Handout 3: Evaluating Opinions – *Roper v. Simmons*

In 2005, the Supreme Court decided a case about the Eighth Amendment. The Eighth Amendment prohibits "cruel and unusual punishments." Christopher Simmons, a 17-year-old, was convicted of murdering a woman and was given the death penalty. Simmons appealed his death sentence, arguing to the Court that it was "cruel and unusual punishment" to execute a person who was under the age of 18 at the time the crime was committed. The Supreme Court had to decide whether to ban the death penalty for juveniles.

The excerpts below come from the Supreme Court justices' opinions in this case. Read each excerpt and decide whether it represents an Originalist (O) approach or a Living Constitutionalist (LC) approach to interpreting the Eighth Amendment's ban on "cruel and unusual punishments."

____"We share a common history with the United Kingdom, and … often consult English sources when asked to discern the meaning of a constitutional text written against the backdrop of 18th-century English law and legal thought."

____ "If the meaning of [the Eighth] Amendment had been frozen when it was originally drafted, it would impose no impediment to the execution of 7–year–old children today. … The evolving standards of decency that have driven our construction of this critically important part of the Bill of Rights foreclose any such reading of the Amendment."

____ "[In a previous case, the] Court determined that executing mentally retarded offenders 'has become truly unusual, and it is fair to say that a national consensus has developed against it.' … [There is] evidence of national consensus against the death penalty for juveniles … 30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but … exclude juveniles from its reach."

____ "[The majority's conclusion is that] the meaning of our Constitution has changed over the past 15 years—not, mind you, that this Court's decision 15 years ago was wrong, but that the Constitution has changed….[It finds], on the flimsiest of grounds, that a national consensus which could not be perceived in our people's laws barely 15 years ago now solidly exists."

____ "… the Court says in so many words that what our people's laws say about the issue does not, in the last analysis, matter: "[I]n the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment…The Court thus proclaims itself sole arbiter of our Nation's moral standards–and in the course of discharging that awesome responsibility purports to take guidance from the views of foreign courts and legislatures."