

WILL THE OPPORTUNITY FOR PAROLE EQUATE TO THE *DE FACTO* OPPORTUNITY FOR A NEW LIFE?

Leigh Ainsworth\*

Henry Montgomery was seventeen-years-old in 1963 when he was arrested for the murder of Sheriff's Deputy Charles Hurt in Scotlandville, Louisiana.<sup>1</sup> Scotlandville police had spent the day rounding up black men in the area after a witness identified the deputy's killer as black, tall, and slender.<sup>2</sup> An all white jury initially found Montgomery guilty and sentenced him to death, but the Louisiana Supreme Court later ruled that a new trial was required because of the possibility of racial discrimination during the trial.<sup>3</sup> At his second trial, Montgomery was again found guilty, but he was ultimately sentenced to life without the possibility of parole ("LWOP") rather than death.<sup>4</sup>

The rest was history—until the United States Supreme Court in January of 2016 held that its 2012 decision in *Miller v. Alabama*, which found LWOP to be an unconstitutional sentence for juveniles,<sup>5</sup> applied retroactively.<sup>6</sup> Following the *Miller* decision, Montgomery petitioned for collateral review of his mandatory LWOP sentence, but the Louisiana courts refused to hear his case, arguing that the *Miller* decision did not apply retroactively.<sup>7</sup> The Court's decision in *Montgomery v. Louisiana* gives individuals, including Henry Montgomery and potentially 2000 other inmates around the nation,<sup>8</sup> a chance at parole because their sentences are deemed to have violated their *substantive* constitutional

---

\* Leigh Ainsworth is a *juris doctor* candidate at Georgetown University Law Center, where she expects to graduate in 2017. The author is a Featured Online Contributor for the *American Criminal Law Review*.

<sup>1</sup> Katy Reckdahl, *Split-Second Flash of a Gun Still Resonates 52 Years Later*, THE CTR. FOR PUB. INTEGRITY (Oct. 11, 2015), <http://www.publicintegrity.org/2015/10/11/18288/split-second-flash-gun-still-resonates-52-years-later>.

<sup>2</sup> *Id.*

<sup>3</sup> Montgomery's attorneys appealed the death sentence for a number of reasons, including the lack of black jurors, the use of racial epithets, and reported cross burnings by the KKK during the trial. *Id.*; see also *State v. Montgomery*, 248 So. 2d 756, 762 (La. 1966) (finding that "the feelings which existed prior to trial . . . permeated the atmosphere and prejudiced the defendant").

<sup>4</sup> *Id.*

<sup>5</sup> *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012).

<sup>6</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 736–37 (2016).

<sup>7</sup> *Id.* at 726–27.

<sup>8</sup> Naureen Khan, *After 52 Years in Prison, SCOTUS May Help Set Henry Montgomery Free*, AL JAZEERA AMERICA (Oct. 13, 2015), <http://america.aljazeera.com/articles/2015/10/13/after-52-years-scotus-may-help-set-henry-montgomery-free.html>.

right to be free from “disproportionate punishments” that violate the Eighth Amendment.<sup>9</sup> While there is some contention amongst different advocacy groups over whether the Supreme Court’s decision in *Miller* is a step in the right direction,<sup>10</sup> most experts agree that juveniles have the capacity to change,<sup>11</sup> and the Court’s decision in *Montgomery* is only one in a long line of recent cases that have reformed the ways in which the Eighth Amendment provides additional protections to juveniles convicted of crimes.<sup>12</sup> In *Miller* and *Montgomery*, both Justices Kagan and Kennedy noted that a juvenile’s capacity to change should be taken into consideration when sentencing a juvenile for crimes committed.<sup>13</sup> In *Miller*, Justice Kagan cited to the Court’s previous decision in *Roper v. Simmons*, noting that the Eighth Amendment’s prohibition on cruel and

---

<sup>9</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 732–35 (2016); *see also Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012) (holding that life imprisonment without parole for juveniles who had committed murder violated the Eighth Amendment’s prohibition against cruel and unusual punishment).

<sup>10</sup> Some juvenile justice reformers applaud the Court’s decision, noting that juveniles are different from adults and should be treated as such in sentencing decisions. *See, e.g.,* Marsha Levick, *A Week of Stunning Victories for Youth Justice*, OPEN SOC’Y FOUND.: VOICES (Jan. 29, 2016), <https://www.opensocietyfoundations.org/voices/week-stunning-victories-youth-justice>. However, some advocacy organizations who focus on victims’ rights also noted that allowing homicide offenders to obtain parole eliminates the finality of sentencing decisions, and retraumatizes victims’ families. *Montgomery v. Louisiana*, NAT’L ORG. OF VICTIMS OF JUV. MURDERERS: CTS. & L. (Jan. 25, 2016), <http://www.teenkillers.org/index.php/courts-2/montgomery-alabama/>.

<sup>11</sup> Research shows that when juveniles who have not yet reached the age of twenty-one act irrationally and commit a crime, it is likely because they have yet to develop the inhibitors that would prevent an adult in the same situation from acting in that way. *See The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, HUM. RTS. WATCH & AMNESTY INT’L 48–49 (Oct. 11, 2005), <https://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf> (citing medical experts who have found that frontal lobe development, which “[regulates] aggression, long-range planning, mental flexibility, abstract thinking, . . . and perhaps moral judgment,” continues into “young adulthood”); Kevin W. Saunders, *A Disconnect Between Law and Neuroscience: Modern Brain Science, Media Influences, and Juvenile Justice*, 2005 UTAH L. REV. 695, 703–12 (2005) (discussing the developments in neuroscience that have led to the recognition that cranial development during adolescent years can affect “response inhibition, emotional regulation, planning and organization”); *see also* Larry Cunningham, *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status under Law*, 10 U.C. DAVIS J. JUV. L. & POL’Y 275, 281 (citing a neuropsychiatric study conducted on 18 juveniles awaiting execution in Texas).

<sup>12</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 736–37 (2016); *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012); *see also Graham v. Florida*, 560 U.S. 48, 68–75 (2010) (holding that life imprisonment without parole was unconstitutional for juvenile offenders who had committed crimes that did not involve killing); *Roper v. Simmons*, 543 U.S. 551, 569–576 (2005) (holding that the death penalty was unconstitutional for juvenile offenders).

<sup>13</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 736–37 (2016); *Miller v. Alabama*, 132 S. Ct. 2455, 2465–69 (2012).

unusual punishment also rules out the use of excessive or disproportionate punishment, and found that the severity of the punishment in *Miller*'s case was excessive for failing to take into account the defendant's age.<sup>14</sup> The Court's decision in *Montgomery*, like the decisions before it, thus gives new hope to those inmates who have spent their years in prison working to improve themselves and learn from mistakes made when they were juveniles.<sup>15</sup> If states properly apply *Montgomery*, which gives retroactive effect to the Court's decision in *Miller* (ruling that the LWOP sentences are unconstitutional for youth offenders), it should be expected that many of these individuals will have parole hearings in the coming months or years, allowing them an opportunity at a new life outside prison walls.

However, with this new opportunity for parole comes the question of whether individuals, such as Henry Montgomery, will be able to successfully reintegrate into society after they are released from prisons. Inmates like Mr. Montgomery deserve a second chance, especially if they have learned from their wrongs and worked to improve themselves. Yet, life after prison is often not easy, and funding for post-prison reintegration programs is limited.<sup>16</sup> California has faced this problem in recent years as Governor Brown has allowed for the parole of over 1900 inmates during his tenure.<sup>17</sup> Prison programs may be difficult to access for "lifers" as they are considered the lowest priority for programming.<sup>18</sup>

---

<sup>14</sup> *Miller*, 132 S. Ct. at 2463–64.

<sup>15</sup> One such individual is Jennifer Pruitt, who was convicted of felony-murder when she was just shy of her eighteenth birthday. Beth Schwartzapfel, *Sentenced Young: The Story of Life without Parole for Juvenile Offenders*, AL JAZEERA AMERICA (Feb. 1, 2014), <http://america.aljazeera.com/features/2014/1/sentenced-young-the-story-of-life-without-parole-for-juvenile-offenders.html>. Having been sexually abused by her father and living in her friend's closet, Jennifer agreed to help her friend rob a neighbor because she felt she owed her friend for the kindness she had shown. *Id.* When the robbery went badly and her friend killed the neighbor, Jennifer found herself facing life in prison, even though she was the one who ultimately reported the neighbor's death to the police. *Id.* At the time the article was written, Jennifer had spent more time in prison than she had lived outside of prison. *Id.*

<sup>16</sup> See, e.g., Karen E. Crummy & Christopher N. Osher, *Colorado Parolees: For Many, Life Outside Harder Than Prison*, THE DENVER POST (Sept. 24, 2013), [http://www.denverpost.com/parole/ci\\_24157488/colorado-parolees-many-life-outside-harder-than-prison](http://www.denverpost.com/parole/ci_24157488/colorado-parolees-many-life-outside-harder-than-prison) (noting that life outside of prison can be difficult for many parolees and that funding for transitional programs in Colorado dropped to fifteen dollars per offender in 2010).

<sup>17</sup> Paige St. John, *As More Inmates Are Released from Prison, More Parolees Return*, L.A. TIMES (Dec. 27, 2014), <http://www.latimes.com/local/california/la-me-ff-pol-lifer-parole-20141228-story.html>.

<sup>18</sup> See Schwartzapfel, *supra* note 15 (noting that Jennifer Pruitt had to wait more than a decade to gain access to certain prison programs because "lifers are last on the list for prison programming"). But see Laura Sullivan, *Life After 'Life': Aging Inmates Struggle for Redemption*, NPR (June 4, 2014), <http://www.npr.org/2014/06/04/317055077/life-after-life-aging-inmates-struggle-for->

and those rehabilitation programs that do exist are often inadequate.<sup>19</sup>

The popular Netflix show *Orange is the New Black* highlighted this issue when one of the main characters, Taystee, was granted parole but—unable to cope without the support system of friends she developed in prison and feeling overwhelmed, out of place, and alone—she committed a crime to get herself back in prison.<sup>20</sup> Many parolees share these feelings of loneliness and being out of place when released.<sup>21</sup> Society often does not openly welcome released inmates,<sup>22</sup> and getting a job can be difficult with the scarlet letter of a criminal conviction on one's record.<sup>23</sup>

Thus, while the Court's decision in *Montgomery* should be lauded for allowing juvenile lifers a new chance at life outside of prison, it is only one small step towards truly helping juvenile offenders have an opportunity for a new life. Prisons ought to provide programs that more appropriately address the psychological effects of being released after decades spent in a prison cell.<sup>24</sup> While job training programs are important, having realistic expectations of what life on the outside will be like, as well as developing a support network of friends and rehabilitated ex-offenders before release, can have longer lasting impacts

---

redemption (detailing Colorado's new "Long Term Offender Program" that aims to help inmates who have been in prison for several decades reintegrate upon their release).

<sup>19</sup> See St. John, *supra* note 17 ("[I]nmates and their advocates say prison rehabilitation programs are inadequate."); Marc Mauer, Ryan S. King, & Malcolm C. Young, *The Meaning of "Life": Long Prison Sentence in Context* 31, THE SENTENCING PROJECT (May 2004), [http://www.sentencingproject.org/doc/publications/inc\\_meaningoflife.pdf](http://www.sentencingproject.org/doc/publications/inc_meaningoflife.pdf) (advocating for increased prison programming that would allow "lifers" to be better prepared for reentry).

<sup>20</sup> *Orange Is the New Black: Fucksgiving* (Netflix broadcast July 11, 2013); *Orange Is the New Black: Fool Me Once* (Netflix broadcast July 11, 2013).

<sup>21</sup> See Sullivan, *supra* note 18 (discussing the difficulty that many long-term inmates face when leaving prison only to find their support system gone); see also St. John, *supra* note 17 (discussing how inmates are often not prepared for the transition back into society).

<sup>22</sup> See Beth Schwartzapfel, *Why It's Hard to Be a Lifer Who's Getting Out of Prison*, THE MARSHALL PROJECT (Dec. 4, 2015), <https://www.themarshallproject.org/2015/12/04/why-it-s-hard-to-be-a-lifer-who-s-getting-out-of-prison#.Gwh2uJ5Oc> (telling the story of Gregory Diatchenko, a man who was released on parole after thirty-four years in prison) ("When they find out where I'm from, and my past. I have that blemish on me. Once a prisoner, that's there forever. No matter what you do, no matter how good you do. It's just always there.").

<sup>23</sup> *A Stigma That Never Fades*, THE ECONOMIST (Aug. 8, 2002), <http://www.economist.com/node/1270755> (discussing a study that found that sixty-five percent of employers questioned would not knowingly hire an ex-convict).

<sup>24</sup> See HUM. RTS. WATCH & AMNESTY INT'L, *supra* note 11, at 61–65 (discussing the psychological impact on youth who spend decades in prison, losing hope that they will ever be released).

for individuals who may face enormous challenges upon release.<sup>25</sup> For example, a non-profit community-based organization in New York called The Fortune Society provides housing and programming staffed by ex-offenders to help parolees adjust to their new lives outside of prisons.<sup>26</sup> One ex-offender, Otis, explained that it is often hard for parolees to ask for help because prison conditions them to think that asking for help is a sign of weakness.<sup>27</sup> Working with inmates to develop a group of friends and mentors who will guide and help them prior to their release may alleviate the emotional and psychological difficulties facing prisoners upon release.<sup>28</sup>

Furthermore, parole programs ought to be better staffed and more focused on the well-being and development of parolees,<sup>29</sup> rather than imposing strict regulations that show little faith in the individual's ability to make a new life for him or herself.<sup>30</sup> Psychologists agree that juveniles

---

<sup>25</sup> See Sullivan, *supra* note 18 (noting that the program in Colorado is designed to “teach [inmates] how to navigate a fast-paced world; how to rejoin a society that isn’t sure they deserve the chance”).

<sup>26</sup> THE FORTUNE SOCIETY (last visited May 4, 2016), [fortunesociety.org](http://fortunesociety.org); see also Justin Rohrlich, *His First Day Out of Jail After 40 Years: Adjusting to Life Outside*, THE DAILY BEAST (Jan. 3, 2015), <http://www.thedailybeast.com/articles/2015/01/03/his-first-day-out-of-jail-after-40-years-adjusting-to-life-outside.html> (following a man released from prison who was helped to adjust to life outside of prison with the help of the Fortune Society).

<sup>27</sup> Rohrlich, *supra* note 26.

<sup>28</sup> See, e.g., Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, in PAPERS PREPARED FOR THE “FROM PRISON TO HOME” CONFERENCE 77, 79–84, 88–89 (Jan. 30, 2002) (asserting that incarceration can cause deep psychological trauma for individuals and suggesting that prison systems help individuals to “decompress” and re-acclimate and that parole programs use “broadly conceived family systems” to counsel ex-offenders).

<sup>29</sup> Instead of increasing funding for correctional programs, federal budget cuts have forced many state and local governments to reduce correctional programs, including parole and community-based correctional programs. See NAT’L CRIMINAL JUSTICE ASS’N & VERA INST. OF JUSTICE, THE IMPACT OF FEDERAL BUDGET CUTS FROM FY10–FY13 ON STATE AND LOCAL PUBLIC SAFETY: RESULTS FROM A SURVEY OF CRIMINAL JUSTICE PRACTITIONERS, 7–8 (Nov. 11, 2013) (quoting various parole administrators who have cut programs or laid off staff due to budget cuts). As well, probation and parole programs have been developed under an “intensive supervision” model that often results in high recidivism rates, rather than as a rehabilitation model that would allow for taking an individual’s needs and community (family, friends, etc.) support into consideration when developing a post-incarceration plan. See Joan Petersilia, *Beyond the Prison Bubble*, 75 FED. PROB. 1, 2, 4 (June 2011) (discussing new programs based on the “risk-need-responsivity” model that assesses ex-offenders and places them in an appropriate program based on their needs).

<sup>30</sup> See Jessica Glazer, *Why It Might Be Time to Rethink the Rules of Parole*, FIVETHIRTYEIGHT (Nov. 13, 2014), <http://fivethirtyeight.com/features/why-it-might-be-time-to-rethink-the-rules-of-parole/> (suggesting that strict parole rules often lead to parolees being sent back for “technical violations” and finding that being sent back to prison can often depend on whether one’s parole agent tends to take a more punitive or rehabilitative tact).

have the ability to change,<sup>31</sup> but if parole programs are not designed to address the psychological and emotional needs of juvenile offenders who have not experienced life on the outside in half a century,<sup>32</sup> society is likely setting these individuals up for failure after they are released.

As former Michigan Circuit Court Judge Fred Mester told Al-Jazeera journalist Beth Schwartzapfel, “[w]e humans do a lot of stupid and bad things. And the one thing that helps us move on is the sense that there is an atoning for the crime. And forgiveness from the victim—that creates a better civilization.”<sup>33</sup> Although forgiving juvenile offenders who have committed crimes against a person (such as homicide or assault) may also be a personal matter for the victim, society has a collective responsibility to work with individuals who have committed crimes. Otherwise, offenders will likely cycle back through the system.

---

<sup>31</sup> See *supra*, note 11 and accompanying text.

<sup>32</sup> See *supra*, notes 25–30 and accompanying text.

<sup>33</sup> Schwartzapfel, *supra* note 15.