTY

A steady societal shift towards juvenile leniency was the backdrop for *Roper v. Simmons*. The Court ruled 5-4 in favor of Simmons, arguing that the imposition of the death penalty on juvenile defendants (those under the age of 18) is unconstitutional under the Eighth Amendment's cruel and unusual punishment clause. Several contextual factors led to this decision. By 2005, growing research on adolescent development significantly influenced debates about the appropriate treatment of juveniles in the justice system. Studies highlighted juveniles' heightened impulsivity, vulnerability to external influences, and diminished capacity for rational decision-making, challenging the appropriateness of adult punishments for youth offenders (Steinberg). Additionally, juveniles have an increased risk of suicide and physical and sexual abuse from older inmates in adult prisons as opposed to juvenile prisons (Flaherty). Further, only 13% of facilities in the U.S. house youth offenders separate from adult offenders in the 44 states with juveniles in adult facilities (Redding). When juveniles are separated from adults in adult jails, they are frequently positioned in isolated conditions, and correlated studies suggest that deteriorat-

ing mental health and suicide are prevalent among inmates in isolated housing (Haney).

A few important cases were used as precedent in the court's decision. *Trop v. Dulles* articulated the concept of "evolving standards of decency," which maintains that legal principles should evolve over time to remain relevant to societal changes. *Thompson v. Oklahoma* abolished the legality of executing minors under the age of 16, and *Atkins v. Virginia* held that the execution of individuals with intellectual disabilities is unconstitutional.

Kennedy and the majority opinion argue that the execution of minors for crimes committed when they were under the age of 18 (juveniles) is unconstitutional and violates the Eighth Amendment. To support this conclusion, Kennedy relies on three separate claims that serve as the grounds (data) for the argument. First, that a national consensus has been reached on the death sentence for juveniles is similar when comparing the evidence to *Atkins*. Secondly, there is increasing research on a lack of maturity and an "underdeveloped sense of responsibility" in youth when compared to adults, leading to "ill-considered actions and decisions" (Roper 569). Third, international policies align with prohibiting juvenile death penalty, which is "confirmation that the death penalty is disproportionate punishment for offenders under 18" (Roper 575). These three grounds support Kennedy's primary claim that the juvenile death penalty is unconstitutional.

Given the three pieces of evidence as the grounds/data, the next component is the warrant, which should connect the grounds to the claim in a reasonable manner. In Kennedy's

argument, the warrant is the belief in the principle of “evolving standards of decency,” established in *Trop v. Dulles*, that the Court’s interpretation of the Eighth Amendment must be adapted to changing societal norms and values. In other words, this warrant bridges the gap between the evidence Kennedy provides and constitutional interpretation of the legality of the death penalty. It asserts that the meaning of “cruel and unusual punishment” is not fixed and must reflect contemporary moral judgments. Without this warrant, Kennedy’s grounds would lack the requisite “reasonableness” needed in his constitutional analysis.

The qualifier is simple: the Court’s stance is not universal, but the trends are sufficient to show a national and global consensus, which outweighs the dissent’s statistical argument. As Kennedy writes, “Since *Stanford*, no State that previously prohibited capital punishment

for juveniles has reinstated it... coupled with the trend toward abolition of the juvenile death penalty, carries special force...general popularity of anticrime legislation...and in light of the particular trend in recent years toward cracking down on juvenile crime in other respects” (Roper 566). Kennedy’s counterargument and rebuttal anticipate the dissenting opinion’s focus on deterrence, which argues that the presence of consequences causes people to refrain from ill action. Kennedy offers a rebuttal by claiming that juveniles do not have the capability to rationally weigh the options before making decisions (Roper 568). Figure 2 shows a simple map of Kennedy’s argument to this point.

Justice O’Connor and the dissenting opinion stand in stark contrast to Kennedy’s argument. O’Connor claims that the Eighth Amendment does not categorically ban the



Fig. 2. Toulmin’s model applied to Justice Kennedy’s Opinion

execution of minors, and such determinations should be left to the states.

O'Connor relies on a few premises to serve as the grounds for her primary claim that the juvenile death penalty is not unconstitutional under the Eighth Amendment. For one, she disagrees with Kennedy that a national consensus on the matter exists, instead arguing that legislative actions leading up to the *Atkins* decision provided "strong evidence that the country had truly set itself against capital punishment of the mentally retarded. Here, by contrast, the halting pace of change gives reason for pause" (597). In other words, O'Connor's first point of evidence (grounds) is that the widespread national consensus present in *Atkins* is not present in the same way in *Roper* and therefore cannot be considered a valid reason. The second piece of evidence offered by O'Connor is that the distinction between 18-year-olds and 17-year-olds is negligible and that both can be culpable for misconduct. As she writes, "the fact that juveniles are generally *less* culpable for their misconduct than adults does not necessarily mean that a 17-year-old murderer cannot be *sufficiently* culpable to merit the death penalty" (599). In other words, categorically banning all executions of minors disallows the rare cases when juveniles *do* have the mental fortitude and character to carry out capital offenses; these individuals *do* deserve the death penalty. This, in turn, leads to her claim that these cases must be judged on a case-by-case basis:

The proportionality issues raised by the Court clearly implicate Eighth Amendment concerns. But these concerns may properly be

addressed not by means of an arbitrary, categorical age-based rule, but rather through individualized sentencing in which juries are required to give appropriate mitigating weight to the defendant's immaturity, his susceptibility to outside pressures. (603) or O'Connor's primary claim regarding the constitutionality of the juvenile death penalty.

The reasonableness of O'Connor's argument rests on an originalist interpretation of the U.S. Constitution, emphasizing that the Constitution's meaning must remain anchored in its historical context. This point functions as the warrant in the argument. By advocating for state discretion, the dissent implicitly critiques the majority's approach as judicial overreach, arguing that sweeping moral judgments belong to democratically elected legislators, not the judiciary. To qualify the primary claim, O'Connor agrees that some juveniles do, in fact, have reduced culpability; still, she maintains this is not applicable to all juveniles. As a rebuttal to Kennedy's view on international law and its impacts on U.S. policy, O'Connor argues that international principles should not influence U.S. policy and law. Figure 3 demonstrates the dissenting opinion.

UNSPOKEN PRINCIPLES SHAPING THE OPINION

While Justice Kennedy and Justice O'Connor differ in their explicit legal reasoning, their arguments also rest on different unspoken assumptions about what the Supreme Court's role should be and how it cements its legitimacy and derives its authority. These assumptions



Figure 3. Toulmin's Model Applied to Justice O'Connor's Opinion

are implicit backings, which reveal foundational ideological positions. While each opinion keeps these positions unstated, they are crucial for understanding how justices connect their evidence (grounds) to their legal conclusions (claims). This connection is possible because a justice's view of the Court's role and source of legitimacy directly shapes how they interpret the same evidence and legal frameworks. In *Roper* these backings are not just a side-effect of their legal reasoning; rather, they are the rhetorical "core" that explains how two justices, both moderates in a sense, can be presented with the same facts, precedents, and legal frameworks yet reach directly opposite conclusions. As the court becomes increasingly polarized and comes under heightened scrutiny, recognizing these unstated ideological positions (backings) helps illustrate how the Court justifies its authority and decision-mak-

ing processes, through both a legal lens and from a broader political and moral perspective. In Justice Kennedy's opinion, the principle of "evolving standards of decency," first articulated in *Trop*, functions as a warrant in the argument. It also reflects a broader moral-progressive worldview, which serves as an implicit backing. Kennedy (and others) would never explicitly state that the Constitution is a living document because such declarations come with unwanted political and social side effects. Importantly, it risks aligning too closely with political views and jeopardizes the perceived neutrality of the Court. Still, Kennedy's opinion depends on the ideological position that the Supreme Court's interpretation of the law must adapt to changing cultural norms, research, and international consensus. His appeal to the "overwhelming weight of international opinion" (575) and to new scientific un-

derstandings of adolescent impulsivity (569) suggests that the moral values advocated by the Court are not strictly grounded within what is explicitly written in the Constitution. Instead, these values should arise from the intersection of domestic values and global human rights values. On this view, Kennedy presents the Court as having the role of not just interpreting the law but also as reflecting and promoting a moral consensus, even if this consensus changes throughout time. This extends to cases in which the moral consensus is still developing or not universal among all states.

Understanding this view of the U.S. Constitution helps illustrate why Kennedy is willing to extend the logic of *Atkins v. Virginia* (banning the death penalty for intellectually disabled people) to juveniles, even though the pace of legislative change on juvenile execution had been slower and less convincing. For Kennedy, it is not a matter of simply reading and interpreting the laws as written. Rather, the Court should keep its interpretation flexible, changing with moral development in society. In this sense, Kennedy positions the Court as a moral authority, guiding the nation forward when the legislature fails to do so. Regardless of whether morality is fixed or malleable, Kennedy views the Court as responsible for making moral decisions as opposed to staying distanced from such judgments.

On the other hand, Justice O'Connor views the same facts and frameworks from an opposing ideological perspective. O'Connor acknowledges that minors are "generally less culpable," but she insists that this "does not necessarily mean that a 17-year-old murderer

cannot be sufficiently culpable" (599). Instead, O'Connor advocates for "individualized sentencing" (603) instead of categorical bans on sentencing. In contrast to Kennedy, her argument is based on judicial restraint and federalism. Through these grounds, O'Connor presents a worldview in which the Court's legitimacy is found not in its moral leadership, but in its commitment to precedent and democratic boundaries. O'Connor emphasizes the Court's responsibility to avoid overwhelming legislative decisions, instead leaving these decisions up to the other branches of government and the states to determine. In Toulmin's terms, these backings support O'Connor's warrant—that the Court should exercise restraint and leave morally or politically charged decisions to the states and democratic processes—by grounding it in a deeper commitment to judicial legitimacy.

O'Connor does more than disagree with Kennedy's legal reasoning; rather, she presents a broader ideological position that treats judicial restraint as a responsibility the Court owes to American society. By opposing a "categorical, age-based rule" (603), she rejects the idea that moral principles should override factual nuance. This distinction is at the heart of her disagreement with the majority opinion. The warrant that connects the grounds to the claim is that the Courts should defer to the states and juries in sentencing decisions, since the current system is adequate to ensure just outcomes. The implicit backing that supports this warrant is the belief that constitutional legitimacy derives from judicial restraint and deference to precedent. This backing justifies her

warrant. Applied to *Roper*, O'Connor argues that, though most juvenile defendants may be less culpable and so should receive benefit of the doubt, the existing American legal system maintains this possibility while still allowing for those select cases in which a juvenile defendant *is* culpable and thus should be sentenced to death. For O'Connor, legitimacy is not based on the moral content of the decision but rather on the Court's ability to maintain consistency and respect for its *limited* role in the broader constitutional structure of American government.

When analyzing both opinions together, the majority and dissenting opinions in *Roper v. Simmons* offer more than just a simple legal disagreement between two seemingly moderate justices. Kennedy positions the court as a moral interpreter, responsible for adapting constitutional principles to reflect emerging research, international standards, and social norms. His implicit backing comes from his belief in the idea that judicial legitimacy is based on moral alignment with a forward-looking society. O'Connor disagrees, and her contrasting view claims the Court should refrain from being a moral guide and instead rely on its limited authority and procedural consistency, leaving broader decisions to the legislature. Her implicit backing comes from her belief in the idea that judicial legitimacy derives from the Court's stability and restraint.

The difference between the two positions is more than simply a theoretical disagreement in ideology. It demonstrates how the Court views its legitimacy and position of authority in American society. If the Court presents itself as

a moral leader (Kennedy's view), it gains support and legitimacy through alignment with evolving ethical values and the promotion of social change. Consequently, it risks appearing partisan or activist, compromising its position as neutral. On the other hand, if the Court demonstrates restraint and adherence to tradition (O'Connor's view), it maintains perceived neutrality and stability, yet risks failing to address pressing moral changes. As this difference in ideology becomes polarized with time, the Court's language and how it perceives its legitimacy and authority are crucial for understanding legal arguments like *Roper*.

This ideological divide has only intensified since 2005. As the Court has become more openly polarized and its decisions more contested, implicit backings reveal not just how justices reason and what they argue for, but how they can communicate deeper moral beliefs and values. As public trust in the Court continues to decline for a variety of reasons, understanding rhetorical techniques employed by justices is crucial for understanding both how they justify legal outcomes and how they attempt to preserve the Court's authority in an era of heightened skepticism. Without recognizing these ideological differences, we risk misinterpreting judicial opinions as neutral applications of law rather than as products of visions for the Court's role, leaving us ignorant of the forces shaping constitutional meaning. In turn, such ignorance undermines our ability to critically evaluate the Court's decisions and hold it accountable. *Roper* reveals that, when justices appear to debate legal doctrines and practices, they are often expressing deeper,

competing visions of the Court's role in American life. By uncovering these implicit backings, we can better understand not just the rhetorical structure and significance of judicial reasoning, but the ideological views that shape a now deeply polarized Supreme Court.

CONCLUSION

By exposing the implicit backings in *Roper v. Simmons*, this analysis reveals the broader ideological debates over the judiciary's role in shaping societal norms and balancing democratic principles with moral leadership. Though justices rarely state these underlying assumptions outright, they are foundational to how legal arguments are constructed, interpreted, and justified.

Kennedy and O'Connor address a similar set of facts and the same constitutional issue—the Eighth Amendment's cruel and unusual punishment clause. However, they reach radically different conclusions because they are operating from fundamentally distinct views about what the Court is, its responsibility, and what it *should* be. Kennedy's majority opinion draws authority from the idea that the Court must evolve alongside society, interpreting the

Constitution in the context of emerging moral and scientific consensus. In contrast, O'Connor's dissent argues the Court derives its legitimacy from its restraint, consistency, and reliance on precedent, leaving broad, overarching rulings to the elected legislatures of the states.

Understanding these tensions deepens our appreciation of the rhetorical strategies at play in landmark decisions while also giving us insight into the evolving role of judicial rhetoric in increasingly polarized times. The language used by justices does more than simply justify legal conclusions; it frames the values that guide constitutional interpretation and the role of the Court in American democracy. This language and use of implicit backings is more important than ever as public trust declines and beliefs that the Court is a political agent continue to emerge as a popular notion in society. In this context, recognizing and interrogating the implicit backings behind judicial opinions becomes essential for both understanding past decisions like *Roper* but also for anticipating future ideological battles that will shape the Court's future and its role in American democracy for years to come.

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