COMMENT

JUVENILES ARE DIFFERENT: JUVENILE LIFE WITHOUT PAROLE AFTER *GRAHAM V. FLORIDA*

INTRODUCTION

Peter A. was only fifteen years old when his older brother instructed him to help an eighteen-year-old steal a van.[1] After stealing the van, Peter sat unarmed in the back seat with a twenty-one-year-old while the eighteen-year-old drove them to the home of the men they were told robbed Peter's brother.[2] Once they arrived, Peter remained in the van while the others went into the residence.[3] Shortly afterward, Peter heard gunshots, followed by one of the young men racing to the van.[4] While the two fled, Peter learned that two people were shot to death during the failed robbery.[5]

Once arrested, Peter admitted to his role in stealing the van.[6] He admitted to being present at the scene but asserted that he "never shot or killed anyone."[7] In support of his account, no physical evidence indicated that Peter entered the victims' home, and the prosecution proved at trial that one of his co-defendants pulled the trigger.[8] Under mandatory sentencing laws, however, Peter will spend the rest of his life behind bars with no possibility of re-entering society.[9]

Peter A.'s case illustrates the need to allow juvenile offenders an *opportunity*—not a *guarantee*—to eventually obtain freedom.[10] Research shows that significant psychological and neurological

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[1] AMNESTY INT'L & HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 11 (2005), *available at* http://www.hrw.org/node/11578/section/1.

[2] *Id.* at 11-12. According to Peter, "[N]o one sat in the front passenger's seat because 'there was glass on the seat'" from the broken front window. *Id.* at 12.

[3] *Id.* at 12.

[4] *Id.*

[5] *Id.* Peter later found out that one of the victims was a close friend who had no role in the original robbery of Peter's brother. *Id.*

[6] *Id.* Police questioned Peter for eight hours without the presence of his mother or an attorney. *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* Due to proof that Peter stole the van driven to the victim's house, he was convicted of two counts of felony murder and sentenced to life without parole. *Id.*

[10] Throughout this article, all references to "juveniles" refer to persons under the age of eighteen.

differences exist between adults and adolescents,[11] which demonstrate reduced levels of culpability in juveniles. In *Roper v. Simmons*, the Supreme Court recognized this reduced culpability and adopted a categorical rule prohibiting the death penalty for defendants who committed crimes before the age of eighteen.[12]

The Court's recent decision in *Graham v. Florida* extended the holding in *Roper* to exempt juveniles from sentences of life without parole for committing crimes short of homicide.[13] In doing so, the Court examined the evolving standards of decency in the United States, as it did in *Roper*, and held that the sentence violated the cruel and unusual punishment clause of the Eighth Amendment.[14] First, the Court looked to the "objective indicia" of state legislatures and juries and found that a national consensus existed against the practice of issuing life sentences to juvenile offenders.[15] Then, the Court applied its own independent judgment and found the punishment cruel and unusual due to juveniles' reduced culpability and the sentence's lack of penological justifications.[16]

The Court's decision marked the first use of its "evolving standards of decency" analysis for a non-capital case.[17] Previously, this categorical approach was reserved for death penalty cases alone, based on the notion that "[d]eath is different."[18] Now, however, after *Graham*, non-capital offenses are subject to categorical exemption under the Eighth Amendment.

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[11] *See, e.g.*, Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741, 742-43 (2000); Elizabeth R. Sowell et al., *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships during Postadolescent Brain Maturation*, 21 J. NEUROSCIENCE 8819, 8819-20 (2001); Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1013 (2003); *see infra* Part III.

[12] 543 U.S. 551, 578 (2005).

[13] 130 S. Ct. 2011, 2034 (2009). For brevity's sake, throughout this article life imprisonment without the opportunity or possibility of parole is referred to as simply "life without parole."

[14] *Id.*

[15] *Id.* at 2023-26.

[16] *Id.* at 2026-30.

[17] *Id.* at 2021-23.

[18] *Id.* at 2046 (Thomas, J., dissenting).

Applying the reasoning in *Graham*, this article argues that under the evolving standards of decency analysis, sentencing juveniles to life without parole—for any crime—violates the Eighth Amendment because *juveniles are different*. As a class, juveniles are less culpable than adults.[19] This limited culpability should be viewed no differently when applied to homicide than when applied to non-homicide offenses. Further, the penological justifications of sentencing juveniles to life without parole fail because of the unique nature of adolescence. In short, this article argues that juveniles are different than adults, and therefore deserve an *opportunity*—not a *guarantee*—to eventually obtain freedom, no matter the crime.

Part II of this article provides a history of juvenile jurisprudence in the context of the Eighth Amendment. Part III discusses why juveniles are uniquely different than adults. Part IV reconsiders the constitutionality of sentencing juveniles to life without parole after *Graham v. Florida*. Part V then argues for the broadening of the traditional definition of "juvenile" and presents a possible framework as a solution to the arbitrary nature of the current meaning.

I. JUVENILE JURISPRUDENCE OF THE EIGHTH AMENDMENT

When evaluating whether a category of punishment violates the Eighth Amendment prohibition against cruel and unusual punishment, the Court consults "the evolving standards of decency that mark the progress of a maturing society."[20] To determine the "evolving standards of decency," the Court employs a two-part inquiry. First, the Court reviews the "objective indicia" of relevant legislative enactments and sentencing juries to identify a national consensus against the mode of punishment at issue.[21] Then, the Court applies its own independent judgment to determine whether the particular punishment is cruel and unusual.[22] In making that judgment, the Court is guided by "the standards elaborated by

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[19] Roper v. Simmons, 543 U.S. 551, 569 (2005); *see supra* note 11 and accompanying text.

[20] Trop v. Dulles, 356 U.S. 86, 101 (1958).

[21] *Roper*, 543 U.S. at 564.

[22] Coker v. Georgia, 433 U.S. 584, 597 (1977).

controlling precedents and on the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose."[23] Specifically, the Court examines whether the particular punishment is justified by legitimate penological goals.[24]

Until the Court's recent decision in *Graham*, the use of its evolving standards of decency analysis was reserved for capital crimes alone, based on the notion that "[d]eath is different."[25] Now, however, non-capital offenses are subject to categorical exemption under the Eighth Amendment. The evolution of the Supreme Court's application of this standard in juvenile jurisprudence is outlined below.

A. Thompson v. Oklahoma

The Supreme Court first considered the constitutionality of juvenile punishment in the Eighth Amendment context in 1988 with its decision in *Thompson v. Oklahoma*.[26] William Wayne Thompson committed murder at the age of fifteen.[27] He was tried as an adult and sentenced to death, along with three older participants in the crime.[28] Thompson appealed his sentence, arguing that sentencing a defendant to death who was fifteen years old at the time of his offense violated the cruel and unusual punishment clause of the Eighth Amendment.[29]

To identify the existence of a national consensus against the punishment, the Court first reviewed relevant state legislation.[30] The Court began by examining various state statutes that define

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[23] Kennedy v. Louisiana, 554 U.S. 407 (2008).

[24] *Id.* at 440-47.

[25] Graham v. Florida, 130 S. Ct. 2011, 2046 (2010) (Thomas, J., dissenting). Justice Thomas further declared that "[t]oday's decision eviscerates that distinction. 'Death is different' no longer." *Id.*

[26] 487 U.S. 815 (1988) (Stevens, J., plurality).

[27] *Id.* at 819. Thompson, along with three older participants, shot and stabbed his former brother-in-law. *Id.* The body was found in a river four weeks later chained to a concrete block. *Id.*

[28] *Id.* at 819-20. The Criminal Court of Appeals of Oklahoma affirmed the conviction and sentence. *Id.* at 820.

[29] *Id.* at 818-19.

[30] *Id.* at 823-24.

"[t]he line between childhood and adulthood."[31] Specifically, the Court noted that fifteen-year-olds could not vote or serve on a jury in any state, drive without parental consent in all but one state, or marry without parental consent in all but four states.[32] The most relevant legislation, however, was that all states designated sixteen as the maximum age for juvenile court jurisdiction.[33]

Next, the Court surveyed state death penalty legislation.[34] At the time, most state legislatures had not expressly established a minimum age of eligibility for the death penalty.[35] Of the states that had, however, all required that the defendant attain at least the age of sixteen at the time of the capital offense.[36] Finally, noting the rarity of executions of persons under the age of sixteen,[37] the Court came to the "unambiguous conclusion" that the imposition of capital punishment on a fifteen-year-old offender was "generally abhorrent to the conscience of the community."[38]

The Court then brought its own "judgment to bear"[39] to determine whether the punishment was cruel and unusual. In making that judgment, the Court first noted the reduced culpability of juveniles.[40] It then considered the principal social

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[31] *Id.* at 824.

[32] *Id.* at 823-24. The Court also noted that in the states that had passed laws on the subject, "no one under age 16 may purchase pornographic materials (50 States), and in most States that have some form of legalized gambling, minors are not permitted to participate without parental consent (42 States)." *Id.* at 824.

[33] *Id.* at 824.

[34] *Id.* at 826-29. In its review of state legislation, the plurality cited many industrialized Western nations' limitations on capital punishment—particularly juvenile executions. *Id.* at 830-31.

[35] *Id.* at 826. Fourteen states did not authorize capital punishment, and nineteen others allowed capital punishment, but had not set a minimum age requirement. *Id.* at 826-27.

[36] *Id.* at 829. Eighteen state statutes expressly established a minimum age requirement. *Id.*

[37] *Id.* at 832. The last execution for a crime committed before age sixteen was in 1948, forty years prior. *Id.*

[38] *Id.*

[39] Coker v. Georgia, 433 U.S. 584, 597 (1977) ("[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.").

[40] *Thompson*, 487 U.S. at 833-35. The Court stated that "[t]he basis for this conclusion is too obvious to require extended explanation." *Id.* at 835.

purposes of the death penalty: retribution and deterrence.[41] Because of juveniles' reduced culpability, capacity for growth, and "society's fiduciary obligations to its children," the Court found that retribution did not justify the execution of a fifteen-year-old offender.[42] Further, the Court found that the death penalty did not deter persons under the age of sixteen because of their reduced capacity for decision-making.[43] Thus, the national consensus against the imposition of the death penalty on an offender under the age of sixteen, coupled with the lack of measurable contribution to the social purposes of capital punishment, rendered the imposition of the death penalty on offenders under the age of sixteen at the time of the offense unconstitutional.[44]

B. Stanford v. Kentucky

One year after the decision in *Thompson*, the Supreme Court revisited the constitutionality of the juvenile death penalty in *Stanford v. Kentucky*.[45] In *Stanford*, however, the Court considered whether the Eighth Amendment prohibits the execution of juveniles *over* the age of sixteen at the time of the offense.[46] The matter before the Court involved the consolidated appeals of two juveniles sentenced to death.[47] In the first case, seventeen-year-old Kevin Stanford and an accomplice raped and sodomized a gas station attendant during the course of a robbery and then drove her to a remote area where Stanford shot her to death.[48] In the second case, sixteen-year-old Heath Wilkins and an accomplice robbed a convenience store.[49] During the robbery,

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[41] *Id.* at 836.

[42] *Id.* at 836-37.

[43] *Id.* at 837-38.

[44] *Id.* at 838. Although Thompson argued for a bright-line rule prohibiting the execution of any person who was under the age of eighteen at the time of the offense, the Court limited its decision to consider only the imposition of the punishment on anyone under sixteen. *Id.*

[45] 492 U.S. 361 (1989).

[46] *Id.* at 368. It is worth noting that "over the age of sixteen" means on or past an offender's sixteenth birthday.

[47] *Id.* at 364-65.

[48] *Id.* at 365.

[49] *Id.* at 366.

Wilkins stabbed an employee to death as part of a preconceived plan.[50] Stanford and Wilkins were tried as adults and sentenced to death.[51] On appeal, Stanford argued that the Eighth Amendment prohibits the imposition of the death penalty on offenders under age eighteen at the time of their crime; Wilkins argued under age seventeen was proper.[52]

In an opinion by Justice Scalia, the plurality began its analysis by citing two tests to determine whether a particular punishment violates the Eighth Amendment.[53] The first test considers whether the punishment constitutes one of "those modes or acts of punishment . . . considered cruel and unusual at the time that the Bill of Rights was adopted."[54] The second test looks at the category of punishment and determines whether the punishment is "contrary to the 'evolving standards of decency that mark the progress of a maturing society.'"[55] The Court rejected the first test outright since, at the time the Bill of Rights was adopted, the common law allowed capital punishment in theory at age seven and in practice at age fourteen.[56]

Next, the Court considered whether the punishment was contrary to the evolving standards of decency.[57] The plurality began its survey of objective evidence of society's view by examining state statutes.[58] The Court noted that of the thirty-seven states that permitted capital punishment, twenty-two allowed it for sixteen-year-old offenders while twenty-five allowed it for seventeen-year-old offenders.[59] Based on this information, the Court found that no national consensus existed against

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[50] *Id.*

[51] *Id.* at 365-68.

[52] *Id.* at 368.

[53] *Id.* at 368-69.

[54] *Id.* at 368 (quoting Ford v. Wainwright, 477 U.S. 399, 405 (1986)).

[55] *Id.* at 369 (quoting Trop v. Dulles, 356 U.S. 86, 101 (1958)).

[56] *Id.* at 368.

[57] *Id.* at 369.

[58] *Id.* at 370. The majority consisted of the *Thompson* dissenters (Chief Justice Rehnquist, Justice White, and Justice Scalia) along with Justice Kennedy, who did not participate in *Thompson*, and Justice O'Connor, who concurred in part and in the judgment. *Id.* at 364.

[59] *Id.* at 370.

executing offenders aged sixteen or seventeen.[60] Further, accepting the proposition that the legislation itself did not establish a settled consensus, the Court rejected as irrelevant the defendants' argument that the actual application of the laws as reflected by sentencing juries showed a consensus against the punishment.[61]

Then, in Part IV-B of the opinion, which only a minority embraced,[62] the Court rejected the argument that, by analogy, other minimum age statutes show a national consensus.[63] Lastly, in Part V, Justice Scalia "emphatically reject[ed]" the continued use of the Supreme Court's own subjective judgment in determining whether a particular punishment is cruel and unusual.[64] Justice O'Connor, however, rejected Part V of the plurality opinion, leaving the Court's independent judgment as a valid approach.[65] Accordingly, because of the lack of a national consensus, the Court held that the imposition of the death penalty on offenders who committed crimes at age sixteen or seventeen does not constitute cruel and unusual punishment.[66]

C. Roper v. Simmons

In *Roper v. Simmons*, the Court addressed, "for the second time in a decade and a half," the issue decided in *Stanford*: whether the Eighth Amendment prohibits the execution of an offender who was sixteen or seventeen when he committed a capital crime.[67] At age seventeen, Christopher Simmons planned

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[60] *Id.* at 371-72.

[61] *Id.* at 374. Scalia reasoned that although only two percent of executions involved offenders who committed their crime before age eighteen, far fewer capital crimes are committed by offenders under the age of eighteen, which accounts for the discrepancy in treatment. *Id.*

[62] *Id.* Justice O'Connor did not join the plurality in Part IV-B or Part V. *Id.* at 364.

[63] *Id.* at 374-77.

[64] *Id.* at 377-78. Justice Scalia also rejected the use of public opinion polls, the views of interest groups, and the positions of professional organizations to show a national consensus. *Id.* at 377.

[65] *Id.* at 380-82. Justice O'Connor agreed that no national consensus existed against the execution of sixteen and seventeen-year-old offenders, but concluded that the Court has a constitutional obligation to conduct a proportionality analysis. *Id.*

[66] *Id.* at 380.

[67] Roper v. Simmons, 543 U.S. 551, 555-56 (2005).

and committed murder.[68] Late one evening, Simmons and an accomplice broke into the home of the victim and bound her hands with duct tape.[69] The two then drove her to a state park and threw her off of a bridge where she later drowned.[70] Simmons was tried as an adult and sentenced to death.[71]

After a series of rejected appeals, the Supreme Court granted certiorari in light of its 2002 decision in *Atkins v. Virginia*.[72] In *Atkins*, the Court found a national consensus against executing mentally retarded criminals, and decided that mental retardation reduces moral culpability such that the death penalty is an excessive punishment, and therefore prohibited by the Eighth Amendment.[73] Using the reasoning in *Atkins*, Simmons argued that the Eighth Amendment forbids the execution of a juvenile who was under age eighteen at the time of the offense.[74]

Writing for the majority, Justice Kennedy began his analysis by reconsidering "[t]he evidence of national consensus."[75] The fact that thirty states rejected the juvenile death penalty outright, combined with the infrequency of its use in those states without formal prohibition and a trend towards the abolition of the juvenile death penalty, led the Court to find that the national consensus had changed since *Stanford*."[76] The Court determined that society had evolved, and now viewed juveniles as "categorically less culpable than the average criminal."[77]

Then, after identifying a national consensus against the sentencing practice, the Court exercised its own independent judgment.[78] It cited three general differences between juveniles

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[68] *Id*. at 556.

[69] *Id*.

[70] *Id*. at 556-57.

[71] *Id*. at 557-58.

[72] *Id*. at 559.

[73] Atkins v. Virginia, 536 U.S. 304, 321 (2002).

[74] *Roper*, 543 U.S. at 559.

[75] *Id*. at 564-67. It is important to note that Justice Kennedy joined the majority in *Stanford*. *See supra* notes 45-61 and accompanying text.

[76] *Id*. at 564-65. The Court noted that since *Stanford*, six states had executed offenders for crimes committed as juveniles, only three of which had done so in the previous ten years. *Id*.

[77] *Id*. at 567 (quoting *Atkins*, 536 U.S. at 316).

[78] *Id*. at 568-72.

and adults that "demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders."[79] First, juveniles have a diminished capacity for decision-making because of "[a] lack of maturity and an underdeveloped sense of responsibility."[80] Second, juveniles have a heightened vulnerability to negative influences and outside pressures, such as peer pressure.[81] And third, juveniles have a relatively unformed character.[82] Because of their reduced culpability, the Court concluded that the social purposes served by the death penalty—retribution and deterrence—"apply to [juveniles] with lesser force than to adults," and therefore do not provide adequate justification for imposing capital punishment on offenders under age eighteen.[83]

Lastly, the Court noted that its holding was supported by "the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty."[84] In particular, the majority pointed to the fact that only the United States and Somalia had not ratified Article 37 of the United Nations Convention on the Rights of the Child, which expressly prohibits capital punishment for offenders under age eighteen.[85] Thus, the Court's own independent evaluation confirmed society's view that the death penalty is an unconstitutionally disproportionate punishment when applied to offenders under age eighteen.[86] Accordingly, by a 5-4 majority, the Court overruled *Stanford* and held that the Eighth Amendment

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[79] *Id.* at 569.

[80] *Id.* (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).

[81] *Id.* (citing Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).

[82] *Id.* at 570.

[83] *Id.* at 571-72. Following the logic of *Thompson*, the Court determined that age eighteen was "the point where society draws the line for many purposes between childhood and adulthood," and therefore was the "age at which the line for death eligibility ought to rest." *Id.* at 574.

[84] *Id.* at 575.

[85] *Id.* at 576. In citing international opinion, however, the Court made it clear that the position of the international community was not controlling, rather it provided "respected and significant confirmation" for the Court's own conclusions and was instructive on the interpretation of the cruel and unusual punishment clause of the Eighth Amendment. *Id.* at 575, 578.

[86] *Id.* at 568-72.

"forbid[s] [the] imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed."[87]

D. Graham v. Florida

In the 2010 case of *Graham v. Florida*, the Supreme Court considered whether the Constitution permits sentencing juveniles convicted of non-homicide offenses to life without parole.[88] At age sixteen, Terrance Graham was convicted of armed burglary and attempted armed robbery.[89] Graham and three other youths attempted to rob a restaurant but fled after Graham's accomplice assaulted the restaurant manager.[90] Under a plea agreement, Graham received probation.[91] A month short of his eighteenth birthday, Graham violated the terms of his probation by committing additional crimes.[92] Against the recommendation of the prosecution, the trial judge sentenced Graham to life without parole for the initial armed burglary.[93] On appeal, Graham argued that his sentence was unconstitutionally disproportionate to his crimes and that categorically, the Eighth Amendment prohibits sentences of life without parole imposed on juveniles convicted of non-homicide offenses.[94]

The issue before the Court, then, fell between two categories of cases: cases involving as-applied challenges to sentence length (i.e., non-capital cases), and cases involving categorical challenges to the application of the Eighth Amendment to an entire class of offenders (i.e., capital cases).[95] Writing for the Court, Justice Kennedy found *Graham* to fall under the latter category because it "implicate[d] a particular type of sentence as it applies to an entire class of offenders who have committed a range of crimes,"

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[87] *Id.* at 578.

[88] 130 S. Ct. 2011 (2010).

[89] *Id.* at 2018.

[90] *Id.* The accomplice struck the restaurant manager in the head with a metal bar, requiring stitches for the manager's injury. *Id.*

[91] *Id.*

[92] *Id.* at 2019.

[93] *Id.* at 2019-20. The prosecution recommended a sentence of thirty years for the armed burglary and fifteen years for the attempted armed robbery. *Id.* at 2019.

[94] *Id.* at 2020.

[95] *Id.* at 2021.

and therefore, reasoned Kennedy, "a threshold comparison between the severity of the penalty and the gravity of the crime does not advance the analysis."[96]

The Court began its application of the evolving standards of decency analysis by examining the objective indicia of national consensus.[97] First, the Court looked to the legislative evidence.[98] Six states prohibited juvenile life-without-parole sentences for any offense,[99] seven prohibited juvenile life without parole sentences for non-homicide offenses,[100] and thirty-seven states including the District of Columbia permitted the punishment for non-homicide offenses.[101] While the prosecution argued that this metric proved a national consensus did not exist against the punishment in question, the Court disagreed.[102] It reasoned:

> There are measures of consensus other than legislation. Actual sentencing practices are an important part of the Court's inquiry into consensus. Here, an examination of actual sentencing practices in jurisdictions where the sentence in question is permitted by statute discloses a consensus against its use. Although these statutory schemes contain no explicit prohibition on sentences of life without parole for juvenile nonhomicide offenders, those sentences are most infrequent.[103]

Thus, the Court concluded that, because of the rarity of juveniles with convictions for non-homicide offenses receiving sentences of life without parole, "it is fair to say that a national consensus has developed against it."[104]

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[96] *Id.* at 2022-23.

[97] *Id.* at 2023.

[98] *Id.*

[99] These states are: Alaska, Colorado, Kansas, Kentucky, Montana, and Texas. *Id.* at 2035.

[100] These states include: Connecticut, Hawaii, Maine, Massachusetts, New Jersey, New Mexico, and Vermont. *Id.*

[101] *Id.* at 2023. The Court also noted that the federal government permitted the punishment in question. *Id.*

[102] *Id.*

[103] *Id.* (quoting Kennedy v. Louisiana, 554 U.S. 407, 433 (2008)).

[104] *Id.* at 2026 (quoting Atkins v. Virginia, 536 U.S. 304, 316 (2002)).

After finding a national consensus, the Court exercised its own independent judgment to determine if the punishment was unconstitutional.[105] First, the Court considered whether life without parole sentences are justified in light of the culpability of juveniles convicted of non-homicide crimes.[106] Citing *Roper*, the majority concluded that juveniles are categorically "less deserving of the most severe punishments" due to their reduced culpability."[107] The Court reasoned that, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," and therefore there was no need to reconsider the Court's observations in *Roper* concerning the unique nature of juveniles.[108] Next, the majority noted that categorically, non-homicide offenders are less deserving of the most severe modes of punishment than are murderers, to conclude, "when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability."[109] Lastly, turning to the nature of the punishment, the Court pointed out the harshness of a life without parole sentence on a juvenile due to the actual length of time spent imprisoned.[110]

The Court also considered the penological justifications of juvenile life without parole sentences—retribution, deterrence, incapacitation, and rehabilitation.[111] In the Court's eyes, retribution was not justified because invoking the "second most severe penalty on the less culpable juvenile nonhomicide offender" is not proportionate.[112] In light of juveniles' lack of maturity and diminished sense of responsibility, deterrence did not suffice to justify the sentence either.[113] Further, the Court found incapacitation unjustifiable due to the challenging and speculative

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[105] *Id.*
[106] *Id.*
[107] *Id.* (citing Roper v. Simmons, 543 U.S. 551, 569 (2005)).
[108] *Id.*
[109] *Id.* at 2027.
[110] *Id.* at 2027-28.
[111] *Id.* at 2028-29.
[112] *Id.* at 2028.
[113] *Id.* at 2028-29.

nature of making a judgment that a juvenile is incorrigible.[114] Lastly, the Court found the very nature of life without parole forswears the possibility of rehabilitation.[115] Accordingly, "[b]ecause '[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood,'" the Court held that "those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime."[116]

The Court's decision marked the first use of its "evolving standards of decency" analysis for a non-capital case.[117] Previously, this categorical approach was reserved for death penalty cases alone, based on the notion that "[d]eath is different."[118] Now, however, non-capital offenses are subject to categorical exemption under the Eighth Amendment. The remainder of this article argues, then, that under the evolving standards of decency analysis, sentencing juveniles to life without parole—for any crime—violates the Eighth Amendment because *juveniles are different*.

II. WHY JUVENILES ARE DIFFERENT

The Court's decision in *Graham* confirms the generally recognized notion that juveniles differ from adults in many distinguishable ways. In the legal context, the salient distinctions relate to a lack of maturity and decision-making ability formed during adolescence. Research suggests that these distinctions are explained by psychological and neurological differences between adults and adolescents.[119] These developmental differences, as outlined below, reduce the criminal culpability of juvenile offenders and make them, as a class, inherently "different" than adults.

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[114] *Id.* at 2029.

[115] *Id.* at 2029-30.

[116] *Id.* at 2030 (quoting Roper v. Simmons, 543 U.S. 551, 574 (2005)).

[117] *Id.* at 2022-23.

[118] *Id.* at 2046 (Thomas, J., dissenting). Justice Thomas further declared that "[t]oday's decision eviscerates that distinction. 'Death is different' no longer." *Id.*

[119] *See supra* note 11.

A. Psychological Differences between Adolescents and Adults

According to research in developmental psychology, adolescent involvement in criminal activity may be attributable to two forms of immaturity: cognitive and psychosocial.[120] Cognitive development refers to adolescents' ability to process information and use reasoning to make informed decisions, while psychosocial development concerns adolescents' judgment based on social and emotional factors that influence decision-making.[121] Both psychological capacities are required for sound judgment; however, they develop at different rates. Generally, cognitive control capacities increase linearly from childhood to adulthood, but begin to plateau at age sixteen.[122] Psychosocial maturity, however, continues to develop throughout adolescence.[123] Therefore, even in late adolescence, when teenagers' cognitive capacities may rival those of adults, psychosocial factors influence their decision-making differently than adults, thus affecting determinations of culpability.[124]

1. Diminished Capacity for Decision-Making

Among the psychosocial factors that influence decision-making and judgment, (1) peer influence, (2) risk assessment, (3) future orientation, and (4) impulse control, are particularly

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[120] *See* Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 156-57 (1997); Cauffman & Steinberg, *supra* note 11, at 742-43; Steinberg & Scott, *supra* note 11, at 1011-12.

[121] *See* Scott & Grisso, *supra* note 120, at 157.

[122] *See, e.g.*, Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333, 343-44 (2003) (sixteen and seventeen-year-olds performed significantly better than fourteen and fifteen-year-olds on a test of fundamental cognitive capacities, but performed equally with eighteen to twenty-four-year-olds); Daniel P. Keating, *Cognitive and Brain Development*, *in* HANDBOOK OF ADOLESCENT PSYCHOLOGY 45, 64 (Richard M. Lerner & Laurence D. Steinberg eds., 2004) (cognitive abilities increased rapidly until approaching the limits of growth at the fourteen to sixteen age range); *see also* Leah H. Somerville & B.J. Casey, *Developmental Neurobiology of Cognitive Control and Motivational Systems*, 20 CURRENT OPINION NEUROBIOLOGY 236, 237 (2010) (describing growth of cognitive capacity as a linear function).

[123] *See* Cauffman & Steinberg, *supra* note 11, at 743-44.

[124] *See* Steinberg & Scott, *supra* note 11, at 1012.

important to determinations of criminal culpability in adolescents.[125]

a. Peer Influence

First, research—and the Court—confirms the conventional wisdom that teens are generally more susceptible than adults to peer influence.[126] Peer influence on adolescents' judgment operates both directly and indirectly.[127] In some contexts, adolescents might make decisions because they are directly coerced into taking risks they normally would avoid.[128] More indirectly, adolescents might make decisions based on their desire for peer approval (or the converse fear of peer rejection), even without any direct coercion.[129] Thus, adolescents have a heightened vulnerability to coercive circumstances, making them more likely than adults to alter their behavior in response to peer influences.

b. Risk Assessment

Second, adolescents and adults differ in their evaluation of, and attitude toward, risk.[130] Adolescents are more likely than adults to participate in risky behavior because adolescents generally place a higher value on reward in relation to risk than adults.[131] Research suggests that this relatively weaker risk aversion is due to adolescents' overvaluation of the potential reward of risky behavior, not because adolescents are less able than adults to appreciate risk.[132] Therefore, adolescents are more

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[125] *Id.*

[126] Roper v. Simmons, 543 U.S. 551, 569 (2005) ("[J]uveniles are more vulnerable . . . to negative influences and outside pressures, including peer pressure."); *see* Steinberg & Scott, *supra* note 11, at 1012.

[127] *See* Steinberg & Scott, *supra* note 11, at 1012.

[128] ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 38-39 (2008).

[129] *Id.*

[130] *See* Steinberg & Scott, *supra* note 11, at 1012.

[131] *Id.*

[132] *See* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 469 (2009); Steinberg & Scott, *supra* note 11, at 1012.

likely than adults to engage in risky behavior, including criminal activity.

c. Future Orientation

Third, adolescents are less future-oriented than adults because of a difference in temporal perspective.[133] Adolescents focus more on short-term consequences than adults, which could lead to rash decisions and risky behavior.[134] This tendency may be attributable to adolescents' lack of cognitive capacity to envision the future in hypothetical terms, or their lack of life experiences.[135] In either case, adolescents' diminished ability to foresee and consider the future consequences of their behavior makes them different than adults.

d. Impulse Control

Fourth, adolescents are less able to control their impulses than adults.[136] Impulse control refers to the ability to allow goal-directed emotions and actions to supersede goal-inappropriate ones.[137] This ability is limited in adolescents. They lack the self-restraint necessary to achieve adult levels of reasoning and consistent exercise of good judgment.[138] In fact, research suggests that the ability to control impulses does not fully form until approximately age thirty.[139] This inability to control impulses makes adolescents more likely than adults to react on reflex rather than sound judgment.

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[133] *See* Steinberg & Scott, *supra* note 11, at 1012.

[134] *Id.*

[135] *Id.*

[136] *See* Steinberg, *supra* note 132, at 470; *see also* Steinberg & Scott, *supra* note 11, at 1012-13.

[137] Beatrice Luna, *The Maturation of Cognitive Control and the Adolescent Brain, in* FROM ATTENTION TO GOAL-DIRECTED BEHAVIOR 251 (Francisco Aboitiz & Diego Cosmelli eds., Springer Berlin Heidelberg 2009).

[138] *See id.*; Steinberg, *supra* note 132, at 470.

[139] Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence of a Dual Systems Model,* 44 DEVELOPMENTAL PSYCHOL. 1764, 1774-76 (2008); *see* Steinberg & Scott, *supra* note 11, at 1012-13; Steinberg, *supra* note 132, at 469.

2. Relatively Unformed Character

In addition to juveniles' diminished capacity for decision-making, they also differ from adults because they have relatively unformed characters.[140] The process of developing one's character to form a personal identity is not complete until at least early adulthood.[141] This process often involves experimentation with risky, dangerous, and even criminal activities.[142] Therefore, criminal acts committed during this transient period often reflect characteristics of adolescence rather than an indication of "bad" character.[143] These characteristics, however, usually subside once a personal identity is fully formed.[144] Given this, it seems presumptuous to conclude that a juvenile will persist in criminal behavior beyond adolescence.

B. Neurological Differences between Adolescents and Adults

Emerging neurological research establishes a biological basis for the observed psychological differences between adult and adolescent behavior. In regard to decision-making, the adolescent brain differs from the adult brain in two respects. First, adolescent brains are not as structurally developed as adult brains in areas responsible for behavior control.[145] Second, in making decisions, adolescents rely more heavily than adults on regions of

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[140] Steinberg & Scott, *supra* note 11, at 1014.

[141] *See* SCOTT & STEINBERG, *supra* note 128, at 52 (observing that the final stages of the process of forming a personal identity occur during the time spent in college); Steinberg & Scott, *supra* note 11, at 1014 (discussing the notion that the resolution of identity crisis does not occur until late adolescence or early adulthood (citing Alan S. Waterman, *Identity Development from Adolescence to Adulthood: An Extension of Theory and a Review of Research*, 18 DEVELOPMENTAL PSYCHOL. 341, 355 (1982))).

[142] *See* Steinberg & Scott, *supra* note 11, at 1014.

[143] *Id.* at 1015.

[144] *Id.*

[145] *See* B.J. Casey et al., *The Adolescent Brain*, 28 DEVELOPMENTAL REV. 62, 62-77 (2008); Laurence Steinberg et al., *Are Adolescents Less Mature than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip Flop,"* 64 AM. PSYCHOLOGIST 583, 592 (2009); *see also* Sarah Durston & B.J. Casey, *What Have We Learned About Cognitive Development from Neuroimaging?*, 44 NEUROPSYCHOLOGIA 2149, 2150 (2006).

the brain associated with impulsive, risky, and sensation-seeking behavior.[146] These complementary differences are outlined below.

1. Differences in Brain Structure

Since the late 1990s, magnetic resonance imaging ("MRI") has allowed scientists to better understand adolescent brain development. Using this technology, scientific research shows that the brain's prefrontal cortex is "one of the last brain regions to mature," continuing to develop beyond adolescence.[147] The prefrontal cortex is part of the cognitive control system, and is the area within the frontal lobes of the brain associated with "response inhibition, emotional regulation, planning and organization."[148] In short, it is the portion of the brain responsible for rational decision-making.

Adolescents' prefrontal cortex is structurally immature in two ways that affect brain functioning. First, the process of pruning is incomplete. "Pruning" refers to the process of trimming excess brain tissue, called gray matter, from the outer surfaces of the brain.[149] This process strengthens the brain's ability to process information, reason, and make informed decisions.[150] And second, the process of myelination is incomplete. Myelination is the process by which neural pathways used to carry information are

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[146] *See* Amy L. Krain et al., *An fMRI Examination of Developmental Differences in the Neural Correlates of Uncertainty and Decision-Making*, 47 J. CHILD PSYCHOL. & PSYCHIATRY 1023, 1023-24 (2006); *see also* Adriana Galvan et al., *Earlier Development of the Accumbens Relative to Orbitofrontal Cortex Might Underlie Risk-Taking Behavior in Adolescents*, 26 J. NEUROSCIENCE 6885 (2006); Todd A. Hare et al., *Biological Substrates of Emotional Reactivity and Regulation in Adolescence During an Emotional Go-Nogo Task*, 63 BIOLOGICAL PSYCHIATRY 927 (2008).

[147] B.J. Casey et al., *Structural and Functional Brain Development and its Relation to Cognitive Development*, 54 BIOLOGICAL PSYCHOL. 241, 243 (2000); *see* Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 NATURE NEUROSCIENCE 861 (1999); *see also* Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROC. NAT'L ACAD. SCI. 8174, 8177 (2004); Sowell et al., *supra* note 11, at 8826.

[148] Elizabeth R. Sowell et al., In Vivo *Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 NATURE NEUROSCIENCE 859, 860 (1999).

[149] *See* Casey et al., *supra* note 147, at 244-46.

[150] *Id.* at 241.

coated with a white insulating substance called myelin.[151] This insulating process improves the reliability and speed of communication between different sections of the brain, which affects the processing of emotions.[152]

Together, pruning and myelination increase the brain's efficiency, thus improving impulse control and risk evaluation.[153] These processes continue to alter the composition of the brain throughout adolescence in the prefrontal cortex—the area of the brain responsible for rational decision-making.[154] Thus, as compared to adult brains, adolescent brains are structurally immature in the regions of the brain crucial to determinations of culpability.

2. Differences in Brain Usage

The socioemotional system, which is in the limbic and paralimbic sections of the brain, drives risky and impulsive behavior.[155] Because of the structural immaturity of the cognitive control system, adolescent brains rely more heavily on the earlier-developing socioemotional system to make decisions. The main area affected by the system's early development is the amygdala. The amygdala is "a neural system that . . . detect[s] danger and produce[s] rapid protective responses without conscious participation."[156] In other words, it processes emotions. The prefrontal cortex regulates the activity in the amygdala,[157] and since adolescents' prefrontal cortex is structurally immature, as discussed above, it has less control over the amygdala, thus less

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[151] *See* ELKHONON GOLDBERG, THE EXECUTIVE BRAIN: FRONTAL LOBES AND THE CIVILIZED MIND 144 (2001).

[152] *Id.*

[153] *See* Sowell et al., *supra* note 11, at 8828.

[154] In fact, research indicates that myelination of the prefrontal cortex continues to occur into early adulthood. *See* Giedd et al., *supra* note 147, at 861-62.

[155] *See* Steinberg, *supra* note 132, at 466.

[156] Abigail A. Baird et al., *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 1 (1999).

[157] *See* Mario Beauregard et al., *Neural Correlates of Conscious Self-Regulation of Emotion*, 21 J. NEUROSCIENCE RC165 (2001).

influence over emotions.[158] As a result, adolescents rely more on the amygdala than the prefrontal cortex to make decisions.[159] Stated differently, adolescents rely more heavily on emotions than adults when making decisions.

III. RECONSIDERING JUVENILE LIFE WITHOUT PAROLE

With its decision in *Graham v. Florida*, the Supreme Court adopted a categorical rule prohibiting life without parole sentences for defendants who committed non-homicide crimes before the age of eighteen.[160] In doing so, the Court examined the evolving standards of decency in the United States and held that the sentence violated the cruel and unusual punishment clause of the Eighth Amendment.[161] This Part argues that the reasoning used to reach that conclusion should also prohibit sentencing juveniles to life without parole for any crime.

A. Society's View of Juvenile Life Without Parole

When the Supreme Court decided *Graham*, thirty-seven states permitted juvenile life without parole sentences for non-homicide offenses.[162] In *Graham*, the prosecution argued that since the overwhelming majority of jurisdictions allowed the sentencing practice, there was no national consensus against its use.[163] The Court, however, relied almost entirely on the rarity of the actual imposition of the sentence to find that a consensus had developed against it.[164] Given this, the Court could find a national consensus against *all* juvenile life without parole sentences by taking such sentencing practices into consideration.

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[158] *See* Neir Eshel et al., *Neural Substrates of Choice Selection in Adults and Adolescents: Development of the Ventrolateral Prefrontal and Anterior Cingulate Cortices*, 45 NEUROPSYCHOLOGIA 1270, 1270-71 (2007).

[159] *See* Mary Beckman, *Crime, Culpability, and the Adolescent Brain*, 305 SCI. 596, 599 (2004).

[160] 130 S. Ct. 2011 (2010).

[161] *Id.* at 2034.

[162] *See supra* note 101 and accompanying text.

[163] *See supra* note 102 and accompanying text.

[164] *See supra* notes 103-04 and accompanying text.

Currently, forty-four states permit sentencing juveniles to life without parole for homicide offenses.[165] While this is an overwhelming majority of states, an examination of the actual imposition of the sentence sheds more light on the national consensus. Research indicates that there were approximately 39,694 homicides committed in the United States from 1980 to 2004 by offenders who were below the age of eighteen at the time of the crime.[166] Of the 39,694 juveniles, approximately 1,642 received sentences of life without parole—roughly 4.1 percent.[167] While this percentage indicates that sentencing juveniles to life without parole for homicide offenses is not as rare as the sentencing practice in question was in *Graham*,[168] it still reflects the nation's relative distaste for its imposition, and provides the Court with an opportunity to recognize a national consensus against its use.

B. The Court's Independent Judgment

Even if the Supreme Court does not find enough evidence to recognize a national consensus against sentencing juveniles to life without parole for homicide offenses, it could still find the sentence unconstitutional based on its own independent judgment. To make that judgment, the Court weighs the culpability of the class of offenders, the penological justifications of the sentencing practice, and the customs of the international community.[169]

In *Graham*, the Court recognized that juveniles, as a class, are less culpable than adults because of the psychological and neurological differences that exist between them.[170] When

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[165] *See supra* note 101 and accompanying text.

[166] *See* C. Puzzanchera & W. Kang, *Easy Access to the FBI's Supplementary Homicide Reports: 1980-2006*, http://www.ojjdp.gov/ojstatbb/ezashr/ (last visited Nov. 1, 2011) (using data from the Federal Bureau of Investigation, Supplementary Homicide Reports 1980-2008 [machine-readable data files]).

[167] *See* AMNESTY INT'L & HUMAN RIGHTS WATCH, *supra* note 1, at 41-42 (compiling the number of juveniles entering sentences of life without parole from 1980 to 2004).

[168] *See* Graham v. Florida, 130 S. Ct. 2011, 2024-25 (2010) (comparing the number of juvenile offenders sentenced to life without parole for non-homicide offenses with statistics from 2007 of certain types of offenses).

[169] *See* Thompson v. Oklahoma, 487 U.S. 815, 833 (1988).

[170] *Graham*, 130 S. Ct. at 2026.

invoking its own independent judgment, the Court should view this diminished culpability no differently when applied to homicide than when applied to non-homicide offenses because adolescents are developmentally immature in both circumstances. A child who commits murder is just as psychologically and neurologically ill-equipped to make decisions as a child who commits armed robbery. Additionally, "[l]ife without parole is an especially harsh punishment for a juvenile."[171] It is essentially "a death sentence without an execution date."[172] The severity of this punishment—one that is like a death sentence in many ways—combined with the diminished culpability of juveniles, should influence the Court to prohibit juvenile life without parole.[173]

The reduced culpability of juveniles also affects the penological purposes served by juvenile life without parole: retribution, deterrence, incapacitation, and rehabilitation.[174] Sentencing juveniles to life without parole is not justified because it does not further these goals.

First, sentencing juveniles to life without parole serves no valid retribution goals. Juveniles are less culpable and therefore less blameworthy than adults.[175] While they can cause harm just as adults can, they cannot bear the same responsibility. Also, society's entitlement to inflict harm on juvenile offenders in return for the harm inflicted on society can be met by sentencing juveniles to life imprisonment with the possibility—not the guarantee—of parole. Life imprisonment expresses society's condemnation of the crime and attempts to right the wrong to the victim just as life without parole does. The two only differ in that life without parole forecloses the opportunity to re-enter society. Thus, retribution fails as a justification for juvenile life without parole since a lesser punishment adequately serves its goal.

Second, juvenile life without parole does not further the penological goal of deterrence. By definition, deterrence relies on

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[171] *Id.* at 2028.

[172] William W. Berry III, *More Different than Life, Less Different than Death*, 71 OHIO ST. L.J. 1109, 1112 (2010).

[173] *Id.*

[174] *See supra* note 111 and accompanying text.

[175] *See supra* Part III.

the assumption that the offender is a rational calculator of the risk in relation to the reward of crime. As discussed above, adolescents inherently place more value than adults on reward in relation to risk.[176] This insufficiency makes suspect the deterrent value of life without parole as a punishment for juvenile offenders. Further, the strong possibility that only a marginal deterrent value is gained from sentencing juveniles to life without parole rather than life imprisonment supports the conclusion that deterrence fails here as a valid penological purpose.[177] In fact, the argument can be made that allowing juveniles the possibility of parole better serves the goal of specific deterrence because it allows them the possibility to be rehabilitated during imprisonment, which could deter them from a crime-ridden future.

Third, incapacitation fails as a legitimate penological goal of juvenile life without parole because it requires a judgment at the outset that an offender "never will be fit to reenter society" at an age where the defendant is not yet fully developed.[178] This one-time assessment is, at best, speculative. Because of the "transient immaturity" of juveniles,[179] there is a possibility that a juvenile offender may, at some point, no longer be dangerous to society. Thus, sentencing juveniles to life without parole is not justified by the goal of incapacitation.

Fourth, the goal of rehabilitation does not justify sentencing juveniles to life without parole. The sentence of life without parole, by definition, forecloses any possibility of rehabilitation. A sentence of life imprisonment, however, allows the possibility of rehabilitation while still serving the goal of incapacitation since the offender is not guaranteed eventual freedom.

The Court should also consider the global consensus against juvenile life without parole when making its independent judgment. The vast majority of the developed countries forbid imposing sentences of life without parole on juvenile offenders for

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176 *See supra* Part III.A.1.b.

177 *See* Berry, *supra* note 172, at 1134-35.

178 Graham v. Florida, 130 S. Ct. 2011, 2030 (2010).

179 *Id.* at 2029 (quoting Roper v. Simmons, 543 U.S. 551, 572 (2005)).

any crime.[180] While this fact is not controlling,[181] it should confirm the Court's judgment that juvenile life without parole is a cruel and unusual punishment.

IV. REDEFINING "JUVENILE"

As discussed above, adolescents differ from adults in many significant psychological and neurological ways.[182] They are more susceptible to peer influence, they place more value on reward in relation to risk, they are less future-oriented, they are less able to control their impulses, and they have relatively unformed characters.[183] Further, adolescents have structurally immature brains and rely more heavily than adults on regions of the brain associated with risky behavior.[184] These developmental differences reduce the criminal culpability of offenders who committed their crimes during adolescence—a developmental phase that varies in length among individuals. The Court, however, in the Eighth Amendment context, categorically limits this reduced culpability to offenders under age eighteen, which fails to mirror the transition to adulthood of many individuals. This arbitrary "age of majority" is too simplistic to determine if an individual is an adolescent or an adult for the purpose of receiving a sentence of death or life without parole. The use of a bright-line rule to define the end of adolescence distorts developmental reality by failing to consider variations in maturity, and is thus inadequate to assess culpability. After all, as the Supreme Court recognized, "youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage."[185]

This article proposes, then, a framework that more adequately mirrors the transitory nature of adolescence. Offenders who commit crimes before age eighteen are viewed as categorically

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[180] *Id.* at 2033 ("[O]nly 11 nations authorize life without parole for juvenile offenders under any circumstances . . . .").

[181] *See id.* at 2034.

[182] *See supra* Part III.

[183] *See supra* Part III.A.

[184] *See supra* Part III.B.

[185] Eddings v. Oklahoma, 455 U.S. 104, 115 (1982).

less culpable than offenders over age eighteen.[186] This bright-line rule recognizes the inherent differences in development between adolescents and adults, but fails to account for those who psychologically or neurologically develop beyond age eighteen. A rule extending the arbitrary end date of adolescence would capture these outliers, as well as more accurately determine true culpability. Accordingly, this article advances a juvenile framework that supports a rebuttable presumption that an offender who commits a crime after their eighteenth birthday, but before their twenty-first, is less culpable than offenders over age twenty-one. This framework would allow the prosecution an opportunity to prove that an individual is developmentally mature, while safeguarding offenders who have not fully completed adolescence.

CONCLUSION

This article advocates for the abolishment of juvenile life without parole. After outlining the juvenile jurisprudence in the context of the Eighth Amendment, the article describes what makes juveniles inherently different than adults. Next, the article discusses how the Court could find juvenile life without parole cruel and unusual under the evolving standards of decency analysis. Lastly, this article proposes a basic framework for broadening the current meaning of "juvenile" to more adequately mirror the transitory nature of adolescence.

Michael Barbee

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[186] *See supra* Part I.D.