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October 29, 2012

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OCT 29 2012

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Andrew Lee Harrison, Appellate case No. 2010-178686

Dear Ms. Kitchings:

Please find enclosed two cases decided by the United States Supreme Court: Graham v. Florida, 130 S.Ct. 2111 (2010) and Miller v. Alabama, 132 S.Ct. 2455 (2012). Pursuant to Rule 208(b)(7), SCACR, I am advising this Court that these cases represent pertinent and significant authority for the issue presented in the brief filed by undersigned counsel.

Should you have any questions, please contact me.

Sincerely,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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OCT 30 2012

S.C. Supreme Court

SBH/eab

Enclosures

cc: William M. Blitch, Jr., Esquire
Janna Nelson, Esquire (via email only)
Andrew Lee Harrison

130 S.Ct. 2011, 176 L.Ed.2d 825, 78 USLW 4387, 10 Cal. Daily Op. Serv. 5996, 2010 Daily Journal D.A.R. 7115,
22 Fla. L. Weekly Fed. S 328
(Cite as: 130 S.Ct. 2011)



Supreme Court of the United States
Terrance Jamar **GRAHAM**, Petitioner,
v.
FLORIDA.

No. 08-7412.
Argued Nov. 9, 2009.
Decided May 17, 2010.
As Modified July 6, 2010.

Background: The State of Florida filed a probation violation report against defendant, who was on probation for crimes he had committed while a **juvenile**. The Circuit Court, Duval County, Lance M. Day, J., determined that a probation violation occurred and sentenced defendant to life imprisonment without the possibility of parole. Defendant appealed. The District Court of Appeal of Florida, First District, Wolf, J., 982 So.2d 43, affirmed and the Supreme Court of Florida, 2008 WL 3896182, denied review. Certiorari was granted.

Holdings: The Supreme Court, Justice Kennedy, held that:

- (1) Eighth Amendment prohibits imposition of life without parole sentence on **juvenile** offender who did not commit homicide, and
- (2) State must give **juvenile** nonhomicide offender sentenced to life without parole meaningful opportunity to obtain release.

Reversed and remanded.

Justice Stevens filed a concurring opinion in which Justice Ginsburg and Justice Sotomayor joined.

Chief Justice Roberts filed an opinion concurring in the judgment.

Justice Thomas filed a dissenting opinion in which Justice Scalia joined, and which Justice Alito joined in part.

Justice Alito filed a dissenting opinion.

West Headnotes

[1] Sentencing and Punishment 350H 1435

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(A) In General
350Hk1434 Scope of Prohibition

350Hk1435 k. In general. Most Cited Cases
To determine whether a punishment is cruel and unusual, in violation of the Eighth Amendment, courts must look beyond historical conceptions to the evolving standards of decency that mark the progress of a maturing society. U.S.C.A. Const.Amend. 8.

[2] Sentencing and Punishment 350H 1439

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(A) In General
350Hk1434 Scope of Prohibition

350Hk1439 k. Cruelty and unnecessary infliction of pain. Most Cited Cases

The Eighth Amendment's standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment; the standard itself remains the same, but its applicability must change as the basic mores of society change. U.S.C.A. Const.Amend. 8.

[3] Sentencing and Punishment 350H 1520

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(F) Methods of Punishment
350Hk1520 k. Barbarous and inhumane punishment. Most Cited Cases

The Cruel and Unusual Punishments Clause prohibits the imposition of inherently barbaric punishments under all circumstances. U.S.C.A. Const.Amend. 8.

[4] Sentencing and Punishment 350H 1522

130 S.Ct. 2011, 176 L.Ed.2d 825, 78 USLW 4387, 10 Cal. Daily Op. Serv. 5996, 2010 Daily Journal D.A.R. 7115,
22 Fla. L. Weekly Fed. S 328
(Cite as: 130 S.Ct. 2011)

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(F) Methods of Punishment

350Hk1522 k. Torture. Most Cited Cases

Punishments of torture are forbidden under the Cruel and Unusual Punishments Clause. U.S.C.A. Const.Amend. 8.

[5] Sentencing and Punishment 350H ⚔️ 1435

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(A) In General

350Hk1434 Scope of Prohibition

350Hk1435 k. In general. Most Cited Cases

Under the Eighth Amendment, the State must respect the human attributes even of those who have committed serious crimes. U.S.C.A. Const.Amend. 8.

[6] Sentencing and Punishment 350H ⚔️ 1482

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(E) Excessiveness and Proportionality of Sentence

350Hk1482 k. Proportionality. Most Cited

The concept of proportionality is central to the Eighth Amendment. U.S.C.A. Const.Amend. 8.

[7] Sentencing and Punishment 350H ⚔️ 1482

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(E) Excessiveness and Proportionality of Sentence

350Hk1482 k. Proportionality. Most Cited

Embodied in the Constitution's ban on cruel and unusual punishments is the precept of justice that punishment for crime should be graduated and proportioned to the offense. U.S.C.A. Const.Amend. 8.

[8] Sentencing and Punishment 350H ⚔️ 1480

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(E) Excessiveness and Proportionality of Sentence

350Hk1480 k. In general. Most Cited Cases

On an Eighth Amendment challenge to the length of a term-of-years sentence, the Court considers all of the circumstances of the case to determine whether the sentence is unconstitutionally excessive. U.S.C.A. Const.Amend. 8.

[9] Sentencing and Punishment 350H ⚔️ 1481

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(E) Excessiveness and Proportionality of Sentence

350Hk1481 k. Length of sentence. Most Cited Cases

Under categorical approach for defining Eighth Amendment standards, the Supreme Court first considers objective indicia of society's standards, as expressed in legislative enactments and state practice to determine whether there is a national consensus against the sentencing practice at issue, and then, guided by the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose, the Court must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution. U.S.C.A. Const.Amend. 8.

[10] Sentencing and Punishment 350H ⚔️ 1607

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(L) Juvenile Justice

350Hk1607 k. Juvenile offenders. Most Cited Cases

Eighth Amendment categorically prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide; although 37 States and District of Columbia permitted sentences of life without parole for a juvenile nonhomicide offender in some circumstances, and federal law allowed for possibility of life without parole for offenders as young as

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13, national consensus existed against imposing such sentences, given that only 12 jurisdictions nationwide imposed life without parole sentences on **juvenile** non-homicide offenders, and most of those imposed the sentence quite rarely, life without parole was the second most severe penalty permitted, **juvenile** nonhomicide offenders had limited culpability compared to adult offenders, and no legitimate penological goal, including retribution, deterrence, incapacitation, and rehabilitation, provided an adequate justification for such a sentence. U.S.C.A. Const.Amend. 8.

[11] Sentencing and Punishment 350H ⚡ 1435

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(A) In General
350Hk1434 Scope of Prohibition

350Hk1435 k. In general. Most Cited Cases

The clearest and most reliable objective evidence of contemporary values, for purposes of Eighth Amendment challenge, is the legislation enacted by the country's legislatures, but there are measures of consensus other than legislation, and actual sentencing practices are an important part of the Court's inquiry into consensus. U.S.C.A. Const.Amend. 8.

[12] Sentencing and Punishment 350H ⚡ 1435

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(A) In General
350Hk1434 Scope of Prohibition

350Hk1435 k. In general. Most Cited Cases

Community consensus, while entitled to great weight, is not itself determinative of whether a punishment is cruel and unusual, in violation of the Eighth Amendment. U.S.C.A. Const.Amend. 8.

[13] Sentencing and Punishment 350H ⚡ 1480

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of

Sentence

350Hk1480 k. In general. Most Cited Cases

The task of interpreting the Eighth Amendment remains the Court's responsibility, and the judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question, as well as consideration of whether the challenged sentencing practice serves legitimate penological goals. U.S.C.A. Const.Amend. 8.

[14] Infants 211 ⚡ 2662

211 Infants

211XV **Juvenile Justice**

211XV(G) Disposition

211XV(G)I In General

211k2662 k. Factors and considerations in general. Most Cited Cases
(Formerly 211k223.1)

Because **juveniles** have lessened culpability they are less deserving of the most severe punishments.

[15] Infants 211 ⚡ 2661

211 Infants

211XV **Juvenile Justice**

211XV(G) Disposition

211XV(G)I In General

211k2661 k. In general. Most Cited Cases
(Formerly 211k223.1)

For purposes of determining punishment, a **juvenile** is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as that of an adult.

[16] Sentencing and Punishment 350H ⚡ 1480

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(E) Excessiveness and Proportionality of Sentence

350Hk1480 k. In general. Most Cited Cases

The penological justifications for a sentencing practice are relevant to the Court's analysis on an Eighth Amendment challenge to the practice. U.S.C.A.

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Const.Amend. 8.

[17] Sentencing and Punishment 350H 🔑40

350H Sentencing and Punishment

350HI Punishment in General

350HI(C) Factors or Purposes in General

350Hk40 k. In general. Most Cited Cases

Criminal punishment can have different goals, and choosing among them is within a legislature's discretion.

[18] Sentencing and Punishment 350H 🔑1482

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(E) Excessiveness and Proportionality of Sentence

350Hk1482 k. Proportionality. Most Cited

A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense, in violation of the Eighth Amendment. U.S.C.A. Const.Amend. 8.

[19] Sentencing and Punishment 350H 🔑44

350H Sentencing and Punishment

350HI Punishment in General

350HI(C) Factors or Purposes in General

350Hk44 k. Retribution. Most Cited Cases

Retribution is a legitimate reason to punish, but the heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.

[20] Sentencing and Punishment 350H 🔑1482

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(E) Excessiveness and Proportionality of Sentence

350Hk1482 k. Proportionality. Most Cited

Even if a punishment has some connection to a valid penological goal, to satisfy the Eighth Amendment it must be shown that the punishment is not grossly disproportionate in light of the justification offered.

U.S.C.A. Const.Amend. 8.

[21] Sentencing and Punishment 350H 🔑45

350H Sentencing and Punishment

350HI Punishment in General

350HI(C) Factors or Purposes in General

350Hk45 k. Rehabilitation and reform. Most Cited Cases

It is for legislatures to determine what rehabilitative techniques are appropriate and effective for offenders.

[22] Sentencing and Punishment 350H 🔑1607

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(L) Juvenile Justice

350Hk1607 k. Juvenile offenders. Most Cited Cases

While the Eighth Amendment does not require a State that has imposed a life without parole sentence on a juvenile nonhomicide offender to release that offender during his natural life, it does require the State to give the offender some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. U.S.C.A. Const.Amend. 8.

[23] Sentencing and Punishment 350H 🔑1480

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(E) Excessiveness and Proportionality of Sentence

350Hk1480 k. In general. Most Cited Cases

Sentencing and Punishment 350H 🔑1605

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(L) Juvenile Justice

350Hk1605 k. In general. Most Cited Cases

An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed. U.S.C.A. Const.Amend. 8.

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[24] Sentencing and Punishment 350H 1607

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(L) Juvenile Justice

350Hk1607 k. Juvenile offenders. Most Cited Cases

State criminal procedure laws requiring consideration of offender's age in connection with prosecutorial charging decisions did not mitigate need for categorical rule prohibiting the imposition of a life without parole sentence on a **juvenile** offender who did not commit homicide, as sentencing of a **juvenile** nonhomicide offender based on a subjective judgment that the defendant's crimes demonstrate an irretrievably depraved character would be inconsistent with the Eighth Amendment. U.S.C.A. Const.Amend. 8.

[25] Sentencing and Punishment 350H 1435

350H Sentencing and Punishment

350HVII Cruel and Unusual Punishment in General

350HVII(A) In General

350Hk1434 Scope of Prohibition

350Hk1435 k. In general. Most Cited Cases

The judgments of other nations and the international community are not dispositive as to the meaning of the Eighth Amendment, but the climate of international opinion concerning the acceptability of a particular punishment is also not irrelevant. U.S.C.A. Const.Amend. 8.

West Codenotes

Unconstitutional as Applied West's F.S.A. §§ 810.02, 921.002(1)(e), 985.557

Validity Called into Doubt Ala.Code 1975, §§ 12-15-203, 13A-3-3, 13A-5-9(c), 13A-6-61, 13A-7-5 A.R.S. §§ 13-501, 13-1423 West's A.C.A. §§ 9-27-318(b), 5-4-501(c) West's Ann.Cal.Penal Code §§ 667.7(a)(2), 1170.1710 Del.C. § 1010; 11 Del.C. § 773(c) D.C. Official Code §§ 16-2307, 22-3020 West's Ga.Code Ann. §§ 15-11-30.2, *2014 16-6-1(b) West's Idaho Code Annotated §§ 18-6503, 19-2513, 20-509 S.H.A. 705 ILCS 405/5-805, 405/5-130; S.H.A. 720 ILCS 5/12-13(b)(3); S.H.A. 730 ILCS 5/3-3-3(d) West's

A.I.C. 31-30-3-6(1), 35-50-2-8.5(a) Iowa Code §§ 232.45(6), 709.2, 902.1 LSA-Ch.C. art. 305, 857(A),(B); LSA-R.S. 14:44 West's Ann.Md.Code, Courts and Judicial Proceedings, §§ 3-8A-03(d)(1), 3-8A-06(a)(2); West's Ann.Md.Code, Criminal Law, §§ 3-303(d)(2),(3) M.C.L.A. §§ 712A.4, 750.520b(2)(c), 769.1 Minn.Stat. §§ 260B.125(1), 609.3455(2) West's A.M.C. §§ 43-21-157, 97-3-53, 99-19-81, 99-19-83 V.A.M.S. §§ 211.071, 558.018 West's Neb.Rev.St. §§ 28-105, 28-416(8)(a), 29-2204(1),(3), 43-247, 43-276 West's NRSA 62B.330, 200.366 N.H. RSA 169-B:24, 628:1, 632-A:2, 651:6 McKinney's Penal Law §§ 30.00, 60.06, 490.55 West's N.C.G.S.A. §§ 7B-2200, 15A-1340.16B(a) NDCC 12.1-04-01, 12.1-20-03, 12.1-32-01 Ohio R.C. §§ 2152.10, 2907.02, 2971.03(A)(2) 10A Okl.St. Ann. §§ 2-5-204, 2-5-205, 2-5-206; 21 Okl.St. Ann. § 1115 West's Or.Rev. Stat. Ann. §§ 137.707, 137.719(1) 42 Pa.C.S.A § 6355(a); 18 Pa.C.S.A § 3121(e)(2); 61 Pa.C.S.A § 6137(a) R.I. Gen.Laws 1956, §§ 14-1-7, 14-1-7.1, 11-47-3.2 S.C. Code 1976, §§ 63-19-1210, 16-11-311(B) SDCL §§ 26-11-3.1, 26-11-4, 22-3-1, 22-6-1(2),(3), 24-15-4, 22-19-1, 22-22-1 West's T.C.A. §§ 37-1-134, 40-35-120(g) West's U.C.A. §§ 78A-6-602, 78A-6-703, 76-5-302 West's V.C.A. §§ 16.1-269.1, 18.2-61, 53.1-151(B1) West's RCWA 13.40.110, 9A.04.050, 9.94A.030(34), 9.94A.570 West's Ann.W.Va.Code, 49-5-10, 61-2-14a(a) W.S.A. 938.18, 938.183, 939.62(2m)(c) Wyo. Stat. Ann. §§ 6-2-306(d),(e), 14-6-203 18 U.S.C.A. §§ 2241, 5032

Syllabus ^{FN*}

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

Petitioner Graham was 16 when he committed armed burglary and another crime. Under a plea agreement, the Florida trial court sentenced Graham to probation and withheld adjudication of guilt. Subsequently, the trial court found that Graham had violated the terms of his probation by committing additional crimes. The

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trial court adjudicated Graham guilty of the earlier charges, revoked his probation, and sentenced him to life in prison for the burglary. Because Florida has abolished*2015 its parole system, the life sentence left Graham no possibility of release except executive clemency. He challenged his sentence under the Eighth Amendment's Cruel and Unusual Punishments Clause, but the State First District Court of Appeal affirmed.

Held: The Clause does not permit a **juvenile** offender to be sentenced to life in prison without parole for a nonhomicide crime. Pp. 2021 – 2034.

(a) Embodied in the cruel and unusual punishments ban is the “precept ... that punishment for crime should be graduated and proportioned to [the] offense.” *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793. The Court's cases implementing the proportionality standard fall within two general classifications. In cases of the first type, the Court has considered all the circumstances to determine whether the length of a term-of-years sentence is unconstitutionally excessive for a particular defendant's crime. The second classification comprises cases in which the Court has applied certain categorical rules against the death penalty. In a subset of such cases considering the nature of the offense, the Court has concluded that capital punishment is impermissible for nonhomicide crimes against individuals. *E.g.*, *Kennedy v. Louisiana*, 554 U.S. 407, —, 128 S.Ct. 2641, —, 171 L.Ed.2d 525. In a second subset, cases turning on the offender's characteristics, the Court has prohibited death for defendants who committed their crimes before age 18, *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1, or whose intellectual functioning is in a low range, *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335. In cases involving categorical rules, the Court first considers “objective indicia of society's standards, as expressed in legislative enactments and state practice” to determine whether there is a national consensus against the sentencing practice at issue. *Roper, supra*, at 563, 125 S.Ct. 1183. Next, looking to “the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and pur-

pose,” *Kennedy, supra*, at —, 128 S.Ct. at 2642, the Court determines in the exercise of its own independent judgment whether the punishment in question violates the Constitution, *Roper, supra*, at 564, 125 S.Ct. 1183. Because this case implicates a particular type of sentence as it applies to an entire class of offenders who have committed a range of crimes, the appropriate analysis is the categorical approach used in *Atkins*, *Roper*, and *Kennedy*. Pp. 2021 – 2023.

(b) Application of the foregoing approach convinces the Court that the sentencing practice at issue is unconstitutional. Pp. 2023 – 2034.

(1) Six jurisdictions do not allow life without parole sentences for any **juvenile** offenders. Seven jurisdictions permit life without parole for **juvenile** offenders, but only for homicide crimes. Thirty-seven States, the District of Columbia, and the Federal Government permit sentences of life without parole for a **juvenile** nonhomicide offender in some circumstances. The State relies on these data to argue that no national consensus against the sentencing practice in question exists. An examination of actual sentencing practices in those jurisdictions that permit life without parole for **juvenile** nonhomicide offenders, however, discloses a consensus against the sentence. Nationwide, there are only 123 **juvenile** offenders serving life without parole sentences for nonhomicide crimes. Because 77 of those offenders are serving sentences imposed in Florida and the other 46 are imprisoned in just 10 States, it appears that only 11 jurisdictions nationwide in fact impose *2016 life without parole sentences on **juvenile** nonhomicide offenders, while 26 States, the District of Columbia, and the Federal Government do not impose them despite apparent statutory authorization. Given that the statistics reflect nearly all **juvenile** nonhomicide offenders who have received a life without parole sentence stretching back many years, moreover, it is clear how rare these sentences are, even within the States that do sometimes impose them. While more common in terms of absolute numbers than the sentencing practices in, *e.g.*, *Atkins* and *Enmund v. Florida*, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140, the type of sentence at issue is actually as rare as those other sentencing practices when

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viewed in proportion to the opportunities for its imposition. The fact that many jurisdictions do not expressly prohibit the sentencing practice at issue is not dispositive because it does not necessarily follow that the legislatures in those jurisdictions have deliberately concluded that such sentences would be appropriate. See *Thompson v. Oklahoma*, 487 U.S. 815, 826, n. 24, 850, 108 S.Ct. 2687, 101 L.Ed.2d 702. Pp. 2023 – 2026.

(2) The inadequacy of penological theory to justify life without parole sentences for **juvenile** nonhomicide offenders, the limited culpability of such offenders, and the severity of these sentences all lead the Court to conclude that the sentencing practice at issue is cruel and unusual. No recent data provide reason to reconsider *Roper*'s holding that because **juveniles** have lessened culpability they are less deserving of the most serious forms of punishment. 543 U.S., at 551, 125 S.Ct. 1183. Moreover, defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of such punishments than are murderers. *E.g.*, *Kennedy*, *supra*. Serious nonhomicide crimes "may be devastating in their harm ... but 'in terms of moral depravity and of the injury to the person and to the public,' ... they cannot be compared to murder in their 'severity and irrevocability.'" *Id.*, at —, 128 S.Ct. at 2660. Thus, when compared to an adult murderer, a **juvenile** offender who did not kill or intend to kill has a twice diminished moral culpability. Age and the nature of the crime each bear on the analysis. As for the punishment, life without parole is "the second most severe penalty permitted by law," *Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 S.Ct. 2680, 115 L.Ed.2d 836, and is especially harsh for a **juvenile** offender, who will on average serve more years and a greater percentage of his life in prison than an adult offender, see, *e.g.*, *Roper*, *supra*, at 572, 125 S.Ct. 1183. And none of the legitimate goals of penal sanctions—retribution, deterrence, incapacitation, and rehabilitation, see *Ewing v. California*, 538 U.S. 11, 25, 123 S.Ct. 1179, 155 L.Ed.2d 108 —is adequate to justify life without parole for **juvenile** nonhomicide offenders, see, *e.g.*, *Roper*, 543 U.S., at 571, 573, 125 S.Ct. 1183. Because age "18 is the point where society draws the line for many purposes between childhood and adulthood," it is the age below which a de-

fendant may not be sentenced to life without parole for a nonhomicide crime. *Id.*, at 574, 125 S.Ct. 1183. A State is not required to guarantee eventual freedom to such an offender, but must impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. Pp. 2026 – 2030.

(3) A categorical rule is necessary, given the inadequacy of two alternative approaches to address the relevant constitutional concerns. First, although Florida and other States have made substantial efforts to enact comprehensive rules governing*2017 the treatment of youthful offenders, such laws allow the imposition of the type of sentence at issue based only on a discretionary, subjective judgment by a judge or jury that the **juvenile** offender is irredeemably depraved, and are therefore insufficient to prevent the possibility that the offender will receive such a sentence despite a lack of moral culpability. Second, a case-by-case approach requiring that the particular offender's age be weighed against the seriousness of the crime as part of a gross disproportionality inquiry would not allow courts to distinguish with sufficient accuracy the few **juvenile** offenders having sufficient psychological maturity and depravity to merit a life without parole sentence from the many that have the capacity for change. Cf. *Roper*, *supra*, at 572, 125 S.Ct. 1183. Nor does such an approach take account of special difficulties encountered by counsel in **juvenile** representation, given **juveniles'** impulsiveness, difficulty thinking in terms of long-term benefits, and reluctance to trust adults. A categorical rule avoids the risk that, as a result of these difficulties, a court or jury will erroneously conclude that a particular **juvenile** is sufficiently culpable to deserve life without parole for a nonhomicide. It also gives the **juvenile** offender a chance to demonstrate maturity and reform. Pp. 2030 – 2033.

(4) Additional support for the Court's conclusion lies in the fact that the sentencing practice at issue has been rejected the world over: The United States is the only Nation that imposes this type of sentence. While the judgments of other nations and the international

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community are not dispositive as to the meaning of the Eighth Amendment, the Court has looked abroad to support its independent conclusion that a particular punishment is cruel and unusual. See, e.g., *Roper, supra*, at 572, 125 S.Ct. 1183. Pp. 2033 – 2034.

982 So.2d 43, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. STEVENS, J., filed a concurring opinion, in which GINSBURG and SOTOMAYOR, JJ., joined. ROBERTS, C.J., filed an opinion concurring in the judgment. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, and in which ALITO, J., joined as to Parts I and III. ALITO, J., filed a dissenting opinion.

Bryan S. Gowdy, appointed by this Court, Jacksonville, FL, for petitioner.

Scott D. Makar, Solicitor General, Tallahassee, FL, for respondent.

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Bill McCollum, Attorney General of Florida, Scott D. Makar, Solicitor General, Counsel of Record, Louis F. Hubener, Chief Deputy Solicitor General, Timothy D. Osterhaus, Craig D. Feiser, Courtney Brewer, Ronald A. Lathan, Deputy Solicitors General, Tallahassee, FL, for respondent.

For U.S. Supreme Court briefs, see:2009 WL 2159655 (Pet.Brief)2009 WL 2954163 (Resp.Brief)2009 WL 3340114 (Reply.Brief)

Justice KENNEDY delivered the opinion of the Court.

The issue before the Court is whether the Constitution permits a **juvenile** offender to be sentenced to life in prison without ***2018** parole for a nonhomicide crime. The sentence was imposed by the State of Florida. Petitioner challenges the sentence under the Eighth

Amendment's Cruel and Unusual Punishments Clause, made applicable to the States by the Due Process Clause of the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962).

I

Petitioner is Terrance Jamar Graham. He was born on January 6, 1987. Graham's parents were addicted to crack cocaine, and their drug use persisted in his early years. Graham was diagnosed with attention deficit hyperactivity disorder in elementary school. He began drinking alcohol and using tobacco at age 9 and smoked marijuana at age 13.

In July 2003, when Graham was age 16, he and three other school-age youths attempted to rob a barbeque restaurant in Jacksonville, Florida. One youth, who worked at the restaurant, left the back door unlocked just before closing time. Graham and another youth, wearing masks, entered through the unlocked door. Graham's masked accomplice twice struck the restaurant manager in the back of the head with a metal bar. When the manager started yelling at the assailant and Graham, the two youths ran out and escaped in a car driven by the third accomplice. The restaurant manager required stitches for his head injury. No money was taken.

Graham was arrested for the robbery attempt. Under Florida law, it is within a prosecutor's discretion whether to charge 16- and 17-year-olds as adults or **juveniles** for most felony crimes. Fla. Stat. § 985.227 (1)(b) (2003) (subsequently renumbered at § 985.557(1)(b) (2007)). Graham's prosecutor elected to charge Graham as an adult. The charges against Graham were armed burglary with assault or battery, a first-degree felony carrying a maximum penalty of life imprisonment without the possibility of parole, §§ 810.02(1)(b), (2)(a) (2003); and attempted armed-robbery, a second-degree felony carrying a maximum penalty of 15 years' imprisonment, §§ 812.13(2)(b), 777.04(1), (4)(a), 775.082(3)(c).

On December 18, 2003, Graham pleaded guilty to both charges under a plea agreement. Graham wrote a letter to the trial court. After reciting "this is my first and last time getting in trouble," he continued "I've de-

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cided to turn my life around.” App. 379–380. Graham said “I made a promise to God and myself that if I get a second chance, I’m going to do whatever it takes to get to the [National Football League].” *Id.*, at 380.

The trial court accepted the plea agreement. The court withheld adjudication of guilt as to both charges and sentenced Graham to concurrent 3–year terms of probation. Graham was required to spend the first 12 months of his probation in the county jail, but he received credit for the time he had served awaiting trial, and was released on June 25, 2004.

Less than 6 months later, on the night of December 2, 2004, Graham again was arrested. The State’s case was as follows: Earlier that evening, Graham participated in a home invasion robbery. His two accomplices were Meigo Bailey and Kirkland Lawrence, both 20–year–old men. According to the State, at 7 p.m. that night, Graham, Bailey, and Lawrence knocked on the door of the home where Carlos Rodriguez lived. Graham, followed by Bailey and Lawrence, forcibly entered the home and held a pistol to Rodriguez’s chest. For the next 30 minutes, the three held Rodriguez and another man, a friend of Rodriguez, at gunpoint while they ransacked the home searching for money. Before leaving, Graham and his accomplices*2019 barricaded Rodriguez and his friend inside a closet.

The State further alleged that Graham, Bailey, and Lawrence, later the same evening, attempted a second robbery, during which Bailey was shot. Graham, who had borrowed his father’s car, drove Bailey and Lawrence to the hospital and left them there. As Graham drove away, a police sergeant signaled him to stop. Graham continued at a high speed but crashed into a telephone pole. He tried to flee on foot but was apprehended. Three handguns were found in his car.

When detectives interviewed Graham, he denied involvement in the crimes. He said he encountered Bailey and Lawrence only after Bailey had been shot. One of the detectives told Graham that the victims of the home invasion had identified him. He asked Graham, “Aside from the two robberies tonight how many more were you involved in?” Graham responded, “Two to three be-

fore tonight.” *Id.*, at 160. The night that Graham allegedly committed the robbery, he was 34 days short of his 18th birthday.

On December 13, 2004, Graham’s probation officer filed with the trial court an affidavit asserting that Graham had violated the conditions of his probation by possessing a firearm, committing crimes, and associating with persons engaged in criminal activity. The trial court held hearings on Graham’s violations about a year later, in December 2005 and January 2006. The judge who presided was not the same judge who had accepted Graham’s guilty plea to the earlier offenses.

Graham maintained that he had no involvement in the home invasion robbery; but, even after the court underscored that the admission could expose him to a life sentence on the earlier charges, he admitted violating probation conditions by fleeing. The State presented evidence related to the home invasion, including testimony from the victims. The trial court noted that Graham, in admitting his attempt to avoid arrest, had acknowledged violating his probation. The court further found that Graham had violated his probation by committing a home invasion robbery, by possessing a firearm, and by associating with persons engaged in criminal activity.

The trial court held a sentencing hearing. Under Florida law the minimum sentence Graham could receive absent a downward departure by the judge was 5 years’ imprisonment. The maximum was life imprisonment. Graham’s attorney requested the minimum nondeparture sentence of 5 years. A presentence report prepared by the Florida Department of Corrections recommended that Graham receive an even lower sentence—at most 4 years’ imprisonment. The State recommended that Graham receive 30 years on the armed burglary count and 15 years on the attempted armed robbery count.

After hearing Graham’s testimony, the trial court explained the sentence it was about to pronounce:

“Mr. Graham, as I look back on your case, yours is really candidly a sad situation. You had, as far as I

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can tell, you have quite a family structure. You had a lot of people who wanted to try and help you get your life turned around including the court system, and you had a judge who took the step to try and give you direction through his probation order to give you a chance to get back onto track. And at the time you seemed through your letters that that is exactly what you wanted to do. And I don't know why it is that you threw your life away. I don't know why.

"But you did, and that is what is so sad about this today is that you have actually been given a chance to get *2020 through this, the original charge, which were very serious charges to begin with The attempted robbery with a weapon was a very serious charge.

.....

"[I]n a very short period of time you were back before the Court on a violation of this probation, and then here you are two years later standing before me, literally the—facing a life sentence as to—up to life as to count 1 and up to 15 years as to count 2.

"And I don't understand why you would be given such a great opportunity to do something with your life and why you would throw it away. The only thing that I can rationalize is that you decided that this is how you were going to lead your life and that there is nothing that we can do for you. And as the state pointed out, that this is an escalating pattern of criminal conduct on your part and that we can't help you any further. We can't do anything to deter you. This is the way you are going to lead your life, and I don't know why you are going to. You've made that decision. I have no idea. But, evidently, that is what you decided to do.

"So then it becomes a focus, if I can't do anything to help you, if I can't do anything to get you back on the right path, then I have to start focusing on the community and trying to protect the community from your actions. And, unfortunately, that is where we are today is I don't see where I can do anything to help you any further. You've evidently decided this is the

direction you're going to take in life, and it's unfortunate that you made that choice.

"I have reviewed the statute. I don't see where any further **juvenile** sanctions would be appropriate. I don't see where any youthful offender sanctions would be appropriate. Given your escalating pattern of criminal conduct, it is apparent to the Court that you have decided that this is the way you are going to live your life and that the only thing I can do now is to try and protect the community from your actions." *Id.*, at 392–394.

The trial court found Graham guilty of the earlier armed burglary and attempted armed robbery charges. It sentenced him to the maximum sentence authorized by law on each charge: life imprisonment for the armed burglary and 15 years for the attempted armed robbery. Because Florida has abolished its parole system, see Fla. Stat. § 921.002(1)(e) (2003), a life sentence gives a defendant no possibility of release unless he is granted executive clemency.

Graham filed a motion in the trial court challenging his sentence under the Eighth Amendment. The motion was deemed denied after the trial court failed to rule on it within 60 days. The First District Court of Appeal of Florida affirmed, concluding that Graham's sentence was not grossly disproportionate to his crimes. 982 So.2d 43 (2008). The court took note of the seriousness of Graham's offenses and their violent nature, as well as the fact that they "were not committed by a pre-teen, but a seventeen-year-old who was ultimately sentenced at the age of nineteen." *Id.*, at 52. The court concluded further that Graham was incapable of rehabilitation. Although Graham "was given an unheard of probationary sentence for a life felony, ... wrote a letter expressing his remorse and promising to refrain from the commission of further crime, and ... had a strong family structure to support him," the court noted, he "rejected his second chance and chose to continue committing crimes at an escalating pace." *Ibid.* The Florida Supreme Court denied review. 990 So.2d 1058, 2008 WL 3896182 (2008) (table).

We granted certiorari. 556 U.S. —, 129 S.Ct.

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2157, 173 L.Ed.2d 1155 (2009).

*2021 II

[1][2] The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to " 'the evolving standards of decency that mark the progress of a maturing society.' " *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion)). "This is because '[t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.' " *Kennedy v. Louisiana*, 554 U.S. 407, —, 128 S.Ct. 2641, 2649, 171 L.Ed.2d 525 (2008) (quoting *Furman v. Georgia*, 408 U.S. 238, 382, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Burger, C.J., dissenting)).

[3][4][5] The Cruel and Unusual Punishments Clause prohibits the imposition of inherently barbaric punishments under all circumstances. See, e.g., *Hope v. Pelzer*, 536 U.S. 730, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002). "[P]unishments of torture," for example, "are forbidden." *Wilkerson v. Utah*, 99 U.S. 130, 136, 25 L.Ed. 345 (1879). These cases underscore the essential principle that, under the Eighth Amendment, the State must respect the human attributes even of those who have committed serious crimes.

[6][7] For the most part, however, the Court's precedents consider punishments challenged not as inherently barbaric but as disproportionate to the crime. The concept of proportionality is central to the Eighth Amendment. Embodied in the Constitution's ban on cruel and unusual punishments is the "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910).

The Court's cases addressing the proportionality of sentences fall within two general classifications. The first involves challenges to the length of term-of-years

sentences given all the circumstances in a particular case. The second comprises cases in which the Court implements the proportionality standard by certain categorical restrictions on the death penalty.

[8] In the first classification the Court considers all of the circumstances of the case to determine whether the sentence is unconstitutionally excessive. Under this approach, the Court has held unconstitutional a life without parole sentence for the defendant's seventh non-violent felony, the crime of passing a worthless check. *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983). In other cases, however, it has been difficult for the challenger to establish a lack of proportionality. A leading case is *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991), in which the offender was sentenced under state law to life without parole for possessing a large quantity of cocaine. A closely divided Court upheld the sentence. The controlling opinion concluded that the Eighth Amendment contains a "narrow proportionality principle," that "does not require strict proportionality between crime and sentence" but rather "forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Id.*, at 997, 1000–1001, 111 S.Ct. 2680 (KENNEDY, J., concurring in part and concurring in judgment). Again closely divided, the Court rejected a challenge to a sentence of 25 years to life for the theft of a few golf clubs under California's so-called three-strikes recidivist sentencing *2022 scheme. *Ewing v. California*, 538 U.S. 11, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003); see also *Lockyer v. Andrade*, 538 U.S. 63, 123 S.Ct. 1166, 155 L.Ed.2d 144 (2003). The Court has also upheld a sentence of life with the possibility of parole for a defendant's third nonviolent felony, the crime of obtaining money by false pretenses, *Rummel v. Estelle*, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980), and a sentence of 40 years for possession of marijuana with intent to distribute and distribution of marijuana, *Hutto v. Davis*, 454 U.S. 370, 102 S.Ct. 703, 70 L.Ed.2d 556 (1982) (*per curiam*).

The controlling opinion in *Harmelin* explained its approach for determining whether a sentence for a term of years is grossly disproportionate for a particular de-

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defendant's crime. A court must begin by comparing the gravity of the offense and the severity of the sentence. 501 U.S., at 1005, 111 S.Ct. 2680 (opinion of KENNEDY, J.). "[I]n the rare case in which [this] threshold comparison ... leads to an inference of gross disproportionality" the court should then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions. *Ibid.* If this comparative analysis "validate[s] an initial judgment that [the] sentence is grossly disproportionate," the sentence is cruel and unusual. *Ibid.*

The second classification of cases has used categorical rules to define Eighth Amendment standards. The previous cases in this classification involved the death penalty. The classification in turn consists of two subsets, one considering the nature of the offense, the other considering the characteristics of the offender. With respect to the nature of the offense, the Court has concluded that capital punishment is impermissible for non-homicide crimes against individuals. *Kennedy, supra*, at —, 128 S.Ct., at 2660; see also *Enmund v. Florida*, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982); *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977). In cases turning on the characteristics of the offender, the Court has adopted categorical rules prohibiting the death penalty for defendants who committed their crimes before the age of 18, *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), or whose intellectual functioning is in a low range, *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). See also *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988).

[9] In the cases adopting categorical rules the Court has taken the following approach. The Court first considers "objective indicia of society's standards, as expressed in legislative enactments and state practice" to determine whether there is a national consensus against the sentencing practice at issue. *Roper, supra*, at 572, 125 S.Ct. 1183. Next, guided by "the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amend-

ment's text, history, meaning, and purpose," *Kennedy*, 554 U.S., at —, 128 S.Ct., at 2650, the Court must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution. *Roper, supra*, at 572, 125 S.Ct. 1183.

The present case involves an issue the Court has not considered previously: a categorical challenge to a term-of-years sentence. The approach in cases such as *Harmelin* and *Ewing* is suited for considering a gross proportionality challenge to a particular defendant's sentence, but here a sentencing practice itself is in question. This case implicates a particular type of sentence as it applies to an entire class of *2023 offenders who have committed a range of crimes. As a result, a threshold comparison between the severity of the penalty and the gravity of the crime does not advance the analysis. Here, in addressing the question presented, the appropriate analysis is the one used in cases that involved the categorical approach, specifically *Atkins*, *Roper*, and *Kennedy*.

III A

[10][11] The analysis begins with objective indicia of national consensus. "[T]he 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'" *Atkins, supra*, at 312, 122 S.Ct. 2242 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 331, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989)). Six jurisdictions do not allow life without parole sentences for any **juvenile** offenders. See Appendix, *infra*, Part III. Seven jurisdictions permit life without parole for **juvenile** offenders, but only for homicide crimes. *Id.*, Part II. Thirty-seven States as well as the District of Columbia permit sentences of life without parole for a **juvenile** nonhomicide offender in some circumstances. *Id.*, Part I. Federal law also allows for the possibility of life without parole for offenders as young as 13. See, e.g., 18 U.S.C. §§ 2241 (2006 ed. and Supp. II), 5032 (2006 ed.). Relying on this metric, the State and its *amici* argue that there is no national consensus against the sentencing practice at issue.

This argument is incomplete and unavailing. "There are measures of consensus other than legislation."

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Kennedy, supra, at —, 128 S.Ct., at 2657. Actual sentencing practices are an important part of the Court's inquiry into consensus. See *Enmund, supra*, at 794–796, 102 S.Ct. 3368; *Thompson, supra*, at 831–832, 108 S.Ct. 2687 (plurality opinion); *Atkins, supra*, at 316, 122 S.Ct. 2242; *Roper, supra*, at 572, 125 S.Ct. 1183; *Kennedy, supra*, at —, 128 S.Ct., at 2657–58. 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. According to a recent study, nationwide there are only 109 **juvenile** offenders serving sentences of life without parole for nonhomicide offenses. See P. Annino, D. Rasmussen, & C. Rice, **Juvenile** Life without Parole for Non-Homicide Offenses: Florida Compared to Nation 2 (Sept. 14, 2009) (hereinafter Annino).

The State contends that this study's tally is inaccurate because it does not count **juvenile** offenders who were convicted of both a homicide and a nonhomicide offense, even when the offender received a life without parole sentence for the nonhomicide. See Brief for Respondent 34; Tr. of Oral Arg. in *Sullivan v. Florida*, O. T. 2009, No. 08–7621, pp. 28–31. This distinction is unpersuasive. **Juvenile** offenders who committed both homicide and nonhomicide crimes present a different situation for a sentencing judge than **juvenile** offenders who committed no homicide. It is difficult to say that a defendant who receives a life sentence on a nonhomicide offense but who was at the same time convicted of homicide is not in some sense being punished in part for the homicide when the judge makes the sentencing determination. The instant case concerns only those **juvenile** offenders sentenced to life without parole solely for a nonhomicide offense.

Florida further criticizes this study because the authors were unable to obtain complete information on some States and *2024 because the study was not peer reviewed. See Brief for Respondent 40. The State does not, however, provide any data of its own. Although in the first instance it is for the litigants to provide data to

aid the Court, we have been able to supplement the study's findings. The study's authors were not able to obtain a definitive tally for Nevada, Utah, or Virginia. See Annino 11–13. Our research shows that Nevada has five **juvenile** nonhomicide offenders serving life without parole sentences, Utah has none, and Virginia has eight. See Letter from Alejandra Livingston, Offender Management Division, Nevada Dept. of Corrections, to Supreme Court Library (Mar. 26, 2010) (available in Clerk of Court's case file); Letter from Steve Gehrke, Utah Dept. of Corrections, to Supreme Court Library (Mar. 29, 2010) (same); Letter from Dr. Tama S. Celi, Virginia Dept. of Corrections, to Supreme Court Library (Mar. 30, 2010) (same). Finally, since the study was completed, a defendant in Oklahoma has apparently been sentenced to life without parole for a rape and stabbing he committed at the age of 16. See Stogsdill, Delaware County Teen Sentenced in Rape, Assault Case, *Tulsa World*, May 4, 2010, p. A12.

Thus, adding the individuals counted by the study to those we have been able to locate independently, there are 123 **juvenile** nonhomicide offenders serving life without parole sentences. A significant majority of those, 77 in total, are serving sentences imposed in Florida. Annino 2. The other 46 are imprisoned in just 10 States—California, Delaware, Iowa, Louisiana, Mississippi, Nebraska, Nevada, Oklahoma, South Carolina, and Virginia. *Id.*, at 14; *supra*, at 12–13; Letter from Thomas P. Hoey, Dept. of Corrections, Government of the District of Columbia, to Supreme Court Library (Mar. 31, 2010) (available in Clerk of Court's case file); Letter from Judith Simon Garrett, U.S. Dept. of Justice, Federal Bureau of Prisons (BOP), to Supreme Court Library (Apr. 9, 2010) (available in Clerk of Court's case file). Thus, only 11 jurisdictions nationwide in fact impose life without parole sentences on **juvenile** nonhomicide offenders—and most of those do so quite rarely—while 26 States, the District of Columbia, and the Federal Government do not impose them despite apparent statutory authorization.^{FN*}

FN* When issued, the Court's opinion relied on a report from the BOP stating that there are six **juvenile** nonhomicide offenders serving life

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without parole in the federal system. The Acting Solicitor General subsequently informed the Court that further review revealed that none of the six prisoners referred to in the earlier BOP report is serving a life without parole sentence solely for a **juvenile** nonhomicide crime completed before the age of 18. Letter from Neal Kumar Katyal, Acting Solicitor General, to William K. Suter, Clerk of Court (May 24, 2010) (available in Clerk of Court's case file). The letter further stated that the Government was not aware of any other federal prisoners serving life without parole sentences solely for **juvenile** nonhomicide crimes. *Ibid.* The opinion was amended in light of this new information.

The numbers cited above reflect all current convicts in a jurisdiction's penal system, regardless of when they were convicted. It becomes all the more clear how rare these sentences are, even within the jurisdictions that do sometimes impose them, when one considers that a **juvenile** sentenced to life without parole is likely to live in prison for decades. Thus, these statistics likely reflect nearly all **juvenile** nonhomicide offenders who have received a life without parole sentence stretching back many years. It is not certain that this opinion has identified every **juvenile** nonhomicide offender nationwide serving a life without parole sentence, for the statistics are not precise. The available data, nonetheless, are sufficient to demonstrate how rarely these sentences are imposed even if there are isolated cases that have not been included in the presentations of the parties or the analysis of the Court.

It must be acknowledged that in terms of absolute numbers **juvenile** life without parole sentences for non-homicides are more common than the sentencing practices*2025 at issue in some of this Court's other Eighth Amendment cases. See, e.g., *Enmund*, 458 U.S., at 794, 102 S.Ct. 3368 (only six executions of nontriggerman felony murderers between 1954 and 1982) *Atkins*, 536 U.S., at 316, 122 S.Ct. 2242 (only five executions of mentally retarded defendants in 13-year period). This contrast can be instructive, however, if attention is first

given to the base number of certain types of offenses. For example, in the year 2007 (the most recent year for which statistics are available), a total of 13,480 persons, adult and **juvenile**, were arrested for homicide crimes. That same year, 57,600 **juveniles** were arrested for aggravated assault; 3,580 for forcible rape; 34,500 for robbery; 81,900 for burglary; 195,700 for drug offenses; and 7,200 for arson. See Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book, online at <http://ojjdp.ncjrs.org/ojstat-bb/> (as visited May 14, 2010, and available in Clerk of Court's case file). Although it is not certain how many of these numerous **juvenile** offenders were eligible for life without parole sentences, the comparison suggests that in proportion to the opportunities for its imposition, life without parole sentences for **juveniles** convicted of nonhomicide crimes is as rare as other sentencing practices found to be cruel and unusual.

The evidence of consensus is not undermined by the fact that many jurisdictions do not prohibit life without parole for **juvenile** nonhomicide offenders. The Court confronted a similar situation in *Thompson*, where a plurality concluded that the death penalty for offenders younger than 16 was unconstitutional. A number of States then allowed the **juvenile** death penalty if one considered the statutory scheme. As is the case here, those States authorized the transfer of some **juvenile** offenders to adult court; and at that point there was no statutory differentiation between adults and **juveniles** with respect to authorized penalties. The plurality concluded that the transfer laws show "that the States consider 15-year-olds to be old enough to be tried in criminal court for serious crimes (or too old to be dealt with effectively in **juvenile** court), but tells us nothing about the judgment these States have made regarding the appropriate punishment for such youthful offenders." 487 U.S., at 826, n. 24, 108 S.Ct. 2687. Justice O'Connor, concurring in the judgment, took a similar view. *Id.*, at 850; 108 S.Ct. 2687 ("When a legislature provides for some 15-year-olds to be processed through the adult criminal justice system, and capital punishment is available for adults in that jurisdiction, the death penalty becomes at least theoretically applicable to such defendants [H]owever, it does not

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necessarily follow that the legislatures in those jurisdictions have deliberately concluded that it would be appropriate”).

The same reasoning obtains here. Many States have chosen to move away from **juvenile** court systems and to allow **juveniles** to be transferred to, or charged directly in, adult court under certain circumstances. Once in adult court, a **juvenile** offender may receive the same sentence as would be given to an adult offender, including a life without parole sentence. But the fact that transfer and direct charging laws make life without parole possible for some **juvenile** nonhomicide offenders does not justify a judgment that many States intended to subject such offenders to life without parole sentences.

For example, under Florida law a child of any age can be prosecuted as an adult for certain crimes and can be sentenced to life without parole. The State acknowledged at oral argument that even a 5-year-old, theoretically, could receive such *2026 a sentence under the letter of the law. See Tr. of Oral Arg. 36–37. All would concede this to be unrealistic, but the example underscores that the statutory eligibility of a **juvenile** offender for life without parole does not indicate that the penalty has been endorsed through deliberate, express, and full legislative consideration. Similarly, the many States that allow life without parole for **juvenile** nonhomicide offenders but do not impose the punishment should not be treated as if they have expressed the view that the sentence is appropriate. The sentencing practice now under consideration is exceedingly rare. And “it is fair to say that a national consensus has developed against it.” *Atkins, supra*, at 316, 122 S.Ct. 2242.

B

[12][13] Community consensus, while “entitled to great weight,” is not itself determinative of whether a punishment is cruel and unusual. *Kennedy*, 554 U.S., at —, 128 S.Ct., at 2658. In accordance with the constitutional design, “the task of interpreting the Eighth Amendment remains our responsibility.” *Roper*, 543 U.S., at 575, 125 S.Ct. 1183. The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the pun-

ishment in question. *Id.*, at 568, 125 S.Ct. 1183; *Kennedy, supra*, at —, 128 S.Ct., at 2659–60; cf. *Solem*, 463 U.S., at 292, 103 S.Ct. 3001. In this inquiry the Court also considers whether the challenged sentencing practice serves legitimate penological goals. *Kennedy, supra*, at —, 128 S.Ct., at 2661–65; *Roper, supra*, at 572, 125 S.Ct. 1183; *Atkins, supra*, at 318–320, 122 S.Ct. 2242.

[14][15] *Roper* established that because **juveniles** have lessened culpability they are less deserving of the most severe punishments. 543 U.S., at 569, 125 S.Ct. 1183. As compared to adults, **juveniles** have a “‘lack of maturity and an underdeveloped sense of responsibility’”; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “not as well formed.” *Id.*, at 569–570, 125 S.Ct. 1183. These salient characteristics mean that “[i]t is difficult even for expert psychologists to differentiate between the **juvenile** offender whose crime reflects unfortunate yet transient immaturity, and the rare **juvenile** offender whose crime reflects irreparable corruption.” *Id.*, at 573, 125 S.Ct. 1183. Accordingly, “**juvenile** offenders cannot with reliability be classified among the worst offenders.” *Id.*, at 569, 125 S.Ct. 1183. A **juvenile** is not absolved of responsibility for his actions, but his transgression “is not as morally reprehensible as that of an adult.” *Thompson, supra*, at 835, 108 S.Ct. 2687 (plurality opinion).

No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of **juveniles**. As petitioner's *amici* point out, developments in psychology and brain science continue to show fundamental differences between **juvenile** and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. See Brief for American Medical Association et al. as *Amici Curiae* 16–24; Brief for American Psychological Association et al. as *Amici Curiae* 22–27. **Juveniles** are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults. *Roper*, 543 U.S., at 570, 125 S.Ct. 1183. It remains true that “[f]rom a moral standpoint it would be misguided to

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equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's *2027 character deficiencies will be reformed." *Ibid.* These matters relate to the status of the offenders in question; and it is relevant to consider next the nature of the offenses to which this harsh penalty might apply.

The Court has recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers. *Kennedy, supra; Enmund*, 458 U.S. 782, 102 S.Ct. 3368; *Tison v. Arizona*, 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987); *Coker*, 433 U.S. 584, 97 S.Ct. 2861. There is a line "between homicide and other serious violent offenses against the individual." *Kennedy*, 554 U.S., at —, 128 S.Ct., at 2659–60. Serious nonhomicide crimes "may be devastating in their harm ... but 'in terms of moral depravity and of the injury to the person and to the public,' ... they cannot be compared to murder in their 'severity and irrevocability.'" *Id.*, at —, 128 S.Ct., at 2660 (quoting *Coker*, 433 U.S., at 598, 97 S.Ct. 2861 (plurality opinion)). This is because "[l]ife is over for the victim of the murderer," but for the victim of even a very serious nonhomicide crime, "life ... is not over and normally is not beyond repair." *Ibid.* (plurality opinion). Although an offense like robbery or rape is "a serious crime deserving serious punishment," *Enmund, supra*, at 797, 102 S.Ct. 3368, those crimes differ from homicide crimes in a moral sense.

It follows that, when compared to an adult murderer, a **juvenile** offender who did not kill or intend to kill has a twice diminished moral culpability. The age of the offender and the nature of the crime each bear on the analysis.

As for the punishment, life without parole is "the second most severe penalty permitted by law." *Harmelin*, 501 U.S., at 1001, 111 S.Ct. 2680 (opinion of KENNEDY, J.). It is true that a death sentence is "unique in its severity and irrevocability," *Gregg v. Georgia*, 428 U.S. 153, 187, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.); yet life without parole sentences share some characteristics with death sentences that are

shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence. *Solem*, 463 U.S., at 300–301, 103 S.Ct. 3001. As one court observed in overturning a life without parole sentence for a **juvenile** defendant, this sentence "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days." *Naovarath v. State*, 105 Nev. 525, 526, 779 P.2d 944 (1989).

The Court has recognized the severity of sentences that deny convicts the possibility of parole. In *Rummel*, 445 U.S. 263, 100 S.Ct. 1133, the Court rejected an Eighth Amendment challenge to a life sentence for a defendant's third nonviolent felony but stressed that the sentence gave the defendant the possibility of parole. Noting that "parole is an established variation on imprisonment of convicted criminals," it was evident that an analysis of the petitioner's sentence "could hardly ignore the possibility that he will not actually be imprisoned for the rest of his life." *Id.*, at 280–281, 100 S.Ct. 1133 (internal quotation marks omitted). And in *Solem*, the only previous case striking down a sentence for *2028 a term of years as grossly disproportionate, the defendant's sentence was deemed "far more severe than the life sentence we considered in *Rummel*," because it did not give the defendant the possibility of parole. 463 U.S., at 297, 103 S.Ct. 3001.

Life without parole is an especially harsh punishment for a **juvenile**. Under this sentence a **juvenile** offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only. See *Roper, supra*, at 572, 125 S.Ct. 1183; cf. *Harmelin, supra*, at 996, 111 S.Ct. 2680 ("In some cases ... there will be negligible difference between life

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without parole and other sentences of imprisonment—for example, ... a lengthy term sentence without eligibility for parole, given to a 65-year-old man”). This reality cannot be ignored.

[16][17][18] The penological justifications for the sentencing practice are also relevant to the analysis. *Kennedy, supra*, at —, 128 S.Ct., at 2661–65; *Roper*, 543 U.S., at 571–572, 125 S.Ct. 1183; *Atkins, supra*, at 318–320, 122 S.Ct. 2242. Criminal punishment can have different goals, and choosing among them is within a legislature's discretion. See *Harmelin, supra*, at 999, 111 S.Ct. 2680 (opinion of KENNEDY, J.) (“[T]he Eighth Amendment does not mandate adoption of any one penological theory”). It does not follow, however, that the purposes and effects of penal sanctions are irrelevant to the determination of Eighth Amendment restrictions. A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense. With respect to life without parole for **juvenile** nonhomicide offenders, none of the goals of penal sanctions that have been recognized as legitimate—retribution, deterrence, incapacitation, and rehabilitation, see *Ewing*, 538 U.S., at 25, 123 S.Ct. 1179 (plurality opinion)—provides an adequate justification.

[19] Retribution is a legitimate reason to punish, but it cannot support the sentence at issue here. Society is entitled to impose severe sanctions on a **juvenile** nonhomicide offender to express its condemnation of the crime and to seek restoration of the moral imbalance caused by the offense. But “[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.” *Tison*, 481 U.S., at 149, 107 S.Ct. 1676. And as *Roper* observed, “[w]hether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult.” 543 U.S., at 571, 125 S.Ct. 1183. The case becomes even weaker with respect to a **juvenile** who did not commit homicide. *Roper* found that “[r]etribution is not proportional if the law's most severe penalty is imposed” on the **juvenile** murderer. *Ibid.* The considerations underlying that holding support as well the con-

clusion that retribution does not justify imposing the second most severe penalty on the less culpable **juvenile** nonhomicide offender.

[20] Deterrence does not suffice to justify the sentence either. *Roper* noted that “the same characteristics that render **juveniles** less culpable than adults suggest ... that **juveniles** will be less susceptible to deterrence.” *Ibid.* Because **juveniles**’ “lack of maturity and underdeveloped sense of responsibility ... often result in impetuous and ill-considered actions and decisions,” *Johnson v. Texas*, 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993), they are less likely to take a possible punishment into consideration when making decisions. This is particularly so when that punishment is rarely imposed. That the sentence deters in a few cases is perhaps plausible, but “[t]his argument does not overcome other objections.” *Kennedy*, 554 U.S., at —, 128 S.Ct., at 2661–62. Even if the punishment has some connection to a valid penological goal, it must be shown that the punishment is not grossly disproportionate in light of the justification offered. Here, in light of **juvenile** nonhomicide offenders’ diminished moral responsibility, any limited deterrent effect provided by life without parole is not enough to justify the sentence.

Incapacitation, a third legitimate reason for imprisonment, does not justify the life without parole sentence in question here. Recidivism is a serious risk to public safety, and so incapacitation is an important goal. See *Ewing, supra*, at 26, 123 S.Ct. 1179 (plurality opinion) (statistics show 67 percent of former inmates released from state prisons are charged with at least one serious new crime within three years). But while incapacitation may be a legitimate penological goal sufficient to justify life without parole in other contexts, it is inadequate to justify that punishment for **juveniles** who did not commit homicide. To justify life without parole on the assumption that the **juvenile** offender forever will be a danger to society requires the sentencer to make a judgment that the **juvenile** is incorrigible. The characteristics of **juveniles** make that judgment questionable. “It is difficult even for expert psychologists to differentiate between the **juvenile** offender whose crime reflects un-

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fortunate yet transient immaturity, and the rare **juvenile** offender whose crime reflects irreparable corruption.” *Roper, supra*, at 572, 125 S.Ct. 1183. As one court concluded in a challenge to a life without parole sentence for a 14-year-old, “incurability is inconsistent with youth.” *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky.1968).

Here one cannot dispute that this defendant posed an immediate risk, for he had committed, we can assume, serious crimes early in his term of supervised release and despite his own assurances of reform. Graham deserved to be separated from society for some time in order to prevent what the trial court described as an “escalating pattern of criminal conduct,” App. 394, but it does not follow that he would be a risk to society for the rest of his life. Even if the State’s judgment that Graham was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made at the outset. A life without parole sentence improperly denies the **juvenile** offender a chance to demonstrate growth and maturity. Incapacitation cannot override all other considerations, lest the Eighth Amendment’s rule against disproportionate sentences be a nullity.

[21] Finally there is rehabilitation, a penological goal that forms the basis of parole systems. See *Solem*, 463 U.S., at 300, 103 S.Ct. 3001; *Mistretta v. United States*, 488 U.S. 361, 363, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989). The concept of rehabilitation is imprecise; and its utility and proper implementation are the subject of a substantial, dynamic field of inquiry and dialogue. See, e.g., Cullen & Gendreau, *Assessing Correctional Rehabilitation: Policy, Practice, and Prospects*, 3 Criminal Justice 2000, pp. 119–133 (2000) (describing scholarly debates regarding the effectiveness of rehabilitation over the last several decades). It is for legislatures to determine what rehabilitative techniques are appropriate and effective.

A sentence of life imprisonment without parole, however, cannot be justified by the *2030 goal of rehabilitation. The penalty forswears altogether the rehabilitative ideal. By denying the defendant the right to

reenter the community, the State makes an irrevocable judgment about that person’s value and place in society. This judgment is not appropriate in light of a **juvenile** nonhomicide offender’s capacity for change and limited moral culpability. A State’s rejection of rehabilitation, moreover, goes beyond a mere expressive judgment. As one *amicus* notes, defendants serving life without parole sentences are often denied access to vocational training and other rehabilitative services that are available to other inmates. See Brief for Sentencing Project as *Amicus Curiae* 11–13. For **juvenile** offenders, who are most in need of and receptive to rehabilitation, see Brief for J. Lawrence Aber et al. as *Amici Curiae* 28–31 (hereinafter Aber Brief), the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more evident.

In sum, penological theory is not adequate to justify life without parole for **juvenile** nonhomicide offenders. This determination; the limited culpability of **juvenile** nonhomicide offenders; and the severity of life without parole sentences all lead to the conclusion that the sentencing practice under consideration is cruel and unusual. This Court now holds that for a **juvenile** offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole. This clear line is necessary to prevent the possibility that life without parole sentences will be imposed on **juvenile** nonhomicide offenders who are not sufficiently culpable to merit that punishment. Because “[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood,” those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime. *Roper*, 543 U.S., at 574, 125 S.Ct. 1183.

[22] A State is not required to guarantee eventual freedom to a **juvenile** offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amend-

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ment forbids a State from imposing a life without parole sentence on a **juvenile** nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as **juveniles** may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.

C

Categorical rules tend to be imperfect, but one is necessary here. Two alternative approaches are not adequate to address the relevant constitutional concerns. First, the State argues that the laws of Florida and other States governing criminal procedure take sufficient account of the age of a **juvenile** offender. Here, Florida notes that under its law prosecutors are required to charge 16- and 17-year-old offenders as adults only for certain serious felonies; that prosecutors have discretion to charge those offenders as adults for other felonies; and that prosecutors may not charge nonrecidivist 16- and 17-year- *2031 old offenders as adults for misdemeanors. Brief for Respondent 54 (citing Fla. Stat. § 985.227 (2003)). The State also stresses that “in only the narrowest of circumstances” does Florida law impose no age limit whatsoever for prosecuting **juveniles** in adult court. Brief for Respondent 54.

[23] Florida is correct to say that state laws requiring consideration of a defendant's age in charging decisions are salutary. An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed. Florida, like other States, has made substantial efforts to enact comprehensive rules governing the treatment of youthful offenders by its criminal justice system. See generally Fla. Stat. § 958 *et seq.* (2007).

[24] The provisions the State notes are, nonetheless, by themselves insufficient to address the constitutional concerns at issue. Nothing in Florida's laws pre-

vents its courts from sentencing a **juvenile** nonhomicide offender to life without parole based on a subjective judgment that the defendant's crimes demonstrate an “irretrievably depraved character.” *Roper, supra*, at 572, 125 S.Ct. 1183. This is inconsistent with the Eighth Amendment. Specific cases are illustrative. In Graham's case the sentencing judge decided to impose life without parole—a sentence greater than that requested by the prosecutor—for Graham's armed burglary conviction. The judge did so because he concluded that Graham was incorrigible: “[Y]ou decided that this is how you were going to lead your life and that there is nothing that we can do for you. ... We can't do anything to deter you.” App. 394.

Another example comes from *Sullivan v. Florida*, No. 08–7621. *Sullivan* was argued the same day as this case, but the Court has now dismissed the writ of certiorari in *Sullivan* as improvidently granted. *Post*, p. —. The facts, however, demonstrate the flaws of Florida's system. The petitioner, Joe Sullivan, was prosecuted as an adult for a sexual assault committed when he was 13 years old. Noting Sullivan's past encounters with the law, the sentencing judge concluded that, although Sullivan had been “given opportunity after opportunity to upright himself and take advantage of the second and third chances he's been given,” he had demonstrated himself to be unwilling to follow the law and needed to be kept away from society for the duration of his life. Brief for Respondent in *Sullivan v. Florida*, O. T. 2009, No. 08–7621, p. 6. The judge sentenced Sullivan to life without parole. As these examples make clear, existing state laws, allowing the imposition of these sentences based only on a discretionary, subjective judgment by a judge or jury that the offender is irredeemably depraved, are insufficient to prevent the possibility that the offender will receive a life without parole sentence for which he or she lacks the moral culpability.

Another possible approach would be to hold that the Eighth Amendment requires courts to take the offender's age into consideration as part of a case-specific gross disproportionality inquiry, weighing it against the seriousness of the crime. This approach would allow

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courts to account for factual differences between cases and to impose life without parole sentences for particularly heinous crimes. Few, perhaps no, judicial responsibilities are more difficult than sentencing. The task is usually undertaken by trial judges who seek with diligence and professionalism to take account of the human existence of the offender and the just demands of a wronged society.

The case-by-case approach to sentencing must, however, be confined by some *2032 boundaries. The dilemma of **juvenile** sentencing demonstrates this. For even if we were to assume that some **juvenile** nonhomicide offenders might have "sufficient psychological maturity, and at the same time demonstrat[e] sufficient depravity," *Roper*, 543 U.S., at 572, 125 S.Ct. 1183, to merit a life without parole sentence, it does not follow that courts taking a case-by-case proportionality approach could with sufficient accuracy distinguish the few incorrigible **juvenile** offenders from the many that have the capacity for change. *Roper* rejected the argument that the Eighth Amendment required only that juries be told they must consider the defendant's age as a mitigating factor in sentencing. The Court concluded that an "unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the **juvenile** offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death." *Id.*, at 573, 125 S.Ct. 1183. Here, as with the death penalty, "[t]he differences between **juvenile** and adult offenders are too marked and well understood to risk allowing a youthful person to receive" a sentence of life without parole for a nonhomicide crime "despite insufficient culpability." *Id.*, at 572–573, 125 S.Ct. 1183.

Another problem with a case-by-case approach is that it does not take account of special difficulties encountered by counsel in **juvenile** representation. As some *amici* note, the features that distinguish **juveniles** from adults also put them at a significant disadvantage in criminal proceedings. **Juveniles** mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it.

They are less likely than adults to work effectively with their lawyers to aid in their defense. Brief for NAACP Legal Defense & Education Fund et al. as *Amici Curiae* 7–12; Henning, Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases, 81 Notre Dame L.Rev. 245, 272–273 (2005). Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by one charged with a **juvenile** offense. Aber Brief 35. These factors are likely to impair the quality of a **juvenile** defendant's representation. Cf. *Atkins*, 536 U.S., at 320, 122 S.Ct. 2242 ("Mentally retarded defendants may be less able to give meaningful assistance to their counsel"). A categorical rule avoids the risk that, as a result of these difficulties, a court or jury will erroneously conclude that a particular **juvenile** is sufficiently culpable to deserve life without parole for a non-homicide.

Finally, a categorical rule gives all **juvenile** non-homicide offenders a chance to demonstrate maturity and reform. The **juvenile** should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. In *Roper*, that deprivation resulted from an execution that brought life to its end. Here, though by a different dynamic, the same concerns apply. Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. A young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual. In some prisons, moreover, the system itself *2033 becomes complicit in the lack of development. As noted above, see *supra*, at 2029 – 2030, it is the policy in some prisons to withhold counseling, education, and rehabilitation programs for those who are ineligible for parole consideration. A categorical rule against life without parole for **juvenile** nonhomicide offenders avoids the perverse consequence in which the lack of maturity that led to an offender's crime is reinforced by the prison term.

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Terrance Graham's sentence guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes. The State has denied him any chance to later demonstrate that he is fit to rejoin society based solely on a nonhomicide crime that he committed while he was a child in the eyes of the law. This the Eighth Amendment does not permit.

D

[25] There is support for our conclusion in the fact that, in continuing to impose life without parole sentences on **juveniles** who did not commit homicide, the United States adheres to a sentencing practice rejected the world over. This observation does not control our decision. The judgments of other nations and the international community are not dispositive as to the meaning of the Eighth Amendment. But “ ‘[t]he climate of international opinion concerning the acceptability of a particular punishment’ ” is also “ ‘not irrelevant.’ ” *Enmund*, 458 U.S., at 796, n. 22, 102 S.Ct. 3368. The Court has looked beyond our Nation's borders for support for its independent conclusion that a particular punishment is cruel and unusual. See, e.g., *Roper*, 543 U.S., at 575–578, 125 S.Ct. 1183; *Atkins*, *supra*, at 317–318, n. 21, 122 S.Ct. 2242; *Thompson*, 487 U.S., at 830, 108 S.Ct. 2687 (plurality opinion); *Enmund*, *supra*, at 796–797, n. 22, 102 S.Ct. 3368; *Coker*, 433 U.S., at 596, n. 10, 97 S.Ct. 2861 (plurality opinion); *Trop*, 356 U.S., at 102–103, 78 S.Ct. 590 (plurality opinion).

Today we continue that longstanding practice in noting the global consensus against the sentencing practice in question. A recent study concluded that only 11 nations authorize life without parole for **juvenile** offenders under any circumstances; and only 2 of them, the United States and Israel, ever impose the punishment in practice. See M. Leighton & C. de la Vega, *Sentencing Our Children to Die in Prison: Global Law and Practice* 4 (2007). An updated version of the study concluded that Israel's “laws allow for parole review of **juvenile** offenders serving life terms,” but expressed re-

servations about how that parole review is implemented. De la Vega & Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F.L.Rev. 983, 1002–1003 (2008). But even if Israel is counted as allowing life without parole for **juvenile** offenders, that nation does not appear to impose that sentence for non-homicide crimes; all of the seven Israeli prisoners whom commentators have identified as serving life sentences for **juvenile** crimes were convicted of homicide or attempted homicide. See Amnesty International, Human Rights Watch, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States* 106, n. 322 (2005); Memorandum and Attachment from Ruth Levush, Law Library of Congress, to Supreme Court Library (Feb. 16, 2010) (available in Clerk of Court's case file).

*2034 Thus, as petitioner contends and respondent does not contest, the United States is the only Nation that imposes life without parole sentences on **juvenile** nonhomicide offenders. We also note, as petitioner and his *amici* emphasize, that Article 37(a) of the United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), ratified by every nation except the United States and Somalia, prohibits the imposition of “life imprisonment without possibility of release ... for offences committed by persons below eighteen years of age.” Brief for Petitioner 66; Brief for Amnesty International et al. as *Amici Curiae* 15–17. As we concluded in *Roper* with respect to the **juvenile** death penalty, “the United States now stands alone in a world that has turned its face against” life without parole for **juvenile** nonhomicide offenders. 543 U.S., at 577, 125 S.Ct. 1183.

The State's *amici* stress that no international legal agreement that is binding on the United States prohibits life without parole for **juvenile** offenders and thus urge us to ignore the international consensus. See Brief for Solidarity Center for Law and Justice et al. as *Amici Curiae* 14–16; Brief for Sixteen Members of United States House of Representatives as *Amici Curiae* 40–43. These arguments miss the mark. The question before us is not whether international law prohibits the United States from imposing the sentence at issue in this case.

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The question is whether that punishment is cruel and unusual. In that inquiry, "the overwhelming weight of international opinion against" life without parole for nonhomicide offenses committed by **juveniles** "provide[s] respected and significant confirmation for our own conclusions." *Roper, supra*, at 572, 125 S.Ct. 1183.

The debate between petitioner's and respondent's *amici* over whether there is a binding *jus cogens* norm against this sentencing practice is likewise of no import. See Brief for Amnesty International 10–23; Brief for Sixteen Members of United States House of Representatives 4–40. The Court has treated the laws and practices of other nations and international agreements as relevant to the Eighth Amendment not because those norms are binding or controlling but because the judgment of the world's nations that a particular sentencing practice is inconsistent with basic principles of decency demonstrates that the Court's rationale has respected reasoning

to support it.

* * *

The Constitution prohibits the imposition of a life without parole sentence on a **juvenile** offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term. The judgment of the First District Court of Appeal of Florida is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

APPENDIX

I. JURISDICTIONS THAT PERMIT LIFE WITHOUT PAROLE FOR **JUVENILE** NONHOMICIDE OFFENDERS

Alabama	Ala.Code § 12–15–203 (Supp.2009); §§ 13A–3–3, 13A–5–9(c), 13A–6–61 (2005); § 13A–7–5 (Supp.2009)
Arizona	Ariz.Rev.Stat. Ann. §§ 13–501, § 13–1423 (West 2010)
Arkansas	Ark.Code § 9–27–318(b) (2009); § 5–4–501(c) (Supp.2009)
California	Cal.Penal Code Ann. § 667.7(a)(2) (1999); § 1170.17 (2004)
Delaware	Del.Code Ann., Tit., 10, § 1010 (Supp.2008); <i>id.</i> , Tit., 11, § 773(c) (2003)
District of Columbia	D.C.Code § 16–2307 (2009 Supp. Pamphlet); § 22–3020 (Supp.2007)
Florida	Fla. Stat. §§ 810.02, 921.002(1)(e), 985.557 (2007)
Georgia	Georgia Code Ann. § 15–11–30.2 (2008); § 16–6–1(b) (2007)
Idaho	Idaho Code § 18–6503 (Lexis 2005); §§ 19–2513, 20–509 (Lexis Supp.2009)
Illinois	Ill. Comp. Stat., ch. 705, §§ 405/5–805, 405/5–130 (West 2008); <i>id.</i> , ch. 720, § 5/12–13(b)(3) (West 2008); <i>id.</i> , ch. 730, § 5/3–3–3(d) (West 2008)
Indiana	Ind.Code § 31–30–3–6(1); § 35–50–2–8.5(a) (West 2004)
Iowa	Iowa Code §§ 232.45(6), 709.2, 902.1 (2009)
Louisiana	La. Child. Code Ann., Arts. 305, 857(A), (B) (West Supp.2010); La. Stat. Ann. § 14:44 (West 2007)
Maryland	Md. Cts. & Jud. Proc.Code Ann. §§ 3–8A–03(d)(1), 3–8A–06(a)(2) (Lexis 2006); Md.Crim. Law Code Ann. §§ 3–303(d)(2),(3) (Lexis Supp.2009)
Michigan	Mich. Comp. Laws Ann. § 712A.4 (West 2002); § 750.520b(2)(c) (West Supp.2009); § 769.1 (West 2000)

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Minnesota	Minn.Stat. §§ 260B.125(1), 609.3455(2) (2008)
Mississippi	Miss.Code Ann. § 43-21-157 (2009); §§ 97-3-53, 99-19-81 (2007); § 99-19-83 (2006)
Missouri	Mo.Rev.Stat. §§ 211.071, 558.018 (2000)
Nebraska	Neb.Rev.Stat. §§ 28-105, 28-416(8)(a), 29-2204(1), (3), 43-247, 43-276 (2008)
Nevada	Nev.Rev.Stat. §§ 62B.330, 200.366 (2009)
New Hampshire	N.H.Rev.Stat. Ann. § 169-B:24; § 628:1 (2007); §§ 632-A:2, 651:6 (Supp.2009)
New York	N.Y. Penal Law Ann. §§ 30.00, § 60.06 (West 2009); § 490.55 (West 2008)
North Carolina	N.C. Gen.Stat. Ann. §§ 7B-2200, 15A-1340.16B(a) (Lexis 2009)
North Dakota	N.D. Cent.Code Ann. § 12.1-04-01 (Lexis 1997); § 12.1-20-03 (Lexis Supp.2009); § 12.1-32-01 (Lexis 1997)
Ohio	Ohio Rev.Code Ann. § 2152.10 (Lexis 2007); § 2907.02 (Lexis 2006); § 2971.03(A)(2) (2010 Lexis Supp. Pamphlet)
Oklahoma	Okla. Stat., Tit. 10A, §§ 2-5-204, 2-5-205, 2-5-206 (2009 West Supp.); <i>id.</i> , Tit. 21, § 1115 (2007 West Supp.)
Oregon	Ore.Rev.Stat. §§ 137.707, 137.719(1) (2009)
Pennsylvania	42 Pa. Cons.Stat. § 6355(a) (2000); 18 <i>id.</i> , § 3121(e)(2) (2008); 61 <i>id.</i> , § 6137(a) (2009)
Rhode Island	R.I. Gen. Laws §§ 14-1-7, 14-1-7.1, 11-47-3.2 (Lexis 2002)
South Carolina	S.C.Code Ann. § 63-19-1210 (2008 Supp. Pamphlet); § 16-11-311(B) (Westlaw 2009)
South Dakota	S.D. Codified Laws § 26-11-3.1 (Supp.2009); § 26-11-4 (2004); §§ 22-3-1, 22-6-1(2),(3) (2006); § 24-15-4 (2004); §§ 22-19-1, 22-22-1 (2006)
Tennessee	Tenn.Code Ann. §§ 37-1-134, 40-35-120(g) (Westlaw 2010)
Utah	Utah Code Ann. §§ 78A-6-602, 78A-6-703, 76-5-302 (Lexis 2008)
Virginia	Va.Code Ann. §§ 16.1-269.1, § 18.2-61, § 53.1-151(B1) (2009)
Washington	Wash. Rev.Code § 13.40.110 (2009 Supp.); §§ 9A.04.050, 9.94A.030(34), 9.94A.570 (2008)
West Virginia	W. Va.Code Ann. § 49-5-10 (Lexis 2009); § 61-2-14a(a) (Lexis 2005)
Wisconsin	Wis. Stat. §§ 938.18, 938.183 (2007-2008); § 939.62(2m)(c) (Westlaw 2005)
Wyoming	Wyo. Stat. Ann. §§ 6-2-306(d),(e), 14-6-203 (2009)
Federal	18 U.S.C. § 2241 (2006 ed. and Supp. II); § 5032 (2006 ed.)

II. JURISDICTIONS THAT PERMIT LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS CONVICTED OF HOMICIDE CRIMES ONLY

Connecticut	Conn. Gen.Stat. § 53a-35a (2009)
Hawaii	Haw.Rev.Stat. § 571-22(d) (2006); § 706-656(1) (2008 Supp. Pamphlet)
Maine	Me.Rev.Stat. Ann., Tit. 15, § 3101(4) (Supp.2009); <i>id.</i> , Tit. 17-a, § 1251 (2006)
Massachusetts	Mass Gen. Laws ch. 119, § 74; <i>id.</i> , ch. 265, § 2 (2008)
New Jersey	N.J. Stat. Ann. § 2A:4A-26 (West Supp.2009); § 2C:11-3(b)(2) (West Supp.2009)
New Mexico	N.M. Stat. Ann. § 31-18-14 (Supp.2009); § 31-18-15.2(A) (Westlaw 2010)
Vermont	Vt. Stat. Ann., Tit. 33, § 5204 (2009 Cum.Supp.); <i>id.</i> , Tit. 13, § 2303 (2009)

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III. JURISDICTIONS THAT FORBID LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS

Alaska	Alaska Stat. § 12.55.015(g) (2008)
Colorado	Colo.Rev.Stat. Ann. § 18-1.3-401(4)(b) (2009)
Montana	Mont.Code Ann. § 46-18-222(1) (2009)
Kansas	Kan. Stat. Ann. § 21-4622 (West 2007)
Kentucky	Ky.Rev.Stat. Ann. § 640.040 (West 2008); <i>Shepherd v. Commonwealth</i> , 251 S.W.3d 309, 320-321 (Ky.2008)
Texas	Tex. Penal Code Ann. § 12.31 (West Supp.2009)

*2036 Justice STEVENS, with whom Justice GINSBURG and Justice SOTOMAYOR join, concurring.

In his dissenting opinion, Justice THOMAS argues that today's holding is not entirely consistent with the controlling opinions in *Lockyer v. Andrade*, 538 U.S. 63, 123 S.Ct. 1166, 155 L.Ed.2d 144 (2003), *Ewing v. California*, 538 U.S. 11, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003), *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991), and *Rummel v. Estelle*, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980). *Post*, at 2046 – 2047. Given that “evolving standards of decency” have played a central role in our Eighth Amendment jurisprudence for at least a century, see *Weems v. United States*, 217 U.S. 349, 373-378, 30 S.Ct. 544, 54 L.Ed. 793 (1910), this argument suggests the dissenting opinions in those cases more accurately describe the law today than does Justice THOMAS' rigid interpretation of the Amendment. Society changes. Knowledge accumulates. We learn, sometimes, from our mistakes. Punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time; unless we are to abandon the moral commitment embodied in the Eighth Amendment, proportionality review must never become effectively obsolete, *post*, at 2046 – 2047, and n. 2.

While Justice THOMAS would apparently not rule out a death sentence for a \$50 theft by a 7-year-old, see *post*, at 2044, 2047 – 2048, n. 3, the Court wisely rejects his static approach to the law. Standards of decency have evolved since 1980. They will never stop doing so.

Chief Justice ROBERTS, concurring in the judgment.

I agree with the Court that Terrance Graham's sen-

tence of life without parole violates the Eighth Amendment's prohibition on “cruel and unusual punishments.” Unlike the majority, however, I see no need to invent a new constitutional rule of dubious provenance in reaching that conclusion. Instead, my analysis is based on an application of this Court's precedents, in particular (1) our cases requiring “narrow proportionality” review of noncapital sentences and (2) our conclusion in *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), that **juvenile** offenders are generally less culpable than adults who commit the same crimes.

These cases expressly allow courts addressing allegations that a noncapital sentence violates the Eighth Amendment to consider the particular defendant and particular crime at issue. The standards for relief under these precedents are rigorous, and should be. But here Graham's **juvenile** status—together with the nature of his criminal conduct and the extraordinarily severe punishment imposed—lead me to conclude that his sentence of life without parole is unconstitutional.

I

Our Court has struggled with whether and how to apply the Cruel and Unusual Punishments Clause to sentences for noncapital crimes. Some of my colleagues have raised serious and thoughtful questions*2037 about whether, as an original matter, the Constitution was understood to require any degree of proportionality between noncapital offenses and their corresponding punishments. See, e.g., *Harmelin v. Michigan*, 501 U.S. 957, 962-994, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (principal opinion of SCALIA, J.); *post*, at 2044 – 2045, and n. 1 (THOMAS, J., dissenting). Neither party here asks us to reexamine our precedents requiring such proportionality, however, and so I approach this case by

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trying to apply our past decisions to the facts at hand.

A

Graham's case arises at the intersection of two lines of Eighth Amendment precedent. The first consists of decisions holding that the Cruel and Unusual Punishments Clause embraces a "narrow proportionality principle" that we apply, on a case-by-case basis, when asked to review noncapital sentences. *Lockyer v. Andrade*, 538 U.S. 63, 72, 123 S.Ct. 1166, 155 L.Ed.2d 144 (2003) (internal quotation marks omitted); *Solem v. Helm*, 463 U.S. 277, 290, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983); *Ewing v. California*, 538 U.S. 11, 20, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003) (plurality opinion); *Harmelin*, *supra*, at 996–997, 111 S.Ct. 2680 (KENNEDY, J., concurring in part and concurring in judgment). This "narrow proportionality principle" does not grant judges blanket authority to second-guess decisions made by legislatures or sentencing courts. On the contrary, a reviewing court will only "rarely" need "to engage in extended analysis to determine that a sentence is *not* constitutionally disproportionate," *Solem*, *supra*, at 290, n. 16, 103 S.Ct. 3001 (emphasis added), and "successful challenges" to noncapital sentences will be all the more "exceedingly rare," *Rummel v. Estelle*, 445 U.S. 263, 272, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980).

We have "not established a clear or consistent path for courts to follow" in applying the highly deferential "narrow proportionality" analysis. *Lockyer*, *supra*, at 72, 123 S.Ct. 1166. We have, however, emphasized the primacy of the legislature in setting sentences, the variety of legitimate penological schemes, the state-by-state diversity protected by our federal system, and the requirement that review be guided by objective, rather than subjective, factors. *Ewing*, *supra*, at 23, 123 S.Ct. 1179 (plurality opinion); *Harmelin*, *supra*, at 998–1001, 111 S.Ct. 2680 (opinion of KENNEDY, J.). Most importantly, however, we have explained that the Eighth Amendment " 'does not require strict proportionality between crime and sentence' "; rather, " 'it forbids only extreme sentences that are 'grossly disproportionate' to the crime.' " *Ewing*, *supra*, at 23, 123 S.Ct. 1179 (plurality opinion) (quoting *Harmelin*, *supra*, at 1001,

111 S.Ct. 2680 (opinion of KENNEDY, J.)).

Our cases indicate that courts conducting "narrow proportionality" review should begin with a threshold inquiry that compares "the gravity of the offense and the harshness of the penalty." *Solem*, 463 U.S., at 290–291, 103 S.Ct. 3001. This analysis can consider a particular offender's mental state and motive in committing the crime, the actual harm caused to his victim or to society by his conduct, and any prior criminal history. *Id.*, at 292–294, 296–297, and n. 22, 103 S.Ct. 3001 (considering motive, past criminal conduct, alcoholism, and propensity for violence of the particular defendant); see also *Ewing*, *supra*, at 28–30, 123 S.Ct. 1179 (plurality opinion) (examining defendant's criminal history); *2038 *Harmelin*, 501 U.S., at 1001–1004, 111 S.Ct. 2680 (opinion of KENNEDY, J.) (noting specific details of the particular crime of conviction).

Only in "the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality," *id.*, at 1005, 111 S.Ct. 2680, should courts proceed to an "intra-jurisdictional" comparison of the sentence at issue with those imposed on other criminals in the same jurisdiction, and an "inter-jurisdictional" comparison with sentences imposed for the same crime in other jurisdictions. *Solem*, *supra*, at 291–292, 103 S.Ct. 3001. If these subsequent comparisons confirm the inference of gross disproportionality, courts should invalidate the sentence as a violation of the Eighth Amendment.

B

The second line of precedent relevant to assessing Graham's sentence consists of our cases acknowledging that *juvenile* offenders are *generally*—though not necessarily in every case—less morally culpable than adults who commit the same crimes. This insight animated our decision in *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988), in which we invalidated a capital sentence imposed on a *juvenile* who had committed his crime under the age of 16. More recently, in *Roper*, 543 U.S. 551, 125 S.Ct. 1183, we extended the prohibition on executions to those who committed their crimes before the age of 18.

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Both *Thompson* and *Roper* arose in the unique context of the death penalty, a punishment that our Court has recognized “must be limited to those offenders who commit ‘a narrow category of the most serious crimes’ and whose extreme culpability makes them ‘the most deserving of execution.’” 543 U.S., at 568, 125 S.Ct. 1183 (quoting *Atkins v. Virginia*, 536 U.S. 304, 319, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002)). *Roper*’s prohibition on the **juvenile** death penalty followed from our conclusion that “[t]hree general differences between **juveniles** under 18 and adults demonstrate that **juvenile** offenders cannot with reliability be classified among the worst offenders.” 543 U.S., at 569, 125 S.Ct. 1183. These differences are a lack of maturity and an underdeveloped sense of responsibility, a heightened susceptibility to negative influences and outside pressures, and the fact that the character of a **juvenile** is “more transitory” and “less fixed” than that of an adult. *Id.*, at 569–570, 125 S.Ct. 1183. Together, these factors establish the “diminished culpability of **juveniles**,” *id.*, at 571, 125 S.Ct. 1183, and “render suspect any conclusion” that **juveniles** are among “the worst offenders” for whom the death penalty is reserved, *id.*, at 570, 125 S.Ct. 1183.

Today, the Court views *Roper* as providing the basis for a new categorical rule that **juveniles** may never receive a sentence of life without parole for nonhomicide crimes. I disagree. In *Roper*, the Court tailored its analysis of **juvenile** characteristics to the specific question whether **juvenile** offenders could constitutionally be subject to capital punishment. Our answer that they could not be sentenced to death was based on the explicit conclusion that they “cannot with reliability be classified among the *worst* offenders.” *Id.*, at 569, 125 S.Ct. 1183 (emphasis added).

This conclusion does not establish that **juveniles** can never be eligible for life without parole. A life sentence is of course far less severe than a death sentence, and we have never required that it be imposed only on the very worst offenders, as we have with capital punishment. Treating **juvenile** life sentences as analogous to capital punishment is at odds with our longstanding view that “the death penalty is different from other pun-

ishments in kind *2039 rather than degree.” *Solem, supra*, at 294, 103 S.Ct. 3001. It is also at odds with *Roper* itself, which drew the line at capital punishment by blessing **juvenile** sentences that are “less severe than death” despite involving “forfeiture of some of the most basic liberties.” 543 U.S., at 573–574, 125 S.Ct. 1183. Indeed, *Roper* explicitly relied on the possible imposition of life without parole on some **juvenile** offenders. *Id.*, at 572, 125 S.Ct. 1183.

But the fact that *Roper* does not support a categorical rule barring life sentences for all **juveniles** does not mean that a criminal defendant’s age is irrelevant to those sentences. On the contrary, our cases establish that the “narrow proportionality” review applicable to noncapital cases itself takes the personal “culpability of the offender” into account in examining whether a given punishment is proportionate to the crime. *Solem, supra*, at 292, 103 S.Ct. 3001. There is no reason why an offender’s **juvenile** status should be excluded from the analysis. Indeed, given *Roper*’s conclusion that **juveniles** are typically less blameworthy than adults, 543 U.S., at 571, 125 S.Ct. 1183, an offender’s **juvenile** status can play a central role in the inquiry.

Justice THOMAS disagrees with even our limited reliance on *Roper* on the ground that the present case does not involve capital punishment. *Post*, at 2056 (dissenting opinion). That distinction is important—indeed, it underlies our rejection of the categorical rule declared by the Court. But *Roper*’s conclusion that **juveniles** are typically less culpable than adults has pertinence beyond capital cases, and rightly informs the case-specific inquiry I believe to be appropriate here.

In short, our existing precedent already provides a sufficient framework for assessing the concerns outlined by the majority. Not every **juvenile** receiving a life sentence will prevail under this approach. Not every **juvenile** should. But all will receive the protection that the Eighth Amendment requires.

II

Applying the “narrow proportionality” framework to the particular facts of this case, I conclude that Graham’s sentence of life without parole violates the Eighth

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Amendment.^{FN*}

FN* Justice ALITO suggests that Graham has failed to preserve any challenge to his sentence based on the “narrow, as-applied proportionality principle.” *Post*, at 2058 (dissenting opinion). I disagree. It is true that Graham asks us to declare, categorically, that no **juvenile** convicted of a nonhomicide offense may ever be subject to a sentence of life without parole. But he claims that this rule is warranted under the narrow proportionality principle we set forth in *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983), *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991), and *Ewing v. California*, 538 U.S. 11, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003). Brief for Petitioner 30, 31, 54–64. Insofar as he relies on that framework, I believe we may do so as well, even if our analysis results in a narrower holding than the categorical rule Graham seeks. See also Reply Brief for Petitioner 15, n. 8 (“[T]he Court could rule narrowly in this case and hold only that petitioner’s sentence of life without parole was unconstitutionally disproportionate”).

A

I begin with the threshold inquiry comparing the gravity of Graham’s conduct to the harshness of his penalty. There is no question that the crime for which Graham received his life sentence—armed burglary of a nondomicil with an assault or battery—is “a serious crime deserving serious punishment.” *Enmund v. Florida*, 458 U.S. 782, 797, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982). So too is the home invasion robbery that was the basis of Graham’s *2040 probation violation. But these crimes are certainly less serious than other crimes, such as murder or rape.

As for Graham’s degree of personal culpability, he committed the relevant offenses when he was a **juvenile**—a stage at which, *Roper* emphasized, one’s “culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” 543 U.S., at 571, 125 S.Ct. 1183. Graham’s age places him

in a significantly different category from the defendants in *Rummel*, *Harmelin*, and *Ewing*, all of whom committed their crimes as adults. Graham’s youth made him relatively more likely to engage in reckless and dangerous criminal activity than an adult; it also likely enhanced his susceptibility to peer pressure. See, e.g., *Roper*, *supra*, at 572, 125 S.Ct. 1183; *Johnson v. Texas*, 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993); *Eddings v. Oklahoma*, 455 U.S. 104, 115–117, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982). There is no reason to believe that Graham should be denied the general presumption of diminished culpability that *Roper* indicates should apply to **juvenile** offenders. If anything, Graham’s in-court statements—including his request for a second chance so that he could “do whatever it takes to get to the NFL”—underscore his immaturity. App. 380.

The fact that Graham committed the crimes that he did proves that he was dangerous and deserved to be punished. But it does not establish that he was *particularly* dangerous—at least relative to the murderers and rapists for whom the sentence of life without parole is typically reserved. On the contrary, his lack of prior criminal convictions, his youth and immaturity, and the difficult circumstances of his upbringing noted by the majority, *ante*, at 2018, all suggest that he was markedly less culpable than a typical adult who commits the same offenses.

Despite these considerations, the trial court sentenced Graham to life in prison without the possibility of parole. This is the second-harshes sentence available under our precedents for *any* crime, and the most severe sanction available for a nonhomicide offense. See *Kennedy v. Louisiana*, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008). Indeed, as the majority notes, Graham’s sentence far exceeded the punishment proposed by the Florida Department of Corrections (which suggested a sentence of four years, Brief for Petitioner 20), and the state prosecutors (who asked that he be sentenced to 30 years in prison for the armed burglary, App. 388). No one in Graham’s case other than the sentencing judge appears to have believed that Graham deserved to go to prison for life.

Based on the foregoing circumstances, I conclude

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that there is a strong inference that Graham's sentence of life imprisonment without parole was grossly disproportionate in violation of the Eighth Amendment. I therefore proceed to the next steps of the proportionality analysis.

B

Both intrajurisdictional and interjurisdictional comparisons of Graham's sentence confirm the threshold inference of disproportionality.

Graham's sentence was far more severe than that imposed for similar violations of Florida law, even without taking **juvenile** status into account. For example, individuals who commit burglary or robbery offenses in Florida receive average sentences of less than 5 years and less than 10 years, respectively. Florida Dept. of Corrections, Annual Report FY 2007–2008: The Guidebook to Corrections in Florida 35. Unsurprisingly, Florida's **juvenile** *2041 criminals receive similarly low sentences—typically less than five years for burglary and less than seven years for robbery. *Id.*, at 36. Graham's life without parole sentence was far more severe than the average sentence imposed on those convicted of murder or manslaughter, who typically receive under 25 years in prison. *Id.*, at 35. As the Court explained in *Solem*, 463 U.S., at 291, 103 S.Ct. 3001, “[i]f more serious crimes are subject to the same penalty, or to less serious penalties, that is some indication that the punishment at issue may be excessive.”

Finally, the inference that Graham's sentence is disproportionate is further validated by comparison to the sentences imposed in other domestic jurisdictions. As the majority opinion explains, Florida is an outlier in its willingness to impose sentences of life without parole on **juveniles** convicted of nonhomicide crimes. See *ante*, at 2024.

III

So much for Graham. But what about Milagro Cunningham, a 17-year-old who beat and raped an 8-year-old girl before leaving her to die under 197 pounds of rock in a recycling bin in a remote landfill? See Musgrave, *Cruel or Necessary? Life Terms for Youths Spur National Debate*, Palm Beach Post, Oct.

15, 2009, p. 1A. Or Nathan Walker and Jakaris Taylor, the Florida **juveniles** who together with their friends gang-raped a woman and forced her to perform oral sex on her 12-year-old son? See 3 Sentenced to Life for Gang Rape of Mother, Associated Press, Oct. 14, 2009. The fact that Graham cannot be sentenced to life without parole for his conduct says nothing whatever about these offenders, or others like them who commit nonhomicide crimes far more reprehensible than the conduct at issue here. The Court uses Graham's case as a vehicle to proclaim a new constitutional rule—applicable well beyond the particular facts of Graham's case—that a sentence of life without parole imposed on *any juvenile* for *any* nonhomicide offense is unconstitutional. This categorical conclusion is as unnecessary as it is unwise.

A holding this broad is unnecessary because the particular conduct and circumstances at issue in the case before us are not serious enough to justify Graham's sentence. In reaching this conclusion, there is no need for the Court to decide whether that same sentence would be constitutional if imposed for other more heinous nonhomicide crimes.

A more restrained approach is especially appropriate in light of the Court's apparent recognition that it is perfectly legitimate for a **juvenile** to receive a sentence of life without parole for committing murder. This means that there is nothing *inherently* unconstitutional about imposing sentences of life without parole on **juvenile** offenders; rather, the constitutionality of such sentences depends on the particular crimes for which they are imposed. But if the constitutionality of the sentence turns on the particular crime being punished, then the Court should limit its holding to the particular offenses that Graham committed here, and should decline to consider other hypothetical crimes not presented by this case.

In any event, the Court's categorical conclusion is also unwise. Most importantly, it ignores the fact that some nonhomicide crimes—like the ones committed by Milagro Cunningham, Nathan Walker, and Jakaris Taylor—are especially heinous or grotesque, and thus may be deserving of more severe punishment.

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Those under 18 years old may as a general matter have “diminished” culpability relative to adults who commit the same crimes, *2042 *Roper*, 543 U.S., at 571, 125 S.Ct. 1183, but that does not mean that their culpability is always insufficient to justify a life sentence. See generally *Thompson*, 487 U.S., at 853, 108 S.Ct. 2687 (O'Connor, J., concurring in judgment). It does not take a moral sense that is fully developed in every respect to know that beating and raping an 8-year-old girl and leaving her to die under 197 pounds of rocks is horribly wrong. The single fact of being 17 years old would not afford Cunningham protection against life without parole if the young girl had died—as Cunningham surely expected she would—so why should it do so when she miraculously survived his barbaric brutality?

The Court defends its categorical approach on the grounds that a “clear line is necessary to prevent the possibility that life without parole sentences will be imposed on **juvenile** nonhomicide offenders who are not sufficiently culpable to merit that punishment.” *Ante*, at 2030. It argues that a case-by-case approach to proportionality review is constitutionally insufficient because courts might not be able “with sufficient accuracy [to] distinguish the few incorrigible **juvenile** offenders from the many that have the capacity for change.” *Ante*, at 2032.

The Court is of course correct that judges will never have perfect foresight—or perfect wisdom—in making sentencing decisions. But this is true when they sentence adults no less than when they sentence **juveniles**. It is also true when they sentence **juveniles** who commit murder no less than when they sentence **juveniles** who commit other crimes.

Our system depends upon sentencing judges applying their reasoned judgment to each case that comes before them. As we explained in *Solem*, the whole enterprise of proportionality review is premised on the “justified” assumption that “courts are competent to judge the gravity of an offense, at least on a relative scale.” 463 U.S., at 292, 103 S.Ct. 3001. Indeed, “courts traditionally have made these judgments” by applying “generally accepted criteria” to analyze “the harm caused or threatened to the victim or society, and the

culpability of the offender.” *Id.*, at 292, 294, 103 S.Ct. 3001.

* * *

Terrance Graham committed serious offenses, for which he deserves serious punishment. But he was only 16 years old, and under our Court's precedents, his youth is one factor, among others, that should be considered in deciding whether his punishment was unconstitutionally excessive. In my view, Graham's age—together with the nature of his criminal activity and the unusual severity of his sentence—tips the constitutional balance. I thus concur in the Court's judgment that Graham's sentence of life without parole violated the Eighth Amendment.

I would not, however, reach the same conclusion in every case involving a **juvenile** offender. Some crimes are so heinous, and some **juvenile** offenders so highly culpable, that a sentence of life without parole may be entirely justified under the Constitution. As we have said, “successful challenges” to noncapital sentences under the Eighth Amendment have been—and, in my view, should continue to be—“exceedingly rare.” *Rummel*, 445 U.S., at 272, 100 S.Ct. 1133. But Graham's sentence presents the exceptional case that our precedents have recognized will come along. We should grant Graham the relief to which he is entitled under the Eighth Amendment. The Court errs, however, in using this case as a vehicle for unsettling our established jurisprudence and fashioning a categorical rule applicable to far different cases.

*2043 Justice THOMAS, with whom Justice SCALIA joins, and with whom Justice ALITO joins as to Parts I and III, dissenting.

The Court holds today that it is “grossly disproportionate” and hence unconstitutional for any judge or jury to impose a sentence of life without parole on an offender less than 18 years old, unless he has committed a homicide. Although the text of the Constitution is silent regarding the permissibility of this sentencing practice, and although it would not have offended the standards that prevailed at the founding, the Court insists that the standards of American society have evolved such

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that the Constitution now requires its prohibition.

The news of this evolution will, I think, come as a surprise to the American people. Congress, the District of Columbia, and 37 States allow judges and juries to consider this sentencing practice in **juvenile** nonhomicide cases, and those judges and juries have decided to use it in the very worst cases they have encountered.

The Court does not conclude that life without parole itself is a cruel and unusual punishment. It instead rejects the judgments of those legislatures, judges, and juries regarding what the Court describes as the “moral” question of whether this sentence can ever be “proportionat[e]” when applied to the category of offenders at issue here. *Ante*, at 2021 (internal quotation marks omitted), *ante*, at 2036 (STEVENS, J., concurring).

I am unwilling to assume that we, as members of this Court, are any more capable of making such moral judgments than our fellow citizens. Nothing in our training as judges qualifies us for that task, and nothing in Article III gives us that authority.

I respectfully dissent.

I

The Court recounts the facts of Terrance Jamar Graham's case in detail, so only a summary is necessary here. At age 16 years and 6 months, Graham and two masked accomplices committed a burglary at a small Florida restaurant, during which one of Graham's accomplices twice struck the restaurant manager on the head with a steel pipe when he refused to turn over money to the intruders. Graham was arrested and charged as an adult. He later pleaded guilty to two offenses, including armed burglary with assault or battery, an offense punishable by life imprisonment under Florida law. Fla. Stat. §§ 810.02(2)(a), 810.02(2)(b) (2007). The trial court withheld adjudication on both counts, however, and sentenced Graham to probation, the first 12 months of which he spent in a county detention facility.

Graham reoffended just six months after his re-

lease. At a probation revocation hearing, a judge found by a preponderance of the evidence that, at age 17 years and 11 months, Graham invaded a home with two accomplices and held the homeowner at gunpoint for approximately 30 minutes while his accomplices ransacked the residence. As a result, the judge concluded that Graham had violated his probation and, after additional hearings, adjudicated Graham guilty on both counts arising from the restaurant robbery. The judge imposed the maximum sentence allowed by Florida law on the armed burglary count, life imprisonment without the possibility of parole.

Graham argues, and the Court holds, that this sentence violates the Eighth Amendment's Cruel and Unusual Punishments Clause because a life-without-parole sentence is always “grossly disproportionate” when imposed on a person under 18 who commits any crime short of a homicide.*2044 Brief for Petitioner 24; *ante*, at 2028 – 2029.

II

A

The Eighth Amendment, which applies to the States through the Fourteenth, provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” It is by now well established that the Cruel and Unusual Punishments Clause was originally understood as prohibiting torturous “ ‘ methods of punishment,’ ” *Harmelin v. Michigan*, 501 U.S. 957, 979, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (opinion of SCALIA, J.) (quoting Granucci, “Nor Cruel and Unusual Punishments Inflicted”: The Original Meaning, 57 Cal. L.Rev. 839, 842 (1969))—specifically methods akin to those that had been considered cruel and unusual at the time the Bill of Rights was adopted, *Baze v. Rees*, 553 U.S. 35, 99, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008) (THOMAS, J., concurring in judgment). With one arguable exception, see *Weems v. United States*, 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793 (1910); *Harmelin, supra*, at 990–994, 111 S.Ct. 2680 (opinion of SCALIA, J.) (discussing the scope and relevance of *Weems*’ holding), this Court applied the Clause with that understanding for nearly 170 years after the Eighth Amendment's ratification.

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More recently, however, the Court has held that the Clause authorizes it to proscribe not only methods of punishment that qualify as “cruel and unusual,” but also any punishment that the Court deems “grossly disproportionate” to the crime committed. *Ante*, at 2022 (internal quotation marks omitted). This latter interpretation is entirely the Court’s creation. As has been described elsewhere at length, there is virtually no indication that the Cruel and Unusual Punishments Clause originally was understood to require proportionality in sentencing. See *Harmelin*, 501 U.S., at 975–985, 111 S.Ct. 2680 (opinion of SCALIA, J.): Here, it suffices to recall just two points. First, the Clause does not expressly refer to proportionality or invoke any synonym for that term, even though the Framers were familiar with the concept, as evidenced by several founding-era state constitutions that required (albeit without defining) proportional punishments. See *id.*, at 977–978, 111 S.Ct. 2680. In addition, the penal statute adopted by the First Congress demonstrates that proportionality in sentencing was not considered a constitutional command. ^{FN1} See *id.*, at 980–981, 111 S.Ct. 2680 (noting that the statute prescribed capital punishment for offenses ranging from “‘run[ning] away with ... goods or merchandise to the value of fifty dollars,’ ” to “murder on the high seas” (quoting 1 Stat. 114)); see also *2045 Preyer, *Penal Measures in the American Colonies: An Overview*, 26 *Am. J. Legal Hist.* 326, 348–349, 353 (1982) (explaining that crimes in the late 18th-century colonies generally were punished either by fines, whipping, or public “shaming,” or by death, as intermediate sentencing options such as incarceration were not common).

FN1. THE CHIEF JUSTICE’s concurrence suggests that it is unnecessary to remark on the underlying question whether the Eighth Amendment requires proportionality in sentencing because “[n]either party here asks us to reexamine our precedents” requiring “proportionality between noncapital offenses and their corresponding punishments.” *Ante*, at 2037 (opinion concurring in judgment). I disagree. Both the Court and the concurrence do more than apply existing noncapital proportionality precedents to the particulars of Graham’s claim. The Court

radically departs from the framework those precedents establish by applying to a noncapital sentence the categorical proportionality review its prior decisions have reserved for death penalty cases alone. See Part III, *infra*. The concurrence, meanwhile, breathes new life into the case-by-case proportionality approach that previously governed noncapital cases, from which the Court has steadily, and wisely, retreated since *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983). See Part IV, *infra*. In dissenting from both choices to expand proportionality review, I find it essential to reexamine the foundations on which that doctrine is built.

The Court has nonetheless invoked proportionality to declare that capital punishment—though not unconstitutional *per se*—is categorically too harsh a penalty to apply to certain types of crimes and certain classes of offenders. See *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (plurality opinion) (rape of an adult woman); *Kennedy v. Louisiana*, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008) (rape of a child); *Enmund v. Florida*, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982) (felony murder in which the defendant participated in the felony but did not kill or intend to kill); *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion) (juveniles under 16); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (juveniles under 18); *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (mentally retarded offenders). In adopting these categorical proportionality rules, the Court intrudes upon areas that the Constitution reserves to other (state and federal) organs of government. The Eighth Amendment prohibits the government from inflicting a cruel and unusual method of punishment upon a defendant. Other constitutional provisions ensure the defendant’s right to fair process before any punishment is imposed. But, as members of today’s majority note, “[s]ociety changes,” *ante*, at 2037 (STEVENS, J., concurring), and the Eighth Amendment leaves the unavoidably moral question of who “deserves” a particular nonprohibited method of punish-

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ment to the judgment of the legislatures that authorize the penalty, the prosecutors who seek it, and the judges and juries that impose it under circumstances they deem appropriate.

The Court has nonetheless adopted categorical rules that shield entire classes of offenses and offenders from the death penalty on the theory that “evolving standards of decency” require this result. *Ante*, at 2021 (internal quotation marks omitted). The Court has offered assurances that these standards can be reliably measured by “‘objective indicia’” of “national consensus,” such as state and federal legislation, jury behavior, and (surprisingly, given that we are talking about “national” consensus) international opinion. *Ante*, at 2022 (quoting *Roper, supra*, at 572, 125 S.Ct. 1183); see also *ante*, at 2021 – 2025, 2033 – 2034. Yet even assuming that is true, the Framers did not provide for the constitutionality of a particular type of punishment to turn on a “snapshot of American public opinion” taken at the moment a case is decided. *Roper, supra*, at 572, 125 S.Ct. 1183 (SCALIA, J., dissenting). By holding otherwise, the Court preterms in all but one direction the evolution of the standards it describes, thus “calling a constitutional halt to what may well be a pendulum swing in social attitudes,” *Thompson, supra*, at 869, 108 S.Ct. 2687 (SCALIA, J., dissenting), and “stunt[ing] legislative consideration” of new questions of penal policy as they emerge, *Kennedy, supra*, at —, 128 S.Ct., at 2665–66 (ALITO, J., dissenting).

But the Court is not content to rely on snapshots of community consensus in any event. *Ante*, at 2026 (“Community consensus, while ‘entitled to great weight,’ is not itself determinative”) (quoting *Kennedy, supra*, at —, 128 S.Ct., at 2658). Instead, it reserves the right to reject the evidence of consensus it finds whenever its own “independent judgment” points in a *2046 different direction. *Ante*, at 2026. The Court thus openly claims the power not only to approve or disapprove of democratic choices in penal policy based on evidence of how society’s standards *have* evolved, but also on the basis of the Court’s “independent” perception of how those standards *should* evolve, which depends on what the Court concedes is “ ‘necessarily ...

a moral judgment” ’ ” regarding the propriety of a given punishment in today’s society. *Ante*, at 2021 (quoting *Kennedy, supra*, at —, 128 S.Ct., at 2645).

The categorical proportionality review the Court employs in capital cases thus lacks a principled foundation. The Court’s decision today is significant because it does not merely apply this standard—it remarkably expands its reach. For the first time in its history, the Court declares an entire class of offenders immune from a noncapital sentence using the categorical approach it previously reserved for death penalty cases alone.

B

Until today, the Court has based its categorical proportionality rulings on the notion that the Constitution gives special protection to capital defendants because the death penalty is a uniquely severe punishment that must be reserved for only those who are “most deserving of execution.” *Atkins, supra*, at 319, 122 S.Ct. 2242; see *Roper, supra*, at 572, 125 S.Ct. 1183; *Eddings v. Oklahoma*, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); *Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978). Of course, the Eighth Amendment itself makes no distinction between capital and noncapital sentencing, but the “‘bright line’” the Court drew between the two penalties has for many years served as the principal justification for the Court’s willingness to reject democratic choices regarding the death penalty. See *Rummel v. Estelle*, 445 U.S. 263, 275, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980).

Today’s decision eviscerates that distinction. “Death is different” no longer. The Court now claims not only the power categorically to reserve the “most severe punishment” for those the Court thinks are “ ‘the most deserving of execution,’ ” *Roper*, 543 U.S., at 568, 125 S.Ct. 1183 (quoting *Atkins*, 536 U.S., at 319, 122 S.Ct. 2242), *but also* to declare that “less culpable” persons are categorically exempt from the “*second* most severe penalty.” *Ante*, at 2028 (emphasis added). No reliable limiting principle remains to prevent the Court from immunizing any class of offenders from the law’s third, fourth, fifth, or fiftieth most severe penalties as well.

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The Court's departure from the "death is different" distinction is especially mystifying when one considers how long it has resisted crossing that divide. Indeed, for a time the Court declined to apply proportionality principles to noncapital sentences at all, emphasizing that "a sentence of death differs in kind from any sentence of imprisonment, *no matter how long*." *Rummel*, 445 U.S., at 272, 100 S.Ct. 1133 (emphasis added). Based on that rationale, the Court found that the excessiveness of one prison term as compared to another was "properly within the province of legislatures, not courts," *id.*, at 275-276, 100 S.Ct. 1133, precisely because it involved an "invariably ... subjective determination, there being no clear way to make 'any constitutional distinction between one term of years and a shorter or longer term of years,'" *Hutto v. Davis*, 454 U.S. 370, 373, 102 S.Ct. 703, 70 L.Ed.2d 556 (1982) (*per curiam*) (quoting *Rummel*, *supra*, at 275, 100 S.Ct. 1133; emphasis added).

Even when the Court broke from that understanding in its 5-to-4 decision in **2047Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) (striking down as "grossly disproportionate" a life-without-parole sentence imposed on a defendant for passing a worthless check), the Court did so only as applied to the facts of that case; it announced no categorical rule. *Id.*, at 288, 303, 103 S.Ct. 3001. Moreover, the Court soon cabined *Solem*'s rationale. The controlling opinion in the Court's very next noncapital proportionality case emphasized that principles of federalism require substantial deference to legislative choices regarding the proper length of prison sentences. *Harmelin*, 501 U.S., at 999, 111 S.Ct. 2680 (opinion of KENNEDY, J.) ("[M]arked divergences both in underlying theories of sentencing and in the length of prescribed prison terms are the inevitable, often beneficial, result of the federal structure"); *id.*, at 1000, 111 S.Ct. 2680 ("[D]iffering attitudes and perceptions of local conditions may yield different, yet rational, conclusions regarding the appropriate length of prison terms for particular crimes"). That opinion thus concluded that "successful challenges to the proportionality of [prison] sentences [would be] exceedingly rare." *Id.*, at 1001, 111 S.Ct. 2680 (internal quotation marks omitted).

They have been rare indeed. In the 28 years since *Solem*, the Court has considered just three such challenges and has rejected them all, see *Ewing v. California*, 538 U.S. 11, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003); *Lockyer v. Andrade*, 538 U.S. 63, 123 S.Ct. 1166, 155 L.Ed.2d 144 (2003); *Harmelin*, *supra*, largely on the theory that criticisms of the "wisdom, cost-efficiency, and effectiveness" of term-of-years prison sentences are "appropriately directed at the legislature[s]," not the courts, *Ewing*, *supra*, at 27, 28, 123 S.Ct. 1179 (plurality opinion). The Court correctly notes that those decisions were "closely divided," *ante*, at 2022, but so was *Solem* itself, and it is now fair to describe *Solem* as an outlier.^{FN2}

FN2. Courts and commentators interpreting this Court's decisions have reached this conclusion. See, e.g., *United States v. Polk*, 546 F.3d 74, 76 (C.A.1 2008) ("[I]nstances of gross disproportionality [in noncapital cases] will be hen's-teeth rare"); Barkow, The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity, 107 Mich. L.Rev. 1145, 1160 (2009) ("*Solem* now stands as an outlier"); Note, The Capital Punishment Exception: A Case for Constitutionalizing the Substantive Criminal Law, 104 Colum. L.Rev. 426, 445 (2004) (observing that outside of the capital context, "proportionality review has been virtually dormant"); Steiker & Steiker, Opening a Window or Building a Wall? The Effect of Eighth Amendment Death Penalty Law and Advocacy on Criminal Justice More Broadly, 11 U. Pa. J. Const. L. 155, 184 (2009) ("Eighth Amendment challenges to excessive incarceration [are] essentially non-starters").

Remarkably, the Court today does more than return to *Solem*'s case-by-case proportionality standard for noncapital sentences; it hurtles past it to impose a categorical proportionality rule banning life-without-parole sentences not just in this case, but in every case involving a juvenile nonhomicide offender, no matter what the circumstances. Neither the Eighth

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Amendment nor the Court's precedents justify this decision.

III

The Court asserts that categorical proportionality review is necessary here merely because Graham asks for a categorical rule, see *ante*, at 2022 – 2023, and because the Court thinks clear lines are a good idea, see *ante*, at 2030 – 2031. I find those factors wholly insufficient to justify the Court's break from past practice. First, the Court fails to acknowledge that a petitioner seeking to exempt an entire category of offenders from a sentencing practice carries a much heavier burden than one *2048 seeking case-specific relief under *Solem*. Unlike the petitioner in *Solem*, Graham must establish not only that his own life-without-parole sentence is “grossly disproportionate,” but also that such a sentence is always grossly disproportionate whenever it is applied to a **juvenile** nonhomicide offender, no matter how heinous his crime. Cf. *United States v. Salerno*, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). Second, even applying the Court's categorical “evolving standards” test, neither objective evidence of national consensus nor the notions of culpability on which the Court's “independent judgment” relies can justify the categorical rule it declares here.

A

According to the Court, proper Eighth Amendment analysis “begins with objective indicia of national consensus,” ^{FN3} and “[t]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures,” *ante*, at 2023 (internal quotation marks omitted). As such, the analysis should end quickly, because a national “consensus” in favor of the Court's result simply does not exist. The laws of all 50 States, the Federal Government, and the District of Columbia provide that **juveniles** over a certain age may be tried in adult court if charged with certain crimes.^{FN4} See *ante*, at 2034 – 2036 (Appendix to opinion of the Court). Forty-five States, the Federal Government, and the District of Columbia expose **juvenile** offenders charged in adult court to the very same range of punishments faced by adults charged with the same crimes. See *ante*, at 2034 – 2035, Part I. Eight of

those States do not make life-without-parole sentences available for any nonhomicide offender, regardless of age.^{FN5} All remaining jurisdictions—the Federal Government, the other 37 States, *2049 and the District—authorize life-without-parole sentences for certain nonhomicide offenses, and authorize the imposition of such sentences on persons under 18. See *ibid*. Only *five* States prohibit **juvenile** offenders from receiving a life-without-parole sentence that could be imposed on an adult convicted of the same crime.^{FN6}

FN3. The Court ignores entirely the threshold inquiry of whether subjecting **juvenile** offenders to adult penalties was one of the “modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted.” *Ford v. Wainwright*, 477 U.S. 399, 405, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986). As the Court has noted in the past, however, the evidence is clear that, at the time of the Founding, “the common law set a rebuttable presumption of incapacity to commit any felony at the age of 14, and theoretically permitted [even] capital punishment to be imposed on a person as young as age 7.” *Stanford v. Kentucky*, 492 U.S. 361, 368, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989) (citing 4 W. Blackstone, Commentaries *23–*24; 1 M. Hale, Pleas of the Crown 24–29 (1800)). It thus seems exceedingly unlikely that the imposition of a life-without-parole sentence on a person of Graham's age would run afoul of those standards.

FN4. Although the details of state laws vary extensively, they generally permit the transfer of a **juvenile** offender to adult court through one or more of the following mechanisms: (1) judicial waiver, in which the **juvenile** court has the authority to waive jurisdiction over the offender and transfer the case to adult court; (2) concurrent jurisdiction, in which adult and **juvenile** courts share jurisdiction over certain cases and the prosecutor has discretion to file in either court; or (3) statutory provisions that

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exclude **juveniles** who commit certain crimes from **juvenile-court** jurisdiction. See Dept. of Justice, **Juvenile Offenders and Victims: 1999 National Report** 89, 104 (1999) (hereinafter 1999 DOJ National Report); Feld, **Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences**, 10 J. Law & Family Studies 11, 38–39 (2007).

FN5. Alaska entitles all offenders to parole, regardless of their crime. Alaska Stat. § 12.55.015(g) (2008). The other seven States provide parole eligibility to all offenders, except those who commit certain homicide crimes. Conn. Gen.Stat. § 53a–35a (2009); Haw.Rev.Stat. §§ 706–656(1) – (2) (1993 and 2008 Supp. Pamphlet); Me.Rev.Stat. Ann., Tit. 17–a, § 1251 (2006); Mass. Gen. Laws Ann., ch. 265, § 2 (West 2008); N.J. Stat. Ann. §§ 2C:11–3(b)(2)–(3) (West 2005); N.M. Stat. Ann. § 31–18–14 (Supp.2009); Vt. Stat. Ann., Tit. 13, § 2303 (2009).

FN6. Colo.Rev.Stat. Ann. § 18–1.3–401(4)(b) (2009) (authorizing mandatory life sentence with possibility for parole after 40 years for **juveniles** convicted of class 1 felonies); Kan. Stat. Ann. §§ 21–4622, 4643 (2007); Ky.Rev.Stat. Ann. § 640.040 (West 2006); *Shepherd v. Commonwealth*, 251 S.W.3d 309, 320–321 (Ky.2008); Mont.Code Ann. § 46–18–222(1) (2009); Tex. Penal Code Ann. § 12.31 (West Supp.2009).

No plausible claim of a consensus against this sentencing practice can be made in light of this overwhelming legislative evidence. The sole fact that federal law authorizes this practice singlehandedly refutes the claim that our Nation finds it morally repugnant. The additional reality that 37 out of 50 States (a supermajority of 74%) permit the practice makes the claim utterly implausible. Not only is there no consensus against this penalty, there is a clear legislative consensus *in favor* of its availability.

Undaunted, however, the Court brushes this evid-

ence aside as “incomplete and unavailing,” declaring that “[t]here are measures of consensus other than legislation.” *Ante*, at 2023 (quoting *Kennedy*, 554 U.S., at —, 128 S.Ct., at 2657). This is nothing short of stunning. Most importantly, federal civilian law approves this sentencing practice.^{FN7} And although the Court has never decided how many state laws are necessary to show consensus, the Court has never banished into constitutional exile a sentencing practice that the laws of a majority, let alone a supermajority, of States expressly permit.^{FN8}

FN7. Although the Court previously has dismissed the relevance of the Uniform Code of Military Justice to its discernment of consensus, see *Kennedy v. Louisiana*, 554 U.S. 407, —, 128 S.Ct. 2641, —, 171 L.Ed.2d 525 (2008) (statement of KENNEDY, J., respecting denial of rehearing), **juveniles** who enlist in the military are nonetheless eligible for life-without-parole sentences if they commit certain nonhomicide crimes. See 10 U.S.C. §§ 505(a) (permitting enlistment at age 17), 856a, 920 (2006 ed., Supp. II).

FN8. *Kennedy*, 554 U.S., at —, —, 128 S.Ct., at 2651–52, 2657–58 (prohibiting capital punishment for the rape of a child where only six States had enacted statutes authorizing the punishment since *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (*per curiam*)); *Roper v. Simmons*, 543 U.S. 551, 564, 568, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (prohibiting capital punishment for offenders younger than 18 where 18 of 38 death-penalty States precluded imposition of the penalty on persons under 18 and the remaining 12 States did not permit capital punishment at all); *Atkins v. Virginia*, 536 U.S. 304, 314–315, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (prohibiting capital punishment of mentally retarded persons where 18 of 38 death-penalty States precluded imposition of the penalty on such persons and the remaining States did not authorize capital punishment at all); *Thompson v. Oklahoma*,

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487 U.S. 815, 826, 829, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion) (prohibiting capital punishment of offenders under 16 where 18 of 36 death-penalty States precluded imposition of the penalty on such persons and the remaining States did not permit capital punishment at all); *Enmund v. Florida*, 458 U.S. 782, 789, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982) (prohibiting capital punishment for felony murder without proof of intent to kill where eight States allowed the punishment without proof of that element); *Coker v. Georgia*, 433 U.S. 584, 593, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (holding capital punishment for the rape of a woman unconstitutional where “[a]t no time in the last 50 years have a majority of the States authorized death as a punishment for rape”).

Moreover, the consistency and direction of recent legislation—a factor the Court previously has relied upon when crafting *2050 categorical proportionality rules, see *Atkins*, 536 U.S., at 315–316, 122 S.Ct. 2242; *Roper*, 543 U.S., at 565–566, 125 S.Ct. 1183—underscores the consensus *against* the rule the Court announces here. In my view, the Court cannot point to a national consensus in favor of its rule without assuming a consensus in favor of the two penological points it later discusses: (1) **Juveniles** are always less culpable than similarly-situated adults, and (2) **juveniles** who commit nonhomicide crimes should always receive an opportunity to demonstrate rehabilitation through parole. *Ante*, at 2026, 2029 – 2030. But legislative trends make that assumption untenable.

First, States over the past 20 years have consistently *increased* the severity of punishments for **juvenile** offenders. See 1999 DOJ National Report 89 (referring to the 1990's as “a time of unprecedented change as State legislatures crack[ed] down on **juvenile** crime”); *ibid.* (noting that, during that period, “legislatures in 47 States and the District of Columbia enacted laws that made their **juvenile** justice systems more punitive,” principally by “ma[king] it easier to transfer **juvenile** offenders from the **juvenile** justice system to the [adult]

criminal justice system”); *id.*, at 104. This, in my view, reveals the States' widespread agreement that **juveniles** can sometimes act with the same culpability as adults and that the law should permit judges and juries to consider adult sentences—including life without parole—in those rare and unfortunate cases. See Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J. Law & Family Studies 11, 69–70 (2007) (noting that life-without-parole sentences for **juveniles** have increased since the 1980's); Amnesty International & Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* 2, 31 (2005) (same).

Second, legislatures have moved away from parole over the same period. Congress abolished parole for federal offenders in 1984 amid criticism that it was subject to “gamesmanship and cynicism,” Breyer, *Federal Sentencing Guidelines Revisited*, 11 Fed. Sentencing Rep. 180 (1999) (discussing the Sentencing Reform Act of 1984, 98 Stat. 1987), and several States have followed suit, see T. Hughes, D. Wilson, & A. Beck, Dept. of Justice, Bureau of Justice Statistics, *Trends in State Parole, 1990–2000*, p. 1 (2001) (noting that, by the end of 2000, 16 States had abolished parole for all offenses, while another 4 States had abolished it for certain ones). In light of these developments, the argument that there is nationwide consensus that parole must be available to offenders less than 18 years old in *every* nonhomicide case simply fails.

B

The Court nonetheless dismisses existing legislation, pointing out that life-without-parole sentences are rarely imposed on **juvenile** nonhomicide offenders—123 times in recent memory^{FN9} by the Court's calculation, spread out across 11 States.^{FN10} *Ante*, at 2023 – 2024. Based on this rarity of use, the Court proclaims a consensus against the practice, implying that laws allowing it either reflect the consensus of a prior, less civilized time or are the work of legislatures tone-deaf to moral values of their constituents that this *2051 Court claims to have easily discerned from afar. See *ante*, at 2023.

FN9. I say “recent memory” because the re-

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search relied upon by the Court provides a headcount of **juvenile** nonhomicide offenders presently incarcerated in this country, but does not provide more specific information about all of the offenders, such as the dates on which they were convicted.

FN10. When issued, the Court's opinion relied on a letter the Court had requested from the Bureau of Prisons (BOP), which stated that there were six **juvenile** nonhomicide offenders then serving life-without-parole sentences in the federal system. After the Court released its opinion, the Acting Solicitor General disputed the BOP's calculations and stated that none of those six offenders was serving a life without parole sentence solely for a **juvenile** nonhomicide crime completed before the age of 18. See Letter from Neal Kumar Katyal, Acting Solicitor General, U.S. Dept. of Justice, to Clerk of the Supreme Court (May 24, 2010) (available in Clerk of Court's case file) (noting that five of the six inmates were convicted for participation in unlawful conspiracies that began when they were **juveniles** but continued after they reached the age of 18, and noting that the sixth inmate was convicted of murder as a predicate offense under the Racketeer Influenced and Corrupt Organizations Act). The Court has amended its opinion in light of the Acting Solicitor General's letter. In my view, the inconsistency between the BOP's classification of these six offenders and the Solicitor General's is irrelevant. The fact remains that federal law, and the laws of a supermajority of States, permit this sentencing practice. And, as will be explained, see *infra* this page and 2025-2028, judges and jurors have chosen to impose this sentence in the very worst cases they have encountered.

This logic strains credulity. It has been rejected before. *Gregg v. Georgia*, 428 U.S. 153, 182, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.) (“[T]he relative infre-

quency of jury verdicts imposing the death sentence does not indicate rejection of capital punishment *per se*. Rather, [it] ... may well reflect the humane feeling that this most irrevocable of sanctions should be reserved for a small number of extreme cases”). It should also be rejected here. That a punishment is rarely imposed demonstrates nothing more than a general consensus that it should be just that—rarely imposed. It is not proof that the punishment is one the Nation abhors.

The Court nonetheless insists that the 26 States that authorize this penalty, but are not presently incarcerating a **juvenile** nonhomicide offender on a life-without-parole sentence, cannot be counted as approving its use. The mere fact that the laws of a jurisdiction permit this penalty, the Court explains, “does not indicate that the penalty has been endorsed through deliberate, express, and full legislative consideration.” *Ante*, at 2026.

But this misapplies the Court's own evolving standards test, “[i]t is not the burden of [a State] to establish a national consensus *approving* what their citizens have voted to do; rather, it is the ‘heavy burden’ of petitioners to establish a national consensus *against* it.” *Stanford v. Kentucky*, 492 U.S. 361, 373, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989) (quoting *Gregg*, *supra*, at 175, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and STEVENS, JJ.); some emphasis added). In light of this fact, the Court is wrong to equate a jurisdiction's disuse of a legislatively authorized penalty with its moral opposition to it. The fact that the laws of a jurisdiction permit this sentencing practice demonstrates, at a minimum, that the citizens of that jurisdiction find tolerable the possibility that a jury of their peers could impose a life-without-parole sentence on a **juvenile** whose nonhomicide crime is sufficiently depraved.

The recent case of 16-year-old Keighton Budder illustrates this point. Just weeks before the release of this opinion, an Oklahoma jury sentenced Budder to life without parole after hearing evidence that he viciously attacked a 17-year-old girl who gave him a ride home from a party. See Stogsdill, Teen Gets Life Terms in Stabbing, Rape Case, *Tulsa World*, Apr. 2, 2010, p. A10; Stogsdill, Delaware County Teen Sentenced in

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Rape, Assault Case, Tulsa World, May 4, 2010, p. A12. Budder allegedly put the girl's head " 'into a headlock and sliced her throat,' " raped her, stabbed her about 20 times, beat her, and pounded her face into the rocks alongside a dirt road. Teen Gets Life Terms in Stabbing, Rape Case, at A10. Miraculously, the victim survived. *Ibid.*

Budder's crime was rare in its brutality. The sentence the jury imposed was also rare. According to the study relied upon by this Court, Oklahoma had no such offender in its prison system before Budder's offense. P. Annino, D. Rasmussen, *2052 & C. Rice, *Juvenile Life Without Parole for Non-Homicide Offenses: Florida Compared to Nation 2*, 14 (Sept. 14, 2009) (Table A). Without his conviction, therefore, the Court would have counted Oklahoma's citizens as morally opposed to life-without-parole sentences for *juveniles* nonhomicide offenders.

Yet Oklahoma's experience proves the inescapable flaw in that reasoning: Oklahoma citizens have enacted laws that allow Oklahoma juries to consider life-without-parole sentences in *juvenile* nonhomicide cases. Oklahoma juries invoke those laws rarely—in the unusual cases that they find exceptionally depraved. I cannot agree with the Court that Oklahoma citizens should be constitutionally disabled from using this sentencing practice merely because they have not done so more frequently. If anything, the rarity of this penalty's use underscores just how judicious sentencing judges and juries across the country have been in invoking it.

This fact is entirely consistent with the Court's intuition that *juveniles generally* are less culpable and more capable of growth than adults. See *infra*, at 2028 – 2029. Graham's own case provides another example. Graham was statutorily eligible for a life-without-parole sentence after his first crime. But the record indicates that the trial court did not give such a sentence serious consideration at Graham's initial plea hearing. It was only after Graham subsequently violated his parole by invading a home at gunpoint that the maximum sentence was imposed.

In sum, the Court's calculation that 123 *juvenile*

nonhomicide life-without-parole sentences have been imposed nationwide in recent memory, even if accepted, hardly amounts to strong evidence that the sentencing practice offends our common sense of decency.^{FN11}

FN11. Because existing legislation plainly suffices to refute any consensus against this sentencing practice, I assume the accuracy of the Court's evidence regarding the frequency with which this sentence has been imposed. But I would be remiss if I did not mention two points about the Court's figures. First, it seems odd that the Court counts only those *juveniles* sentenced to life without parole and excludes from its analysis all *juveniles* sentenced to lengthy term-of-years sentences (e.g., 70 or 80 years' imprisonment). It is difficult to argue that a judge or jury imposing such a long sentence—which effectively denies the offender any material opportunity for parole—would express moral outrage at a life-without-parole sentence.

Second, if objective indicia of consensus were truly important to the Court's analysis, the statistical information presently available would be woefully inadequate to form the basis of an Eighth Amendment rule that can be revoked only by constitutional amendment. The only evidence submitted to this Court regarding the frequency of this sentence's imposition was a single study completed after this Court granted certiorari in this case. See P. Annino, D. Rasmussen, & C. Rice, *Juvenile Life Without Parole for Non-Homicide Offenses: Florida Compared to Nation 2* (Sept. 14, 2009). Although I have no reason to question the professionalism with which this study was conducted, the study itself acknowledges that it was incomplete and the first of its kind. See *id.*, at 1. The Court's questionable decision to "complete" the study on its own does not materially increase its reliability. For one thing, by finishing the study itself, the Court pro-

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hibits the parties from ever disputing its findings. Complicating matters further, the original study sometimes relied on third-party data rather than data from the States themselves, see *ibid.*; the study has never been peer reviewed; and specific data on all 123 offenders (age, date of conviction, crime of conviction, etc.), have not been collected, making verification of the Court's headcount impossible. The Court inexplicably blames Florida for all of this. See *ante*, at 2023 – 2024. But as already noted, it is not Florida's burden to collect data to prove a national consensus in favor of this sentencing practice, but Graham's "heavy burden" to prove a consensus *against* it. See *supra*, at 2051.

*2053 Finally, I cannot help but note that the statistics the Court finds inadequate to justify the penalty in this case are stronger than those supporting at least one other penalty this Court has upheld. Not long ago, this Court, joined by the author of today's opinion, upheld the application of the death penalty against a 16-year-old, despite the fact that no such punishment had been carried out on a person of that age in this country in nearly 30 years. See *Stanford*, 492 U.S., at 374, 109 S.Ct. 2969. Whatever the statistical frequency with which life-without-parole sentences have been imposed on **juvenile** nonhomicide offenders in the last 30 years, it is surely greater than zero.

In the end, however, objective factors such as legislation and the frequency of a penalty's use are merely ornaments in the Court's analysis, window dressing that accompanies its judicial fiat.^{FN12} By the Court's own decree, "[c]ommunity consensus ... is not itself determinative." *Ante*, at 2026. Only the independent moral judgment of this Court is sufficient to decide the question. See *ibid.*

FN12. I confine to a footnote the Court's discussion of foreign laws and sentencing practices because past opinions explain at length why such factors are irrelevant to the meaning of our Constitution or the Court's discernment of any longstanding tradition in *this* Nation.

See *Atkins*, 536 U.S., at 324–325, 122 S.Ct. 2242 (Rehnquist, C.J., dissenting). Here, two points suffice. First, despite the Court's attempt to count the actual number of **juvenile** non-homicide offenders serving life-without-parole sentences in other nations (a task even more challenging than counting them within our borders), the *laws* of other countries permit **juvenile** life-without-parole sentences, see Child Rights Information, Network, C. de la Vega, M. Montesano, & A. Solter, Human Rights Advocates, Statement on **Juvenile** Sentencing to Human Rights Council, 10th Sess. (Nov. 3, 2009) ("Eleven countries have laws with the potential to permit the sentencing of child offenders to life without the possibility of release"), online at <http://www.crin.org/resources/info/Detail.asp?ID=19806> (as visited May 14, 2010, and available in Clerk of Court's case file)). Second, present legislation notwithstanding, democracies around the world remain free to adopt life-without-parole sentences for **juvenile** offenders tomorrow if they see fit. Starting today, ours can count itself among the few in which judicial decree prevents voters from making that choice.

C

Lacking any plausible claim to consensus, the Court shifts to the heart of its argument: its "independent judgment" that this sentencing practice does not "serv[e] legitimate penological goals." *Ante*, at 2026. The Court begins that analysis with the obligatory preamble that "[t]he Eighth Amendment does not mandate adoption of any one penological theory," *ante*, at 2028 (quoting *Harmelin*, 501 U.S., at 999, 111 S.Ct. 2680 (opinion of KENNEDY, J.)), then promptly mandates the adoption of the theories the Court deems best.

First, the Court acknowledges that, at a minimum, the imposition of life-without-parole sentences on **juvenile** nonhomicide offenders serves two "legitimate" penological goals: incapacitation and deterrence. *Ante*, at 2028 – 2029. By definition, such sentences serve the

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goal of incapacitation by ensuring that **juvenile** offenders who commit armed burglaries, or those who commit the types of grievous sex crimes described by THE CHIEF JUSTICE, no longer threaten their communities. See *ante*, at 2041 (opinion concurring in judgment). That should settle the matter, since the Court acknowledges that incapacitation is an “important” penological goal. *Ante*, at 2029. Yet, the Court finds this goal “*inadequate*” to justify the life-without-parole sentences here. *Ante*, at 2029 (emphasis added). A similar fate befalls deterrence. The Court acknowledges that such sentences will deter future **juvenile** *2054 offenders, at least to some degree, but rejects that penological goal, not as illegitimate, but as insufficient. *Ante*, at 2029 (“[A]ny limited deterrent effect provided by life without parole is *not enough* to justify the sentence.” (emphasis added)).

The Court looks more favorably on rehabilitation, but laments that life-without-parole sentences do little to promote this goal because they result in the offender's permanent incarceration. *Ante*, at 2029 – 2030. Of course, the Court recognizes that rehabilitation's “utility and proper implementation” are subject to debate. *Ante*, at 2030. But that does not stop it from declaring that a legislature may not “forswear[] ... the rehabilitative ideal.” *Ibid*. In other words, the Eighth Amendment does not mandate “any one penological theory,” *ante*, at 2028 (internal quotation marks omitted), just one the Court approves.

Ultimately, however, the Court's “independent judgment” and the proportionality rule itself center on retribution—the notion that a criminal sentence should be proportioned to “ ‘the personal culpability of the criminal offender.’ ” *Ante*, at 2026, 2028 (quoting *Tison v. Arizona*, 481 U.S. 137, 149, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987)). The Court finds that retributive purposes are not served here for two reasons.

1

First, quoting *Roper*, 543 U.S., at 569–570, 125 S.Ct. 1183, the Court concludes that **juveniles** are less culpable than adults because, as compared to adults, they “have a ‘lack of maturity and an underdeveloped sense of responsibility,’ ” and “their characters are

‘not as well formed.’ ” *Ante*, at 2026. As a general matter, this statement is entirely consistent with the evidence recounted above that judges and juries impose the sentence at issue quite infrequently, despite legislative authorization to do so in many more cases. See Part III–B, *supra*. Our society tends to treat the average **juvenile** as less culpable than the average adult. But the question here does not involve the average **juvenile**. The question, instead, is whether the Constitution prohibits judges and juries from *ever* concluding that an offender under the age of 18 has demonstrated sufficient depravity and incorrigibility to warrant his permanent incarceration.

In holding that the Constitution imposes such a ban, the Court cites “developments in psychology and brain science” indicating that **juvenile** minds “continue to mature through late adolescence,” *ante*, at 2026 (citing Brief for American Medical Association et al. as *Amici Curiae* 16–24; Brief for American Psychological Association et al. as *Amici Curiae* 22–27 (hereinafter APA Brief)), and that **juveniles** are “more likely [than adults] to engage in risky behaviors,” *id.*, at 7. But even if such generalizations from social science were relevant to constitutional rulemaking, the Court misstates the data on which it relies.

The Court equates the propensity of a fairly substantial number of youths to engage in “risky” or antisocial behaviors with the propensity of a much smaller group to commit violent crimes. *Ante*, at 2031. But research relied upon by the *amici* cited in the Court's opinion differentiates between adolescents for whom antisocial behavior is a fleeting symptom and those for whom it is a lifelong pattern. See Moffitt, Adolescence–Limited and Life–Course–Persistent Antisocial Behavior: A Developmental Taxonomy, 100 Psychological Rev. 674, 678 (1993) (cited in APA Brief 8, 17, 20) (distinguishing between adolescents who are “antisocial only during adolescence” and a smaller group who engage in antisocial behavior “at every life stage” despite “drift[ing] through successive systems aimed at curbing their deviance”). That research further suggests*2055 that the pattern of behavior in the latter group often sets in before 18. See Moffitt, *supra*, at 684

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("The well-documented resistance of antisocial personality disorder to treatments of all kinds seems to suggest that the life-course-persistent style is fixed sometime before age 18"). And, notably, it suggests that violence itself is evidence that an adolescent offender's antisocial behavior is *not* transient. See Moffitt, A Review of Research on the Taxonomy of Life-Course Persistent Versus Adolescence-Limited Antisocial Behavior, in *Taking Stock: the Status of Criminological Theory* 277, 292-293 (F. Cullen, J. Wright, & K. Blevins eds.2006) (observing that "life-course persistent" males "tended to specialize in serious offenses (carrying a hidden weapon, assault, robbery, violating court orders), whereas adolescence-limited" ones "specialized in non-serious offenses (theft less than \$5, public drunkenness, giving false information on application forms, pirating computer software, etc.)").

In sum, even if it were relevant, none of this psychological or sociological data is sufficient to support the Court's " 'moral' " conclusion that youth defeats culpability in *every* case. *Ante*, at 2026 (quoting *Roper*, 543 U.S., at 570, 125 S.Ct. 1183); see *id.*, at 618, 125 S.Ct. 1183 (SCALIA, J., dissenting); R. Epstein, *The Case Against Adolescence* 171 (2007) (reporting on a study of *juvenile* reasoning skills and concluding that "most teens are capable of conventional, adult-like moral reasoning").

The Court responds that a categorical rule is nonetheless necessary to prevent the " 'unacceptable likelihood' " that a judge or jury, unduly swayed by " 'the brutality or cold-blooded nature' " of a *juvenile's* non-homicide crime, will sentence him to a life-without-parole sentence for which he possesses " 'insufficient culpability,' " *ante*, at 2032 (quoting *Roper*, *supra*, at 572, 125 S.Ct. 1183). I find that justification entirely insufficient. The integrity of our criminal justice system depends on the ability of citizens to stand between the defendant and an outraged public and dispassionately determine his guilt and the proper amount of punishment based on the evidence presented. That process necessarily admits of human error. But so does the process of judging in which we engage. As between the two, I find far more "unacceptable" that this Court,

swayed by studies reflecting the general tendencies of youth, decree that the people of this country are not fit to decide for themselves when the rare case requires different treatment.

2

That is especially so because, in the end, the Court does not even believe its pronouncements about the *juvenile* mind. If it did, the categorical rule it announces today would be most peculiar because it leaves intact state and federal laws that permit life-without-parole sentences for *juveniles* who commit homicides. See *ante*, at 2029 - 2030. The Court thus acknowledges that there is nothing inherent in the psyche of a person less than 18 that prevents him from acquiring the moral agency necessary to warrant a life-without-parole sentence. Instead, the Court rejects overwhelming legislative consensus only on the question of which *acts* are sufficient to demonstrate that moral agency.

The Court is quite willing to accept that a 17-year-old who pulls the trigger on a firearm can demonstrate sufficient depravity and irredeemability to be denied reentry into society, but insists that a 17-year-old who rapes an 8-year-old and leaves her for dead does not. See *ante*, at 2026 - 2028; cf. *ante*, at 2041 (ROBERTS, C.J., concurring in judgment) (describing the crime of life-without-parole offender Milagro Cunningham). Thus, the Court's *2056 conclusion that life-without-parole sentences are "grossly disproportionate" for *juvenile* nonhomicide offenders in fact has very little to do with its view of *juveniles*, and much more to do with its perception that "defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers." *Ante*, at 2027.

That the Court is willing to impose such an exacting constraint on democratic sentencing choices based on such an untestable philosophical conclusion is remarkable. The question of what acts are "deserving" of what punishments is bound so tightly with questions of morality and social conditions as to make it, almost by definition, a question for legislative resolution. It is true that the Court previously has relied on the notion of

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proportionality in holding certain classes of offenses categorically exempt from capital punishment. See *supra*, at 2044. But never before today has the Court relied on its own view of just deserts to impose a categorical limit on the imposition of a lesser punishment. Its willingness to cross that well-established boundary raises the question whether any democratic choice regarding appropriate punishment is safe from the Court's ever-expanding constitutional veto.

IV

Although the concurrence avoids the problems associated with expanding categorical proportionality review to noncapital cases, it employs noncapital proportionality analysis in a way that raises the same fundamental concern. Although I do not believe *Solem* merits *stare decisis* treatment, Graham's claim cannot prevail even under that test (as it has been limited by the Court's subsequent precedents). *Solem* instructs a court first to compare the "gravity" of an offender's conduct to the "harshness of the penalty" to determine whether an "inference" of gross disproportionality exists. 463 U.S., at 290–291, 103 S.Ct. 3001. Only in "the rare case" in which such an inference is present should the court proceed to the "objective" part of the inquiry—an intra- and interjurisdictional comparison of the defendant's sentence with others similarly situated. *Harmelin*, 501 U.S., at 1000, 1005, 111 S.Ct. 2680 (opinion of KENNEDY, J.).

Under the Court's precedents, I fail to see how an "inference" of gross disproportionality arises here. The concurrence notes several arguably mitigating facts—Graham's "lack of prior criminal convictions, his youth and immaturity, and the difficult circumstances of his upbringing." *Ante*, at 2040 (ROBERTS, C.J., concurring in judgment). But the Court previously has upheld a life-without-parole sentence imposed on a first-time offender who committed a *nonviolent* drug crime. See *Harmelin*, *supra*, at 1002–1004, 111 S.Ct. 2680. Graham's conviction for an actual violent felony is surely more severe than that offense. As for Graham's age, it is true that *Roper* held *juveniles* categorically ineligible for capital punishment, but as the concurrence explains, *Roper* was based on the "explicit conclusion

that [*juveniles*] 'cannot with reliability be classified among the *worst* offenders' "; it did "not establish that *juveniles* can never be eligible for life without parole." *Ante*, at 2039 (ROBERTS, C.J., concurring in judgment) (quoting *Roper*, 543 U.S., at 569, 125 S.Ct. 1183 (emphasis added in opinion of ROBERTS, C.J.)). In my view, *Roper*'s principles are thus not generally applicable outside the capital sentencing context.

By holding otherwise, the concurrence relies on the same type of subjective judgment as the Court, only it restrains itself to a case-by-case rather than a categorical ruling. The concurrence is quite ready to *2057 hand Graham "the general presumption of diminished culpability" for *juveniles*, *ante*, at 2040, apparently because it believes that Graham's armed burglary and home invasion crimes were "certainly less serious" than murder or rape, *ibid*. It recoils only from the prospect that the Court would extend the same presumption to a *juvenile* who commits a sex crime. See *ante*, at 2041. I simply cannot accept that these subjective judgments of proportionality are ones the Eighth Amendment authorizes us to make.

The "objective" elements of the *Solem* test provide no additional support for the concurrence's conclusion. The concurrence compares Graham's sentence to "similar" sentences in Florida and concludes that Graham's sentence was "far more severe." *Ante*, at 2040 (ROBERTS, C.J., concurring in judgment). But strangely, the concurrence uses average sentences for burglary or robbery offenses as examples of "similar" offenses, even though it seems that a run-of-the-mill burglary or robbery is not at all similar to Graham's criminal history, which includes a charge for armed burglary with assault, *and* a probation violation for invading a home at gunpoint.

And even if Graham's sentence is higher than ones he might have received for an armed burglary with assault in other jurisdictions, see *ante*, at 2041, this hardly seems relevant if one takes seriously the principle that "[a]bsent a constitutionally imposed uniformity inimical to traditional notions of federalism, some State will *always* bear the distinction of treating particular offenders more severely than any other State." *Harmelin*, *supra*,

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at 1000, 111 S.Ct. 2680 (opinion of KENNEDY, J.) (quoting *Rummel*, 445 U.S., at 282, 100 S.Ct. 1133; emphasis added). Applying *Solem*, the Court has upheld a 25-years-to-life sentence for theft under California's recidivist statute, despite the fact that the State and its amici could cite only "a single instance of a similar sentence imposed outside the context of California's three strikes law, out of a prison population [then] approaching two million individuals." *Ewing*, 538 U.S., at 47, 123 S.Ct. 1179 (BREYER, J., dissenting). It has also upheld a life-without-parole sentence for a first-time drug offender in Michigan charged with possessing 672 grams of cocaine despite the fact that only one other State would have authorized such a stiff penalty for a first-time drug offense, and even that State required a far greater quantity of cocaine (10 kilograms) to trigger the penalty. See *Harmelin*, *supra*, at 1026, 111 S.Ct. 2680 (White, J., dissenting). Graham's sentence is certainly less rare than the sentences upheld in these cases, so his claim fails even under *Solem*.

* * *

Both the Court and the concurrence claim their decisions to be narrow ones, but both invite a host of line-drawing problems to which courts must seek answers beyond the strictures of the Constitution. The Court holds that "[a] State is not required to guarantee eventual freedom to a **juvenile** offender convicted of a non-homicide crime," but must provide the offender with "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Ante*, at 2030. But what, exactly, does such a "meaningful" opportunity entail? When must it occur? And what Eighth Amendment principles will govern review by the parole boards the Court now demands that States empanel? The Court provides no answers to these questions, which will no doubt embroil the courts for years.^{FN13}

FN13. It bears noting that Colorado, one of the five States that prohibit life-without-parole sentences for **juvenile** nonhomicide offenders, permits such offenders to be sentenced to mandatory terms of imprisonment for up to 40 years. Colo.Rev.Stat. § 18-1.3-401(4)(b) (2009). In light of the volume of state and fed-

eral legislation that presently *permits* life-without-parole sentences for **juvenile** nonhomicide offenders, it would be impossible to argue that there is any objective evidence of agreement that a **juvenile** is constitutionally entitled to a parole hearing any sooner than 40 years after conviction. See Tr. of Oral Arg. 6-7 (counsel for Graham, stating that, "[o]ur position is that it should be left up to the States to decide. We think that the ... Colorado provision would probably be constitutional").

*2058 V

The ultimate question in this case is not whether a life-without-parole sentence 'fits' the crime at issue here or the crimes of **juvenile** nonhomicide offenders more generally, but to whom the Constitution assigns that decision. The Florida Legislature has concluded that such sentences should be available for persons under 18 who commit certain crimes, and the trial judge in this case decided to impose that legislatively authorized sentence here. Because a life-without-parole prison sentence is not a "cruel and unusual" method of punishment under any standard, the Eighth Amendment gives this Court no authority to reject those judgments.

It would be unjustifiable for the Court to declare otherwise even if it could claim that a bare majority of state laws supported its independent moral view. The fact that the Court categorically prohibits life-without-parole sentences for **juvenile** nonhomicide offenders in the face of an overwhelming legislative majority *in favor* of leaving that sentencing option available under certain cases simply illustrates how far beyond any cognizable constitutional principle the Court has reached to ensure that its own sense of morality and retributive justice pre-empts that of the people and their representatives.

I agree with Justice STEVENS that "[w]e learn, sometimes, from our mistakes." *Ante*, at 2036 (concurring opinion). Perhaps one day the Court will learn from this one.

I respectfully dissent.

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Justice ALITO, dissenting.

I join Parts I and III of Justice THOMAS's dissenting opinion. I write separately to make two points.

First, the Court holds only that “for a **juvenile** offender who did not commit homicide the Eighth Amendment forbids the sentence of *life without parole*.” *Ante*, at 2030 (emphasis added). Nothing in the Court's opinion affects the imposition of a sentence to a term of years without the possibility of parole. Indeed, petitioner conceded at oral argument that a sentence of as much as 40 years without the possibility of parole “probably” would be constitutional. Tr. of Oral Arg. 6–7; see also *ante*, at 2057, n. 12 (THOMAS, J., dissenting).

Second, the question whether petitioner's sentence violates the narrow, as-applied proportionality principle that applies to noncapital sentences is not properly before us in this case. Although petitioner asserted an as-applied proportionality challenge to his sentence before the Florida courts, see 982 So.2d 43, 51–53 (Fla.App.2008), he did not include an as-applied claim in his petition for certiorari or in his merits briefs before this Court. Instead, petitioner argued for only a categorical rule banning the imposition of life without parole on *any juvenile* convicted of a nonhomicide offense. Because petitioner abandoned his as-applied claim, I would not reach that issue. See this Court's Rule 14.1(a); *2059 *Yee v. Escondido*, 503 U.S. 519, 534–538, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992).

U.S.,2010.

Graham v. Florida

130 S.Ct. 2011, 176 L.Ed.2d 825, 78 USLW 4387, 10 Cal. Daily Op. Serv. 5996, 2010 Daily Journal D.A.R. 7115, 22 Fla. L. Weekly Fed. S 328

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SUPREME COURT OF THE UNITED STATES

Nos. 10-9646 and 10-9647

10-9646

EVAN MILLER, PETITIONER
v.
ALABAMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF ALABAMA

10-9647 KUNTRELL JACKSON, PETITIONER
v.
RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARKANSAS

[June 25, 2012]

JUSTICE KAGAN delivered the opinion of the Court.

The two 14-year-old offenders in these cases were convicted of murder and sentenced to life imprisonment without the possibility of parole. In neither case did the sentencing authority have any discretion to impose a different punishment. State law mandated that each juvenile die in prison even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life *with* the possibility of parole) more appropriate. Such a scheme prevents those meting out punishment from considering a juvenile's "lessened culpability" and greater "capacity for change," *Graham v. Florida*, 560 U. S. ____

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— (2010) (slip op., at 17, 23), and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties. We therefore hold that ~~mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on "cruel and unusual punishments."~~

I

A

In November 1999, petitioner Kuntrell Jackson, then 14 years old, and two other boys decided to rob a video store. En route to the store, Jackson learned that one of the boys, Derrick Shields, was carrying a sawed-off shotgun in his coat sleeve. Jackson decided to stay outside when the two other boys entered the store. Inside, Shields pointed the gun at the store clerk, Laurie Troup, and demanded that she "give up the money." *Jackson v. State*, 359 Ark. 87, 89, 194 S. W. 3d 757, 759 (2004) (internal quotation marks omitted). Troup refused. A few moments later, Jackson went into the store to find Shields continuing to demand money. At trial, the parties disputed whether Jackson warned Troup that "[w]e ain't playin'," or instead told his friends, "I thought you all was playin'." *Id.*, at 91, 194 S. W. 3d, at 760 (internal quotation marks omitted). When Troup threatened to call the police, Shields shot and killed her. The three boys fled empty-handed. See *id.*, at 89–92, 194 S. W. 3d, at 758–760.

Arkansas law gives prosecutors discretion to charge 14-year-olds as adults when they are alleged to have committed certain serious offenses. See Ark. Code Ann. §9–27–318(c)(2) (1998). The prosecutor here exercised that authority by charging Jackson with capital felony murder and aggravated robbery. Jackson moved to transfer the case to juvenile court, but after considering the alleged facts of the crime, a psychiatrist's examination, and Jackson's juvenile arrest history (shoplifting and several inci-

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dents of car theft), the trial court denied the motion, and an appellate court affirmed. See *Jackson v. State*, No. 02–535, 2003 WL 193412, *1 (Ark. App., Jan. 29, 2003); §§9–27–318(d), (e). A jury later convicted Jackson of both crimes. Noting that “in view of [the] verdict, there’s only one possible punishment,” the judge sentenced Jackson to life without parole. App. in No. 10–9647, p. 55 (hereinafter *Jackson App.*); see Ark. Code Ann. §5–4–104(b) (1997) (“A defendant convicted of capital murder or treason shall be sentenced to death or life imprisonment without parole”).¹ Jackson did not challenge the sentence on appeal, and the Arkansas Supreme Court affirmed the convictions. See 359 Ark. 87, 194 S. W. 3d 757.

Following *Roper v. Simmons*, 543 U. S. 551 (2005), in which this Court invalidated the death penalty for all juvenile offenders under the age of 18, Jackson filed a state petition for habeas corpus. He argued, based on *Roper*’s reasoning, that a mandatory sentence of life without parole for a 14-year-old also violates the Eighth Amendment. The circuit court rejected that argument and granted the State’s motion to dismiss. See *Jackson App.* 72–76. While that ruling was on appeal, this Court held in *Graham v. Florida* that life without parole violates the Eighth Amendment when imposed on juvenile nonhomicide offenders. After the parties filed briefs addressing that decision, the Arkansas Supreme Court affirmed the dismissal of Jackson’s petition. See *Jackson v. Norris*, 2011 Ark. 49, ____ S. W. 3d _____. The majority found that *Roper* and *Graham* were “narrowly tailored” to their contexts: “death-penalty cases involving a juvenile and life-imprisonment-without-parole cases for nonhomicide of-

¹Jackson was ineligible for the death penalty under *Thompson v. Oklahoma*, 487 U. S. 815 (1988) (plurality opinion), which held that capital punishment of offenders under the age of 16 violates the Eighth Amendment.

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fenses involving a juvenile.” *Id.*, at 5, ___ S. W. 3d, at ___. Two justices dissented. They noted that Jackson was not the shooter and that “any evidence of intent to kill was severely lacking.” *Id.*, at 10, ___ S. W. 3d, at ___ (Danielson, J., dissenting). And they argued that Jackson’s mandatory sentence ran afoul of *Graham*’s admonition that “[a]n offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Id.*, at 10–11, ___ S. W. 3d, at ___ (quoting *Graham*, 560 U. S., at ___ (slip op., at 25)).²

B

Like Jackson, petitioner Evan Miller was 14 years old at the time of his crime. Miller had by then been in and out of foster care because his mother suffered from alcoholism and drug addiction and his stepfather abused him. Miller, too, regularly used drugs and alcohol; and he had attempted suicide four times, the first when he was six years old. See *E. J. M. v. State*, 928 So. 2d 1077, 1081 (Ala. Crim. App. 2004) (Cobb, J., concurring in result); App. in No. 10–9646, pp. 26–28 (hereinafter Miller App.).

One night in 2003, Miller was at home with a friend, Colby Smith, when a neighbor, Cole Cannon, came to make a drug deal with Miller’s mother. See 6 Record in No. 10–9646, p. 1004. The two boys followed Cannon back to his trailer, where all three smoked marijuana and

²For the first time in this Court, Arkansas contends that Jackson’s sentence was not mandatory. On its view, state law then in effect allowed the trial judge to suspend the life-without-parole sentence and commit Jackson to the Department of Human Services for a “training-school program,” at the end of which he could be placed on probation. Brief for Respondent in No. 10–9647, pp. 36–37 (hereinafter Arkansas Brief) (citing Ark. Code Ann. §12–28–403(b)(2) (1999)). But Arkansas never raised that objection in the state courts, and they treated Jackson’s sentence as mandatory. We abide by that interpretation of state law. See, e.g., *Mullaney v. Wilbur*, 421 U. S. 684, 690–691 (1975).

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played drinking games. When Cannon passed out, Miller stole his wallet, splitting about \$300 with Smith. Miller then tried to put the wallet back in Cannon's pocket, but Cannon awoke and grabbed Miller by the throat. Smith hit Cannon with a nearby baseball bat, and once released, Miller grabbed the bat and repeatedly struck Cannon with it. Miller placed a sheet over Cannon's head, told him "I am God, I've come to take your life," and delivered one more blow. *Miller v. State*, 63 So. 3d 676, 689 (Ala. Crim. App. 2010). The boys then retreated to Miller's trailer, but soon decided to return to Cannon's to cover up evidence of their crime. Once there, they lit two fires. Cannon eventually died from his injuries and smoke inhalation. See *id.*, at 683–685, 689.

Alabama law required that Miller initially be charged as a juvenile, but allowed the District Attorney to seek removal of the case to adult court. See Ala. Code §12–15–34 (1977). The D. A. did so, and the juvenile court agreed to the transfer after a hearing. Citing the nature of the crime, Miller's "mental maturity," and his prior juvenile offenses (truancy and "criminal mischief"), the Alabama Court of Criminal Appeals affirmed. *E. J. M. v. State*, No. CR–03–0915, pp. 5–7 (Aug. 27, 2004) (unpublished memorandum).³ The State accordingly charged Miller as an adult with murder in the course of arson. That crime (like capital murder in Arkansas) carries a mandatory mini-

³The Court of Criminal Appeals also affirmed the juvenile court's denial of Miller's request for funds to hire his own mental expert for the transfer hearing. The court pointed out that under governing Alabama Supreme Court precedent, "the procedural requirements of a trial do not ordinarily apply" to those hearings. *E. J. M. v. State*, 928 So. 2d 1077 (2004) (Cobb, J., concurring in result) (internal quotation marks omitted). In a separate opinion, Judge Cobb agreed on the reigning precedent, but urged the State Supreme Court to revisit the question in light of transfer hearings' importance. See *id.*, at 1081 ("[A]lthough later mental evaluation as an adult affords some semblance of procedural due process, it is, in effect, too little, too late").

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imum punishment of life without parole. See Ala. Code §§13A-5-40(9), 13A-6-2(c) (1982).

Relying in significant part on testimony from Smith, who had pleaded to a lesser offense, a jury found Miller guilty. He was therefore sentenced to life without the possibility of parole. The Alabama Court of Criminal Appeals affirmed, ruling that life without parole was “not overly harsh when compared to the crime” and that the mandatory nature of the sentencing scheme was permissible under the Eighth Amendment. 63 So. 3d, at 690; see *id.*, at 686–691. The Alabama Supreme Court denied review.

We granted certiorari in both cases, see 565 U. S. ____ (2011) (No. 10–9646); 565 U. S. ____ (2011) (No. 10–9647), and now reverse.

II

The Eighth Amendment’s prohibition of cruel and unusual punishment “guarantees individuals the right not to be subjected to excessive sanctions.” *Roper*, 543 U. S., at 560. That right, we have explained, “flows from the basic ‘precept of justice that punishment for crime should be graduated and proportioned’” to both the offender and the offense. *Ibid.* (quoting *Weems v. United States*, 217 U. S. 349, 367 (1910)). As we noted the last time we considered life-without-parole sentences imposed on juveniles, “[t]he concept of proportionality is central to the Eighth Amendment.” *Graham*, 560 U. S., at ____ (slip op., at 8). And we view that concept less through a historical prism than according to “the evolving standards of decency that mark the progress of a maturing society.” *Estelle v. Gamble*, 429 U. S. 97, 102 (1976) (quoting *Trop v. Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion)).

The cases before us implicate two strands of precedent reflecting our concern with proportionate punishment. The first has adopted categorical bans on sentencing

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practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. See *Graham*, 560 U. S., at ____ (slip op., at 9–10) (listing cases). So, for example, we have held that imposing the death penalty for nonhomicide crimes against individuals, or imposing it on mentally retarded defendants, violates the Eighth Amendment. See *Kennedy v. Louisiana*, 554 U. S. 407 (2008); *Atkins v. Virginia*, 536 U. S. 304 (2002). Several of the cases in this group have specially focused on juvenile offenders, because of their lesser culpability. Thus, *Roper* held that the Eighth Amendment bars capital punishment for children, and *Graham* concluded that the Amendment also prohibits a sentence of life without the possibility of parole for a child who committed a nonhomicide offense. *Graham* further likened life without parole for juveniles to the death penalty itself, thereby evoking a second line of our precedents. In those cases, we have prohibited mandatory imposition of capital punishment, requiring that sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death. See *Woodson v. North Carolina*, 428 U. S. 280 (1976) (plurality opinion); *Lockett v. Ohio*, 438 U. S. 586 (1978). Here, the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment.⁴

⁴The three dissenting opinions here each take issue with some or all of those precedents. See *post*, at 5–6 (opinion of ROBERTS, C. J.); *post*, at 1–6 (opinion of THOMAS, J.); *post*, at 1–4 (opinion of ALITO, J.). That is not surprising: their authors (and joiner) each dissented from some or all of those precedents. See, e.g., *Kennedy*, 554 U. S., at 447 (ALITO, J., joined by ROBERTS, C. J., and SCALIA and THOMAS, JJ., dissenting); *Roper*, 543 U. S., at 607 (SCALIA, J., joined by THOMAS, J., dissenting); *Atkins*, 536 U. S., at 337 (SCALIA, J., joined by THOMAS, J., dissenting); *Thompson*, 487 U. S., at 859 (SCALIA, J., dissenting); *Graham v. Collins*, 506 U. S. 461, 487 (1993) (THOMAS, J., concurring) (contending that *Woodson* was wrongly decided). In particular, each disagreed with

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To start with the first set of cases: *Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, “they are less deserving of the most severe punishments.” *Graham*, 560 U. S., at ____ (slip op., at 17). Those cases relied on three significant gaps between juveniles and adults. First, children have a “lack of maturity and an underdeveloped sense of responsibility,” leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U. S., at 569. Second, children “are more vulnerable . . . to negative influences and outside pressures,” including from their family and peers; they have limited “contro[l] over their own environment” and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid.* And third, a child’s character is not as “well formed” as an adult’s; his traits are “less fixed” and his actions less likely to be “evidence of irretrievabl[e] deprav[ity].” *Id.*, at 570.

Our decisions rested not only on common sense—on what “any parent knows”—but on science and social science as well. *Id.*, at 569. In *Roper*, we cited studies showing that “[o]nly a relatively small proportion of adolescents” who engage in illegal activity “develop entrenched patterns of problem behavior.” *Id.*, at 570 (quoting Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009,

the majority’s reasoning in *Graham*, which is the foundation stone of our analysis. See *Graham*, 560 U. S., at ____ (ROBERTS, C. J., concurring in judgment) (slip op., at 1); *id.*, at ____ (THOMAS, J., joined by SCALIA and ALITO, JJ., dissenting) (slip op., at 1–25); *id.*, at ____ (ALITO, J., dissenting) (slip op., at 1). While the dissents seek to relitigate old Eighth Amendment battles, repeating many arguments this Court has previously (and often) rejected, we apply the logic of *Roper*, *Graham*, and our individualized sentencing decisions to these two cases.

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1014 (2003)). And in *Graham*, we noted that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”—for example, in “parts of the brain involved in behavior control.” 560 U. S., at ____ (slip op., at 17).⁵ We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s “moral culpability” and enhanced the prospect that, as the years go by and neurological development occurs, his “deficiencies will be reformed.” *Id.*, at ____ (slip op., at 18) (quoting *Roper*, 543 U. S., at 570).

Roper and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because “[t]he heart of the retribution rationale” relates to an offender’s blameworthiness, “the case for retribution is not as strong with a minor as with an adult.” *Graham*, 560 U. S., at ____ (slip op., at 20–21) (quoting *Tison v. Arizona*, 481 U. S. 137, 149 (1987); *Roper*, 543 U. S., at 571). Nor can deterrence do the work in this context, because “the same characteristics that render juveniles less culpable than adults”—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punish-

⁵The evidence presented to us in these cases indicates that the science and social science supporting *Roper*’s and *Graham*’s conclusions have become even stronger. See, e.g., Brief for American Psychological Association et al. as *Amici Curiae* 3 (“[A]n ever-growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court’s conclusions”); *id.*, at 4 (“It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance”); Brief for J. Lawrence Aber et al. as *Amici Curiae* 12–28 (discussing post-*Graham* studies); *id.*, at 26–27 (“Numerous studies post-*Graham* indicate that exposure to deviant peers leads to increased deviant behavior and is a consistent predictor of adolescent delinquency” (footnote omitted)).

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ment. *Graham*, 560 U. S., at ____ (slip op., at 21) (quoting *Roper*, 543 U. S., at 571). Similarly, incapacitation could not support the life-without-parole sentence in *Graham*: Deciding that a “juvenile offender forever will be a danger to society” would require “mak[ing] a judgment that [he] is incorrigible”—but “incorrigibility is inconsistent with youth.” 560 U. S., at ____ (slip op., at 22) (quoting *Workman v. Commonwealth*, 429 S. W. 2d 374, 378 (Ky. App. 1968)). And for the same reason, rehabilitation could not justify that sentence. Life without parole “forswears altogether the rehabilitative ideal.” *Graham*, 560 U. S., at ____ (slip op., at 23). It reflects “an irrevocable judgment about [an offender’s] value and place in society,” at odds with a child’s capacity for change. *Ibid*.

Graham concluded from this analysis that life-without-parole sentences, like capital punishment, may violate the Eighth Amendment when imposed on children. To be sure, *Graham*’s flat ban on life without parole applied only to nonhomicide crimes, and the Court took care to distinguish those offenses from murder, based on both moral culpability and consequential harm. See *id.*, at ____ (slip op., at 18). But none of what it said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. Those features are evident in the same way, and to the same degree, when (as in both cases here) a botched robbery turns into a killing. So *Graham*’s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses.

Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. In the circumstances there, juvenile status precluded a life-without-parole sentence, even though an adult could receive it for a similar crime. And in other contexts as well, the characteristics of youth, and the way they weaken rationales for

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punishment, can render a life-without-parole sentence disproportionate. Cf. *id.*, at ____ (slip op., at 20–23) (generally doubting the penological justifications for imposing life without parole on juveniles). “An offender’s age,” we made clear in *Graham*, “is relevant to the Eighth Amendment,” and so “criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Id.*, at ____ (slip op., at 25). THE CHIEF JUSTICE, concurring in the judgment, made a similar point. Although rejecting a categorical bar on life-without-parole sentences for juveniles, he acknowledged “*Roper’s* conclusion that juveniles are typically less culpable than adults,” and accordingly wrote that “an offender’s juvenile status can play a central role” in considering a sentence’s proportionality. *Id.*, at ____ (slip op., at 5–6); see *id.*, at ____ (slip op., at 12) (*Graham’s* “youth is one factor, among others, that should be considered in deciding whether his punishment was unconstitutionally excessive”).⁶

But the mandatory penalty schemes at issue here prevent the sentencer from taking account of these central considerations. By removing youth from the balance—by subjecting a juvenile to the same life-without-parole sentence applicable to an adult—these laws prohibit a sentencing authority from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham’s* (and also *Roper’s*) foundational principle: that imposition of a State’s

⁶In discussing *Graham*, the dissents essentially ignore all of this reasoning. See *post*, at 3–6 (opinion of ROBERTS, C. J.); *post*, at 4 (opinion of ALITO, J.). Indeed, THE CHIEF JUSTICE ignores the points made in his own concurring opinion. The only part of *Graham* that the dissents see fit to note is the distinction it drew between homicide and nonhomicide offenses. See *post*, at 7–8 (opinion of ROBERTS, C. J.); *post*, at 4 (opinion of ALITO, J.). But contrary to the dissents’ charge, our decision today retains that distinction: *Graham* established one rule (a flat ban) for nonhomicide offenses, while we set out a different one (individualized sentencing) for homicide offenses.

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most severe penalties on juvenile offenders cannot proceed as though they were not children.

And *Graham* makes plain these mandatory schemes' defects in another way: by likening life-without-parole sentences imposed on juveniles to the death penalty itself. Life-without-parole terms, the Court wrote, "share some characteristics with death sentences that are shared by no other sentences." 560 U. S., at ___ (slip op., at 19). Imprisoning an offender until he dies alters the remainder of his life "by a forfeiture that is irrevocable." *Ibid.* (citing *Solem v. Helm*, 463 U. S. 277, 300–301 (1983)). And this lengthiest possible incarceration is an "especially harsh punishment for a juvenile," because he will almost inevitably serve "more years and a greater percentage of his life in prison than an adult offender." *Graham*, 560 U. S., at ___ (slip op., at 19–20). The penalty when imposed on a teenager, as compared with an older person, is therefore "the same . . . in name only." *Id.*, at ___ (slip op., at 20). All of that suggested a distinctive set of legal rules: In part because we viewed this ultimate penalty for juveniles as akin to the death penalty, we treated it similarly to that most severe punishment. We imposed a categorical ban on the sentence's use, in a way unprecedented for a term of imprisonment. See *id.*, at ___ (slip op., at 9); *id.*, at ___ (THOMAS, J., dissenting) (slip op., at 7) ("For the first time in its history, the Court declares an entire class of offenders immune from a noncapital sentence using the categorical approach it previously reserved for death penalty cases alone"). And the bar we adopted mirrored a proscription first established in the death penalty context—that the punishment cannot be imposed for any nonhomicide crimes against individuals. See *Kennedy*, 554 U. S. 407; *Coker v. Georgia*, 433 U. S. 584 (1977).

That correspondence—*Graham*'s "[t]reat[ment] [of] juvenile life sentences as analogous to capital punishment," 560 U. S., at ___ (ROBERTS, C. J., concurring in

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judgment) (slip op., at 5)—makes relevant here a second line of our precedents, demanding individualized sentencing when imposing the death penalty. In *Woodson*, 428 U. S. 280, we held that a statute mandating a death sentence for first-degree murder violated the Eighth Amendment. We thought the mandatory scheme flawed because it gave no significance to “the character and record of the individual offender or the circumstances” of the offense, and “exclud[ed] from consideration . . . the possibility of compassionate or mitigating factors.” *Id.*, at 304. Subsequent decisions have elaborated on the requirement that capital defendants have an opportunity to advance, and the judge or jury a chance to assess, any mitigating factors, so that the death penalty is reserved only for the most culpable defendants committing the most serious offenses. See, e.g., *Sumner v. Shuman*, 483 U. S. 66, 74–76 (1987); *Eddings v. Oklahoma*, 455 U. S. 104, 110–112 (1982); *Lockett*, 438 U. S., at 597–609 (plurality opinion).

Of special pertinence here, we insisted in these rulings that a sentencer have the ability to consider the “mitigating qualities of youth.” *Johnson v. Texas*, 509 U. S. 350, 367 (1993). Everything we said in *Roper* and *Graham* about that stage of life also appears in these decisions. As we observed, “youth is more than a chronological fact.” *Eddings*, 455 U. S., at 115. It is a time of immaturity, irresponsibility, “impetuousness[,] and recklessness.” *Johnson*, 509 U. S., at 368. It is a moment and “condition of life when a person may be most susceptible to influence and to psychological damage.” *Eddings*, 455 U. S., at 115. And its “signature qualities” are all “transient.” *Johnson*, 509 U. S., at 368. *Eddings* is especially on point. There, a 16-year-old shot a police officer point-blank and killed him. We invalidated his death sentence because the judge did not consider evidence of his neglectful and violent family background (including his mother’s drug abuse and his father’s physical abuse) and his emotional disturbance.

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We found that evidence “particularly relevant”—more so than it would have been in the case of an adult offender. 455 U. S., at 115. We held: “[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered” in assessing his culpability. *Id.*, at 116.

In light of *Graham*’s reasoning, these decisions too show the flaws of imposing mandatory life-without-parole sentences on juvenile homicide offenders. Such mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile (including these two 14-year-olds) will receive the same sentence as the vast majority of adults committing similar homicide offenses—but really, as *Graham* noted, a *greater* sentence than those adults will serve.⁷ In meting out the death penalty, the elision of all these differences would be strictly forbidden. And once again, *Graham* indicates that a similar rule should apply when a juvenile confronts a sentence of life (and death) in prison.

So *Graham* and *Roper* and our individualized sentenc-

⁷Although adults are subject as well to the death penalty in many jurisdictions, very few offenders actually receive that sentence. See, e.g., Dept. of Justice, Bureau of Justice Statistics, S. Rosenmerkel, M. Durose, & D. Farole, *Felony Sentences in State Courts 2006—Statistical Tables*, p. 28 (Table 4.4) (rev. Nov. 22, 2010). So in practice, the sentencing schemes at issue here result in juvenile homicide offenders receiving the same nominal punishment as almost all adults, even though the two classes differ significantly in moral culpability and capacity for change.

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ing cases alike teach that in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult. To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, e.g., *Graham*, 560 U. S., at ____ (slip op., at 27) (“[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings”); *J. D. B. v. North Carolina*, 564 U. S. ___, ____ (2011) (slip op., at 5–6) (discussing children's responses to interrogation). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Both cases before us illustrate the problem. Take Jackson's first. As noted earlier, Jackson did not fire the bullet that killed Laurie Troup; nor did the State argue that he intended her death. Jackson's conviction was instead based on an aiding-and-abetting theory; and the appellate court affirmed the verdict only because the jury could have believed that when Jackson entered the store, he warned Troup that “[w]e ain't playin’,” rather than told his friends that “I thought you all was playin’.” See 359 Ark., at 90–92, 194 S. W. 3d, at 759–760; *supra*, at 2. To be sure, Jackson learned on the way to the video store that his

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friend Shields was carrying a gun, but his age could well have affected his calculation of the risk that posed, as well as his willingness to walk away at that point. All these circumstances go to Jackson's culpability for the offense. See *Graham*, 560 U. S., at ___ (slip op., at 18) ("[W]hen compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability"). And so too does Jackson's family background and immersion in violence: Both his mother and his grandmother had previously shot other individuals. See Record in No. 10-9647, pp. 80-82. At the least, a sentencer should look at such facts before depriving a 14-year-old of any prospect of release from prison.

That is true also in Miller's case. No one can doubt that he and Smith committed a vicious murder. But they did it when high on drugs and alcohol consumed with the adult victim. And if ever a pathological background might have contributed to a 14-year-old's commission of a crime, it is here. Miller's stepfather physically abused him; his alcoholic and drug-addicted mother neglected him; he had been in and out of foster care as a result; and he had tried to kill himself four times, the first when he should have been in kindergarten. See 928 So. 2d, at 1081 (Cobb, J., concurring in result); Miller App. 26-28; *supra*, at 4. Nonetheless, Miller's past criminal history was limited—two instances of truancy and one of "second-degree criminal mischief." No. CR-03-0915, at 6 (unpublished memorandum). That Miller deserved severe punishment for killing Cole Cannon is beyond question. But once again, a sentencer needed to examine all these circumstances before concluding that life without any possibility of parole was the appropriate penalty.

We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. Cf. *Graham*, 560 U. S., at ___ (slip op., at 24) ("A State is not required

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to guarantee eventual freedom,” but must provide “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation”). By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. Because that holding is sufficient to decide these cases, we do not consider Jackson’s and Miller’s alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. But given all we have said in *Roper*, *Graham*, and this decision about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between “the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Roper*, 543 U. S., at 573; *Graham*, 560 U. S., at ____ (slip op., at 17). Although we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.⁸

⁸ Given our holding, and the dissents’ competing position, we see a certain irony in their repeated references to 17-year-olds who have committed the “most heinous” offenses, and their comparison of those defendants to the 14-year-olds here. See *post*, at 2 (opinion of ROBERTS, C. J.) (noting the “17-year old [who] is convicted of deliberately murdering an innocent victim”); *post*, at 3 (“the most heinous murders”); *post*, at 7 (“the worst types of murder”); *post*, at 5 (opinion of ALITO, J.) (warning the reader not to be “confused by the particulars” of these two cases); *post*, at 1 (discussing the “17½-year-old who sets off a bomb in a crowded mall”). Our holding requires factfinders to attend to exactly such circumstances—to take into account the differences among de-

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III

Alabama and Arkansas offer two kinds of arguments against requiring individualized consideration before sentencing a juvenile to life imprisonment without possibility of parole. The States (along with the dissents) first contend that the rule we adopt conflicts with aspects of our Eighth Amendment caselaw. And they next assert that the rule is unnecessary because individualized circumstances come into play in deciding whether to try a juvenile offender as an adult. We think the States are wrong on both counts.

A

The States (along with JUSTICE THOMAS) first claim that *Harmelin v. Michigan*, 501 U. S. 957 (1991), precludes our holding. The defendant in *Harmelin* was sentenced to a mandatory life-without-parole term for possessing more than 650 grams of cocaine. The Court upheld that penalty, reasoning that “a sentence which is not otherwise cruel and unusual” does not “becom[e] so simply because it is ‘mandatory.’” *Id.*, at 995. We recognized that a different rule, requiring individualized sentencing, applied in the death penalty context. But we refused to extend that command to noncapital cases “because of the qualitative difference between death and all other penalties.” *Ibid.*; see *id.*, at 1006 (KENNEDY, J., concurring in part and concurring in judgment). According to Alabama, invalidating the mandatory imposition of life-without-parole terms on juveniles “would effectively overrule *Harmelin*.” Brief for Respondent in No. 10–9646, p. 59 (hereinafter Alabama Brief); see Arkansas Brief 39.

We think that argument myopic. *Harmelin* had nothing to do with children and did not purport to apply its hold-

endants and crimes. By contrast, the sentencing schemes that the dissents find permissible altogether preclude considering these factors.

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ing to the sentencing of juvenile offenders. We have by now held on multiple occasions that a sentencing rule permissible for adults may not be so for children. Capital punishment, our decisions hold, generally comports with the Eighth Amendment—except it cannot be imposed on children. See *Roper*, 543 U. S. 551; *Thompson*, 487 U. S. 815. So too, life without parole is permissible for nonhomicide offenses—except, once again, for children. See *Graham*, 560 U. S., at ____ (slip op., at 24). Nor are these sentencing decisions an oddity in the law. To the contrary, “[o]ur history is replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.” *J. D. B.*, 564 U. S., at ____ (slip op., at 10–11) (quoting *Eddings*, 455 U. S., at 115–116, citing examples from criminal, property, contract, and tort law). So if (as *Harmelin* recognized) “death is different,” children are different too. Indeed, it is the odd legal rule that does *not* have some form of exception for children. In that context, it is no surprise that the law relating to society’s harshest punishments recognizes such a distinction. Cf. *Graham*, 560 U. S., at ____ (ROBERTS, C. J., concurring in judgment) (slip op., at 7) (“Graham’s age places him in a significantly different category from the defendan[t] in . . . *Harmelin*”). Our ruling thus neither overrules nor undermines nor conflicts with *Harmelin*.

Alabama and Arkansas (along with THE CHIEF JUSTICE and JUSTICE ALITO) next contend that because many States impose mandatory life-without-parole sentences on juveniles, we may not hold the practice unconstitutional. In considering categorical bars to the death penalty and life without parole, we ask as part of the analysis whether “‘objective indicia of society’s standards, as expressed in legislative enactments and state practice,’” show a “national consensus” against a sentence for a particular class of offenders. *Graham*, 560 U. S., at ____ (slip op., at 10) (quoting *Roper*, 543 U. S., at 563). By our count, 29 juris-

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dictions (28 States and the Federal Government) make a life-without-parole term mandatory for some juveniles convicted of murder in adult court.⁹ The States argue that this number precludes our holding.

We do not agree; indeed, we think the States' argument on this score *weaker* than the one we rejected in *Graham*. For starters, the cases here are different from the typical one in which we have tallied legislative enactments. Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty. And in so requiring, our decision flows straightforwardly from our precedents: specifically, the principle of *Roper*, *Graham*, and our individualized sentencing cases that youth matters for purposes of meting out the law's most serious punishments. When both of those circumstances have obtained in the past, we have not scrutinized or relied in the same way on legislative

⁹The States note that 26 States and the Federal Government make life without parole the mandatory (or mandatory minimum) punishment for some form of murder, and would apply the relevant provision to 14-year-olds (with many applying it to even younger defendants). See Alabama Brief 17–18. In addition, life without parole is mandatory for older juveniles in Louisiana (age 15 and up) and Texas (age 17). See La. Child. Code Ann., Arts. 857(A), (B) (West Supp. 2012); La. Rev. Stat. Ann. §§14:30(C), 14:30.1(B) (West Supp. 2012); Tex. Family Code Ann. §§51.02(2)(A), 54.02(a)(2)(A) (West Supp. 2011); Tex. Penal Code Ann. §12.31(a) (West 2011). In many of these jurisdictions, life without parole is the mandatory punishment only for aggravated forms of murder. That distinction makes no difference to our analysis. We have consistently held that limiting a mandatory death penalty law to particular kinds of murder cannot cure the law's "constitutional vice" of disregarding the "circumstances of the particular offense and the character and propensities of the offender." *Roberts v. Louisiana*, 428 U. S. 325, 333 (1976) (plurality opinion); see *Sumner v. Shuman*, 483 U. S. 66 (1987). The same analysis applies here, for the same reasons.

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enactments. See, e.g., *Sumner v. Shuman*, 483 U. S. 66 (relying on *Woodson*'s logic to prohibit the mandatory death penalty for murderers already serving life without parole); *Lockett*, 438 U. S., at 602–608 (plurality opinion) (applying *Woodson* to require that judges and juries consider all mitigating evidence); *Eddings*, 455 U. S., at 110–117 (similar). We see no difference here.

In any event, the “objective indicia” that the States offer do not distinguish these cases from others holding that a sentencing practice violates the Eighth Amendment. In *Graham*, we prohibited life-without-parole terms for juveniles committing nonhomicide offenses even though 39 jurisdictions permitted that sentence. See 560 U. S., at ____ (slip op., at 11). That is 10 *more* than impose life without parole on juveniles on a mandatory basis.¹⁰ And

¹⁰In assessing indicia of societal standards, *Graham* discussed “actual sentencing practices” in addition to legislative enactments, noting how infrequently sentencers imposed the statutorily available penalty. 560 U. S., at ____ (slip op., at 11). Here, we consider the constitutionality of mandatory sentencing schemes—which by definition remove a judge’s or jury’s discretion—so no comparable gap between legislation and practice can exist. Rather than showing whether sentencers consider life without parole for juvenile homicide offenders appropriate, the number of juveniles serving this sentence, see *post*, at 1, 3–4 (ROBERTS, C. J., dissenting), merely reflects the number who have committed homicide in mandatory-sentencing jurisdictions. For the same reason, THE CHIEF JUSTICE’s comparison of ratios in this case and *Graham* carries little weight. He contrasts the number of mandatory life-without-parole sentences for juvenile murderers, relative to the number of juveniles arrested for murder, with “the corresponding number” of sentences in *Graham* (i.e., the number of life-without-parole sentences for juveniles who committed serious nonhomicide crimes, as compared to arrests for those crimes). *Post*, at 4. But because the mandatory nature of the sentences here necessarily makes them more common, THE CHIEF JUSTICE’s figures do not “correspon[d]” at all. The higher ratio is mostly a function of removing the sentencer’s discretion.

Where mandatory sentencing does not itself account for the number of juveniles serving life-without-parole terms, the evidence we have of practice supports our holding. Fifteen jurisdictions make life without

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in *Atkins*, *Roper*, and *Thompson*, we similarly banned the death penalty in circumstances in which “less than half” of the “States that permit[ted] capital punishment (for whom the issue exist[ed])” had previously chosen to do so. *Atkins*, 536 U. S., at 342 (SCALIA, J., dissenting) (emphasis deleted); see *id.*, at 313–315 (majority opinion); *Roper*, 543 U. S., at 564–565; *Thompson*, 487 U. S., at 826–827 (plurality opinion). So we are breaking no new ground in these cases.¹¹

Graham and *Thompson* provide special guidance, because they considered the same kind of statutes we do and

parole discretionary for juveniles. See Alabama Brief 25 (listing 12 States); Cal. Penal Code Ann. §190.5(b) (West 2008); Ind. Code §35–50–2–3(b) (2011); N. M. Stat. §§31–18–13(B), 31–18–14, 31–18–15.2 (2010). According to available data, only about 15% of all juvenile life-without-parole sentences come from those 15 jurisdictions, while 85% come from the 29 mandatory ones. See Tr. of Oral Arg. in No. 10–9646, p. 19; Human Rights Watch, State Distribution of Youth Offenders Serving Juvenile Life Without Parole (JLWOP), Oct. 2, 2009, online at <http://www.hrw.org/news/2009/10/02/state-distribution-jvenile-offenders-serving-jvenile-life-without-parole> (as visited June 21, 2012, and available in Clerk of Court’s case file). That figure indicates that when given the choice, sentencers impose life without parole on children relatively rarely. And contrary to THE CHIEF JUSTICE’s argument, see *post*, at 5, n. 2, we have held that when judges and juries do not often choose to impose a sentence, it at least should not be mandatory. See *Woodson v. North Carolina*, 428 U. S. 280, 295–296 (1976) (plurality opinion) (relying on the infrequency with which juries imposed the death penalty when given discretion to hold that its mandatory imposition violates the Eighth Amendment).

¹¹ In response, THE CHIEF JUSTICE complains: “To say that a sentence may be considered unusual *because* so many legislatures approve it stands precedent on its head.” *Post*, at 5. To be clear: That description in no way resembles our opinion. We hold that the sentence violates the Eighth Amendment because, as we have exhaustively shown, it conflicts with the fundamental principles of *Roper*, *Graham*, and our individualized sentencing cases. We then show why the number of States imposing this punishment does not preclude our holding, and note how its mandatory nature (in however many States adopt it) makes use of actual sentencing numbers unilluminating.

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explained why simply counting them would present a distorted view. Most jurisdictions authorized the death penalty or life without parole for juveniles only through the combination of two independent statutory provisions. One allowed the transfer of certain juvenile offenders to adult court, while another (often in a far-removed part of the code) set out the penalties for any and all individuals tried there. We reasoned that in those circumstances, it was impossible to say whether a legislature had endorsed a given penalty for children (or would do so if presented with the choice). In *Thompson*, we found that the statutes “t[old] us that the States consider 15-year-olds to be old enough to be tried in criminal court for serious crimes (or too old to be dealt with effectively in juvenile court), but t[old] us nothing about the judgment these States have made regarding the appropriate punishment for such youthful offenders.” 487 U. S., at 826, n. 24 (plurality opinion) (emphasis deleted); see also *id.*, at 850 (O’Connor, J., concurring in judgment); *Roper*, 543 U. S., at 596, n. (O’Connor, J., dissenting). And *Graham* echoed that reasoning: Although the confluence of state laws “ma[de] life without parole possible for some juvenile nonhomicide offenders,” it did not “justify a judgment” that many States actually “intended to subject such offenders” to those sentences. 560 U. S., at ____ (slip op., at 16).¹²

All that is just as true here. Almost all jurisdictions allow some juveniles to be tried in adult court for some

¹²THE CHIEF JUSTICE attempts to distinguish *Graham* on this point, arguing that there “the extreme rarity with which the sentence in question was imposed could suggest that legislatures did not really intend the inevitable result of the laws they passed.” *Post*, at 6. But neither *Graham* nor *Thompson* suggested such reasoning, presumably because the time frame makes it difficult to comprehend. Those cases considered what legislators intended when they enacted, at different moments, separate juvenile-transfer and life-without-parole provisions—by definition, before they knew or could know how many juvenile life-without-parole sentences would result.

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kinds of homicide. See Dept. of Justice, H. Snyder & M. Sickmund, *Juvenile Offenders and Victims: 2006 National Report* 110–114 (hereinafter 2006 National Report). But most States do not have separate penalty provisions for those juvenile offenders. Of the 29 jurisdictions mandating life without parole for children, more than half do so by virtue of generally applicable penalty provisions, imposing the sentence without regard to age.¹³ And indeed, some of those States set no minimum age for who may be transferred to adult court in the first instance, thus applying life-without-parole mandates to children of any age—be it 17 or 14 or 10 or 6.¹⁴ As in *Graham*, we think that “underscores that the statutory eligibility of a juvenile offender for life without parole does not indicate that the penalty has been endorsed through deliberate, express, and full legislative consideration.” 560 U. S., at ____ (slip

¹³See Ala. Code §§13A-5-45(f), 13A-6-2(c) (2005 and Cum. Supp. 2011); Ariz. Rev. Stat. Ann. §13-752 (West 2010), §41-1604.09(I) (West 2011); Conn. Gen. Stat. §53a-35a(1) (2011); Del. Code Ann., Tit. 11, §4209(a) (2007); Fla. Stat. §775.082(1) (2010); Haw. Rev. Stat. §706-656(1) (1993); Idaho Code §18-4004 (Lexis 2004); Mich. Comp. Laws Ann. §791.234(6)(a) (West Cum. Supp. 2012); Minn. Stat. Ann. §§609.106, subd. 2 (West 2009); Neb. Rev. Stat. §29-2522 (2008); N. H. Rev. Stat. Ann. §630:1-a (West 2007); 18 Pa. Cons. Stat. §§1102(a), (b), 61 Pa. Cons. Stat. §6137(a)(1) (Supp. 2012); S. D. Codified Laws §22-6-1(1) (2006), §24-15-4 (2004); Vt. Stat. Ann., Tit. 13, §2311(c)(2009); Wash. Rev. Code §10.95.030(1) (2010).

¹⁴See Del. Code Ann., Tit. 10, §1010 (1999 and Cum. Supp. 2010), Tit. 11, §4209(a) (2007); Fla. Stat. §985.56 (2010), 775.082(1); Haw. Rev. Stat. §571-22(d) (1993), §706-656(1); Idaho Code §§20-508, 20-509 (Lexis Cum. Supp. 2012), §18-4004; Mich. Comp. Laws Ann. §712A.2d (West 2009), §791.234(6)(a); Neb. Rev. Stat. §§43-247, 29-2522 (2008); 42 Pa. Cons. Stat. §6355(e) (2000), 18 Pa. Cons. Stat. §1102. Other States set ages between 8 and 10 as the minimum for transfer, thus exposing those young children to mandatory life without parole. See S. D. Codified Laws §§26-8C-2, 26-11-4 (2004), §22-6-1 (age 10); Vt. Stat. Ann., Tit. 33, §5204 (2011 Cum. Supp.), Tit. 13, §2311(a) (2009) (age 10); Wash. Rev. Code §§9A.04.050, 13.40.110 (2010), §10.95.030 (age 8).

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op., at 16). That Alabama and Arkansas can count to 29 by including these possibly (or probably) inadvertent legislative outcomes does not preclude our determination that mandatory life without parole for juveniles violates the Eighth Amendment.

B

Nor does the presence of discretion in some jurisdictions' transfer statutes aid the States here. Alabama and Arkansas initially ignore that many States use mandatory transfer systems: A juvenile of a certain age who has committed a specified offense will be tried in adult court, regardless of any individualized circumstances. Of the 29 relevant jurisdictions, about half place at least some juvenile homicide offenders in adult court automatically, with no apparent opportunity to seek transfer to juvenile court.¹⁵ Moreover, several States at times lodge this decision exclusively in the hands of prosecutors, again with no statutory mechanism for judicial reevaluation.¹⁶ And those "prosecutorial discretion laws are usually silent regarding standards, protocols, or appropriate considerations for decisionmaking." Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, P. Griffin, S. Addie, B. Adams, & K. Firestine, *Trying Juveniles as*

¹⁵See Ala. Code §12-15-204(a) (Cum. Supp. 2011); Ariz. Rev. Stat. Ann. §13-501(A) (West Cum. Supp. 2011); Conn. Gen. Stat. §46b-127 (2011); Ill. Comp. Stat. ch. 705, §§405/5-130(1)(a), (4)(a) (West 2010); La. Child. Code Ann., Art. 305(A) (West Cum. Supp. 2012); Mass. Gen. Laws, ch. 119, §74 (West 2010); Mich. Comp. Laws Ann. §712A.2(a) (West 2002); Minn. Stat. Ann. §260B.007, subd. 6(b) (West Cum. Supp. 2011), §260B.101, subd. 2 (West 2007); Mo. Rev. Stat. §§211.021(1), (2) (2011); N. C. Gen. Stat. Ann. §§7B-1501(7), 7B-1601(a), 7B-2200 (Lexis 2011); N. H. Rev. Stat. Ann. §169-B:2(IV) (West Cum. Supp. 2011), §169-B:3 (West 2010); Ohio Rev. Code Ann. §2152.12(A)(1)(a) (Lexis 2011); Tex. Family Code Ann. §51.02(2); Va. Code Ann. §§16.1-241(A), 16.1-269.1(B), (D) (Lexis 2010).

¹⁶Fla. Stat. Ann. §985.557(1) (West Supp. 2012); Mich. Comp. Laws Ann. §712A.2(a)(1); Va. Code Ann. §§16.1-241(A), 16.1-269.1(C), (D).

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Adults: An Analysis of State Transfer Laws and Reporting 5 (2011).

Even when States give transfer-stage discretion to judges, it has limited utility. First, the decisionmaker typically will have only partial information at this early, pretrial stage about either the child or the circumstances of his offense. Miller's case provides an example. As noted earlier, see n. 3, *supra*, the juvenile court denied Miller's request for his own mental-health expert at the transfer hearing, and the appeals court affirmed on the ground that Miller was not then entitled to the protections and services he would receive at trial. See No. CR-03-0915, at 3-4 (unpublished memorandum). But by then, of course, the expert's testimony could not change the sentence; whatever she said in mitigation, the mandatory life-without-parole prison term would kick in. The key moment for the exercise of discretion is the transfer—and as Miller's case shows, the judge often does not know then what she will learn, about the offender or the offense, over the course of the proceedings.

Second and still more important, the question at transfer hearings may differ dramatically from the issue at a post-trial sentencing. Because many juvenile systems require that the offender be released at a particular age or after a certain number of years, transfer decisions often present a choice between extremes: light punishment as a child or standard sentencing as an adult (here, life without parole). In many States, for example, a child convicted in juvenile court must be released from custody by the age of 21. See, e.g., Ala. Code §12-15-117(a) (Cum. Supp. 2011); see generally 2006 National Report 103 (noting limitations on the length of juvenile court sanctions). Discretionary sentencing in adult court would provide different options: There, a judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term *with* the possibility of parole or a lengthy term of years. It is easy

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to imagine a judge deciding that a minor deserves a (much) harsher sentence than he would receive in juvenile court, while still not thinking life-without-parole appropriate. For that reason, the discretion available to a judge at the transfer stage cannot substitute for discretion at post-trial sentencing in adult court—and so cannot satisfy the Eighth Amendment.

IV

Graham, *Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment. We accordingly reverse the judgments of the Arkansas Supreme Court and Alabama Court of Criminal Appeals and remand the cases for further proceedings not inconsistent with this opinion.

It is so ordered.

BREYER, J., concurring

SUPREME COURT OF THE UNITED STATES

Nos. 10-9646 and 10-9647

10-9646

EVAN MILLER, PETITIONER
v.
ALABAMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF ALABAMA

10-9647 KUNTRELL JACKSON, PETITIONER
v.
RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARKANSAS

[June 25, 2012]

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR joins, concurring.

I join the Court's opinion in full. I add that, if the State continues to seek a sentence of life without the possibility of parole for Kuntrell Jackson, there will have to be a determination whether Jackson "kill[ed] or intend[ed] to kill" the robbery victim. *Graham v. Florida*, 560 U. S. ___, ___ (2010) (slip op., at 18). In my view, without such a finding, the Eighth Amendment as interpreted in *Graham* forbids sentencing Jackson to such a sentence, regardless of whether its application is mandatory or discretionary under state law.

In *Graham* we said that “when compared to an adult murderer, a juvenile offender *who did not kill or intend to kill* has a twice diminished moral culpability.” *Ibid.* (emphasis added). For one thing, “compared to adults, juveniles have a lack of maturity and an underdeveloped sense

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of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed.” *Id.*, at ___ (slip op., at 17) (internal quotation marks omitted). See also *ibid.* (“[P]sychology and brain science continue to show fundamental differences between juvenile and adult minds” making their actions “less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults” (quoting *Roper v. Simmons*, 543 U. S. 551, 570 (2005))); *ante*, at 8–9. For another thing, *Graham* recognized that lack of intent normally diminishes the “moral culpability” that attaches to the crime in question, making those that do not intend to kill “categorically less deserving of the most serious forms of punishment than are murderers.” 560 U. S., at ___ (slip op., at 18) (citing *Kennedy v. Louisiana*, 554 U. S. 407, 434–435 (2008); *Enmund v. Florida*, 458 U. S. 782 (1982); *Tison v. Arizona*, 481 U. S. 137 (1987)). And we concluded that, because of this “twice diminished moral culpability,” the Eighth Amendment forbids the imposition upon juveniles of a sentence of life without parole for nonhomicide cases. *Graham, supra*, at ___, ___ (slip op., at 18, 32).

Given *Graham*’s reasoning, the kinds of homicide that can subject a juvenile offender to life without parole must exclude instances where the juvenile himself neither kills nor intends to kill the victim. Quite simply, if the juvenile either kills or intends to kill the victim, he lacks “twice diminished” responsibility. But where the juvenile neither kills nor intends to kill, both features emphasized in *Graham* as extenuating apply. The dissent itself here would permit life without parole for “juveniles who commit the worst types of murder,” *post*, at 7 (opinion of ROBERTS, C. J.), but that phrase does not readily fit the culpability of one who did not himself kill or intend to kill.

I recognize that in the context of felony-murder cases, the question of intent is a complicated one. The felony-

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murder doctrine traditionally attributes death caused in the course of a felony to all participants who intended to commit the felony, regardless of whether they killed or intended to kill. See 2 W. LaFare, Substantive Criminal Law §§14.5(a) and (c) (2d ed. 2003). This rule has been based on the idea of “transferred intent”; the defendant’s intent to commit the felony satisfies the intent to kill required for murder. See S. Kadish, S. Schulhofer, & C. Streiker, Criminal Law and Its Processes 439 (8th ed. 2007); 2 C. Torcia, Wharton’s Criminal Law §147 (15th ed. 1994).

But in my opinion, this type of “transferred intent” is not sufficient to satisfy the intent to murder that could subject a juvenile to a sentence of life without parole. As an initial matter, this Court has made clear that this artificially constructed kind of intent does not count as intent for purposes of the Eighth Amendment. We do not rely on transferred intent in determining if an adult may receive the death penalty. Thus, the Constitution forbids imposing capital punishment upon an aider and abettor in a robbery, where that individual did not intend to kill and simply was “in the car by the side of the road . . . , waiting to help the robbers escape.” *Enmund*, *supra*, at 788. Cf. *Tison*, *supra*, at 157–158 (capital punishment permissible for aider and abettor where kidnaping led to death because he was “actively involved” in every aspect of the kidnaping and his behavior showed “a reckless disregard for human life”). Given *Graham*, this holding applies to juvenile sentences of life without parole *a fortiori*. See *ante*, at 12–13. Indeed, even juveniles who meet the *Tison* standard of “reckless disregard” may not be eligible for life without parole. Rather, *Graham* dictates a clear rule: The only juveniles who may constitutionally be sentenced to life without parole are those convicted of homicide offenses who “kill or intend to kill.” 560 U. S., at ____ (slip op., at 18).

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Moreover, regardless of our law with respect to adults, there is no basis for imposing a sentence of life without parole upon a juvenile who did not himself kill or intend to kill. At base, the theory of transferring a defendant's intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed, even by a confederate. See 2 LaFave, *supra*, §14.5(c). Yet the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack capacity to do effectively. *Ante*, at 8–9. Justice Frankfurter cautioned, "Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to a determination of a State's duty toward children." *May v. Anderson*, 345 U.S. 528, 536 (1953) (concurring opinion). To apply the doctrine of transferred intent here, where the juvenile did not kill, to sentence a juvenile to life without parole would involve such "fallacious reasoning." *Ibid*.

This is, as far as I can tell, precisely the situation present in Kuntrell Jackson's case. Jackson simply went along with older boys to rob a video store. On the way, he became aware that a confederate had a gun. He initially stayed outside the store, and went in briefly, saying something like "We ain't playin'" or "I thought you all was playin,'" before an older confederate shot and killed the store clerk. *Jackson v. State*, 359 Ark. 87, 91, 194 S. W. 3d 757, 760 (2004). Crucially, the jury found him guilty of first-degree murder under a statute that permitted them to convict if, Jackson "attempted to commit or committed an aggravated robbery, and, in the course of that offense, he, or an accomplice, caused [the clerk's] death under circumstance manifesting extreme indifference to the value of human life." *Ibid*. See Ark. Code Ann. §5–10–101(a)(1) (1997); *ante*, at 15. Thus, to be found guilty, Jackson did not need to kill the clerk (it is conceded he did

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not), nor did he need to have intent to kill or even “extreme indifference.” As long as one of the teenage accomplices in the robbery acted with extreme indifference to the value of human life, Jackson could be convicted of capital murder. *Ibid.*

The upshot is that Jackson, who did not kill the clerk, might not have intended to do so either. See *Jackson v. Norris*, 2011 Ark. 49, at 10, ____ S. W. 3d ____ (Danielson, J., dissenting) (“[A]ny evidence of [Jackson’s] intent to kill was severely lacking”). In that case, the Eighth Amendment simply forbids imposition of a life term without the possibility of parole. If, on remand, however, there is a finding that Jackson did intend to cause the clerk’s death, the question remains open whether the Eighth Amendment prohibits the imposition of life without parole upon a juvenile in those circumstances as well. *Ante*, at 17.

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SUPREME COURT OF THE UNITED STATES

Nos. 10-9646 and 10-9647

10-9646

EVAN MILLER, PETITIONER
v.
ALABAMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF ALABAMA

10-9647 KUNTRELL JACKSON, PETITIONER
v.
RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARKANSAS

[June 25, 2012]

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA, JUSTICE THOMAS, and JUSTICE ALITO join, dissenting.

Determining the appropriate sentence for a teenager convicted of murder presents grave and challenging questions of morality and social policy. Our role, however, is to apply the law, not to answer such questions. The pertinent law here is the Eighth Amendment to the Constitution, which prohibits “cruel and unusual punishments.” Today, the Court invokes that Amendment to ban a punishment that the Court does not itself characterize as unusual, and that could not plausibly be described as such. I therefore dissent.

The parties agree that nearly 2,500 prisoners are presently serving life sentences without the possibility of parole for murders they committed before the age of 18. Brief for Petitioner in No. 10–9647, p. 62, n. 80 (Jackson

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Brief); Brief for Respondent in No. 10–9646, p. 30 (Alabama Brief). The Court accepts that over 2,000 of those prisoners received that sentence because it was mandated by a legislature. *Ante*, at 22, n. 10. And it recognizes that the Federal Government and most States impose such mandatory sentences. *Ante*, at 19–20. Put simply, if a 17-year-old is convicted of deliberately murdering an innocent victim, it is not “unusual” for the murderer to receive a mandatory sentence of life without parole. That reality should preclude finding that mandatory life imprisonment for juvenile killers violates the Eighth Amendment.

Our precedent supports this conclusion. When determining whether a punishment is cruel and unusual, this Court typically begins with “‘objective indicia of society’s standards, as expressed in legislative enactments and state practice.’” *Graham v. Florida*, 560 U. S. ___, ___ (2010) (slip op., at 10); see also, e.g., *Kennedy v. Louisiana*, 554 U. S. 407, 422 (2008); *Roper v. Simmons*, 543 U. S. 551, 564 (2005). We look to these “objective indicia” to ensure that we are not simply following our own subjective values or beliefs. *Gregg v. Georgia*, 428 U. S. 153, 173 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). Such tangible evidence of societal standards enables us to determine whether there is a “consensus against” a given sentencing practice. *Graham*, *supra*, at ___ (slip op., at 10). If there is, the punishment may be regarded as “unusual.” But when, as here, most States formally require and frequently impose the punishment in question, there is no objective basis for that conclusion.

Our Eighth Amendment cases have also said that we should take guidance from “evolving standards of decency that mark the progress of a maturing society.” *Ante*, at 6 (quoting *Estelle v. Gamble*, 429 U. S. 97, 102 (1976); internal quotation marks omitted). Mercy toward the guilty can be a form of decency, and a maturing society may abandon harsh punishments that it comes to view as

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unnecessary or unjust. But decency is not the same as leniency. A decent society protects the innocent from violence. A mature society may determine that this requires removing those guilty of the most heinous murders from its midst, both as protection for its other members and as a concrete expression of its standards of decency. As judges we have no basis for deciding that progress toward greater decency can move only in the direction of easing sanctions on the guilty.

In this case, there is little doubt about the direction of society's evolution: For most of the 20th century, American sentencing practices emphasized rehabilitation of the offender and the availability of parole. But by the 1980's, outcry against repeat offenders, broad disaffection with the rehabilitative model, and other factors led many legislatures to reduce or eliminate the possibility of parole, imposing longer sentences in order to punish criminals and prevent them from committing more crimes. See, e.g., Alschuler, *The Changing Purposes of Criminal Punishment*, 70 U. Chi. L. Rev. 1, 1–13 (2003); see generally *Crime and Public Policy* (J. Wilson & J. Petersilia eds. 2011). Statutes establishing life without parole sentences in particular became more common in the past quarter century. See *Baze v. Rees*, 553 U. S. 35, 78, and n. 10 (2008) (Stevens, J., concurring in judgment). And the parties agree that most States have changed their laws relatively recently to expose teenage murderers to mandatory life without parole. Jackson Brief 54–55; Alabama Brief 4–5.

The Court attempts to avoid the import of the fact that so many jurisdictions have embraced the sentencing practice at issue by comparing this case to the Court's prior Eighth Amendment cases. The Court notes that *Graham* found a punishment authorized in 39 jurisdictions unconstitutional, whereas the punishment it bans today is mandated in 10 fewer. *Ante*, at 21. But *Graham* went to

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considerable lengths to show that although theoretically allowed in many States, the sentence at issue in that case was “exceedingly rare” in practice. 560 U. S., at ___ (slip op., at 16). The Court explained that only 123 prisoners in the entire Nation were serving life without parole for nonhomicide crimes committed as juveniles, with more than half in a single State. It contrasted that with statistics showing nearly 400,000 juveniles were arrested for serious nonhomicide offenses in a single year. Based on the sentence’s rarity despite the many opportunities to impose it, *Graham* concluded that there was a national consensus against life without parole for juvenile nonhomicide crimes. *Id.*, at ___ (slip op., at 13–16).

Here the number of mandatory life without parole sentences for juvenile murderers, relative to the number of juveniles arrested for murder, is over 5,000 times higher than the corresponding number in *Graham*. There is thus nothing in this case like the evidence of national consensus in *Graham*.¹

The Court disregards these numbers, claiming that the prevalence of the sentence in question results from the number of statutes requiring its imposition. *Ante*, at 21, n. 10. True enough. The sentence at issue is statutorily mandated life without parole. Such a sentence can only result from statutes requiring its imposition. In *Graham*, the Court relied on the low number of actual sentences to explain why the high number of statutes allowing such

¹ *Graham* stated that 123 prisoners were serving life without parole for nonhomicide offenses committed as juveniles, while in 2007 alone 380,480 juveniles were arrested for serious nonhomicide crimes. 560 U. S., at ___ (slip op., at 13–14). I use 2,000 as the number of prisoners serving mandatory life without parole sentences for murders committed as juveniles, because all seem to accept that the number is at least that high. And the same source *Graham* used reports that 1,170 juveniles were arrested for murder and nonnegligent homicide in 2009. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, C. Puzzanchera & B. Adams, *Juvenile Arrests 2009*, p. 4 (Dec. 2011).

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sentences was not dispositive. Here, the Court excuses the high number of actual sentences by citing the high number of statutes imposing it. To say that a sentence may be considered unusual *because* so many legislatures approve it stands precedent on its head.²

The Court also advances another reason for discounting the laws enacted by Congress and most state legislatures. Some of the jurisdictions that impose mandatory life without parole on juvenile murderers do so as a result of two statutes: one providing that juveniles charged with serious crimes may be tried as adults, and another generally mandating that those convicted of murder be imprisoned for life. According to the Court, our cases suggest that where the sentence results from the interaction of two such statutes, the legislature can be considered to have imposed the resulting sentences “inadvertent[ly].” *Ante*, at 22–25. The Court relies on *Graham* and *Thompson v. Oklahoma*, 487 U. S. 815, 826, n. 24 (1988) (plurality opinion), for the proposition that these laws are therefore not valid evidence of society’s views on the punishment at issue.

It is a fair question whether this Court should ever assume a legislature is so ignorant of its own laws that it does not understand that two of them interact with each

²The Court’s reference to discretionary sentencing practices is a distraction. See *ante*, at 21–22, n. 10. The premise of the Court’s decision is that mandatory sentences are categorically different from discretionary ones. So under the Court’s own logic, whether discretionary sentences are common or uncommon has nothing to do with whether mandatory sentences are unusual. In any event, if analysis of discretionary sentences were relevant, it would not provide objective support for today’s decision. The Court states that “about 15% of all juvenile life-without-parole sentences”—meaning nearly 400 sentences—were imposed at the discretion of a judge or jury. *Ante*, at 22, n. 10. Thus the number of discretionary life without parole sentences for juvenile murderers, relative to the number of juveniles arrested for murder, is about 1,000 times higher than the corresponding number in *Graham*.

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other, especially on an issue of such importance as the one before us. But in *Graham* and *Thompson* it was at least plausible as a practical matter. In *Graham*, the extreme rarity with which the sentence in question was imposed could suggest that legislatures did not really intend the inevitable result of the laws they passed. See 560 U. S., at ___ (slip op., at 15–16). In *Thompson*, the sentencing practice was even rarer—only 20 defendants had received it in the last century. 487 U. S., at 832 (plurality opinion). Perhaps under those facts it could be argued that the legislature was not fully aware that a teenager could receive the particular sentence in question. But here the widespread and recent imposition of the sentence makes it implausible to characterize this sentencing practice as a collateral consequence of legislative ignorance.³

Nor do we display our usual respect for elected officials by asserting that legislators have *accidentally* required 2,000 teenagers to spend the rest of their lives in jail. This is particularly true given that our well-publicized decision in *Graham* alerted legislatures to the possibility that teenagers were subject to life with parole only because of legislative inadvertence. I am aware of no effort in the wake of *Graham* to correct any supposed legislative oversight. Indeed, in amending its laws in response to *Graham* one legislature made especially clear that it *does* intend juveniles who commit first-degree murder to receive mandatory life without parole. See Iowa Code Ann. §902.1 (West Cum. Supp. 2012).

In the end, the Court does not actually conclude that mandatory life sentences for juvenile murderers are unusual. It instead claims that precedent “leads to” today’s

³The Court claims that I “take issue with some or all of these precedents” and “seek to relitigate” them. *Ante*, at 7–8, n. 4. Not so: applying this Court’s cases exactly as they stand, I do not believe they support the Court’s decision in this case.

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decision, primarily relying on *Graham* and *Roper*. *Ante*, at 7. Petitioners argue that the reasoning of those cases “compels” finding in their favor. Jackson Brief 34. The Court is apparently unwilling to go so far, asserting only that precedent points in that direction. But today’s decision invalidates the laws of dozens of legislatures and Congress. This Court is not easily led to such a result. See, e.g., *United States v. Harris*, 106 U. S. 629, 635 (1883) (courts must presume an Act of Congress is constitutional “unless the lack of constitutional authority . . . is clearly demonstrated”). Because the Court does not rely on the Eighth Amendment’s text or objective evidence of society’s standards, its analysis of precedent alone must bear the “heavy burden [that] rests on those who would attack the judgment of the representatives of the people.” *Gregg*, 428 U. S., at 175. If the Court is unwilling to say that precedent compels today’s decision, perhaps it should reconsider that decision.

In any event, the Court’s holding does not follow from *Roper* and *Graham*. Those cases undoubtedly stand for the proposition that teenagers are less mature, less responsible, and less fixed in their ways than adults—not that a Supreme Court case was needed to establish that. What they do not stand for, and do not even suggest, is that legislators—who also know that teenagers are different from adults—may not require life without parole for juveniles who commit the worst types of murder.

That *Graham* does not imply today’s result could not be clearer. In barring life without parole for juvenile non-homicide offenders, *Graham* stated that “[t]here is a line ‘between homicide and other serious violent offenses against the individual.’” 560 U. S., at ____ (slip op., at 18) (quoting *Kennedy*, 554 U. S., at ____ (slip op., at 27)). The whole point of drawing a line between one issue and another is to say that they are different and should be treated differently. In other words, the two are in different

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categories. Which *Graham* also said: “defendants who do not kill, intend to kill, or foresee that life will be taken are *categorically* less deserving of the most serious forms of punishment than are murderers.” 560 U. S., at ____ (slip op., at 18) (emphasis added). Of course, to be especially clear that what is said about one issue does not apply to another, one could say that the two issues cannot be compared. *Graham* said that too: “Serious nonhomicide crimes . . . cannot be compared to murder.” *Ibid.* (internal quotation marks omitted). A case that expressly puts an issue in a different category from its own subject, draws a line between the two, and states that the two should not be compared, cannot fairly be said to control that issue.

Roper provides even less support for the Court’s holding. In that case, the Court held that the death penalty could not be imposed for offenses committed by juveniles, no matter how serious their crimes. In doing so, *Roper* also set itself in a different category than this case, by expressly invoking “special” Eighth Amendment analysis for death penalty cases. 543 U. S., at 568–569. But more importantly, *Roper* reasoned that the death penalty was not needed to deter juvenile murderers in part because “life imprisonment without the possibility of parole” was available. *Id.*, at 572. In a classic bait and switch, the Court now tells state legislatures that—*Roper*’s promise notwithstanding—they do not have power to guarantee that once someone commits a heinous murder, he will never do so again. It would be enough if today’s decision proved JUSTICE SCALIA’s prescience in writing that *Roper*’s “reassurance . . . gives little comfort.” *Id.*, at 623 (dissenting opinion). To claim that *Roper* actually “leads to” revoking its own reassurance surely goes too far.

Today’s decision does not offer *Roper* and *Graham*’s false promises of restraint. Indeed, the Court’s opinion suggests that it is merely a way station on the path to further judicial displacement of the legislative role in

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prescribing appropriate punishment for crime. The Court's analysis focuses on the mandatory nature of the sentences in this case. See *ante*, at 11–17. But then—although doing so is entirely unnecessary to the rule it announces—the Court states that even when a life without parole sentence is not mandatory, “we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Ante*, at 17. Today's holding may be limited to mandatory sentences, but the Court has already announced that discretionary life without parole for juveniles should be “uncommon”—or, to use a common synonym, “unusual.”

Indeed, the Court's gratuitous prediction appears to be nothing other than an invitation to overturn life without parole sentences imposed by juries and trial judges. If that invitation is widely accepted and such sentences for juvenile offenders do in fact become “uncommon,” the Court will have bootstrapped its way to declaring that the Eighth Amendment absolutely prohibits them.

This process has no discernible end point—or at least none consistent with our Nation's legal traditions. *Roper* and *Graham* attempted to limit their reasoning to the circumstances they addressed—*Roper* to the death penalty, and *Graham* to nonhomicide crimes. Having cast aside those limits, the Court cannot now offer a credible substitute, and does not even try. After all, the Court tells us, “none of what [*Graham*] said about children . . . is crime-specific.” *Ante*, at 10. The principle behind today's decision seems to be only that because juveniles are different from adults, they must be sentenced differently. See *ante*, at 14–17. There is no clear reason that principle would not bar all mandatory sentences for juveniles, or any juvenile sentence as harsh as what a similarly situated adult would receive. Unless confined, the only stopping point for the Court's analysis would be never permitting juvenile offenders to be tried as adults. Learning that an

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Amendment that bars only "unusual" punishments requires the abolition of this uniformly established practice would be startling indeed.

* * *

It is a great tragedy when a juvenile commits murder—most of all for the innocent victims. But also for the murderer, whose life has gone so wrong so early. And for society as well, which has lost one or more of its members to deliberate violence, and must harshly punish another. In recent years, our society has moved toward requiring that the murderer, his age notwithstanding, be imprisoned for the remainder of his life. Members of this Court may disagree with that choice. Perhaps science and policy suggest society should show greater mercy to young killers, giving them a greater chance to reform themselves at the risk that they will kill again. See *ante*, at 8–11. But that is not our decision to make. Neither the text of the Constitution nor our precedent prohibits legislatures from requiring that juvenile murderers be sentenced to life without parole. I respectfully dissent.

SUPREME COURT OF THE UNITED STATES

10-9646

U.

10-9647

U.

[June 25, 2012]

Today, the Court holds that “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’” *Ante*, at 2. To reach that result, the Court relies on two lines of precedent. The first involves the categorical prohibition of certain punishments for specified classes of offenders. The second requires individualized sentencing in the capital punishment context. Neither line is consistent with the original understanding of the Cruel and Unusual Punishments Clause. The Court compounds its errors by combining these lines of precedent and extending them to reach a result that is even less legitimate than the foundation on which it is built. Because the Court upsets the legislatively enacted sentencing regimes of 29 jurisdictions without

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constitutional warrant, I respectfully dissent.¹

I

The Court first relies on its cases “adopt[ing] categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty.” *Ante*, at 6–7. Of these categorical proportionality cases, the Court places particular emphasis on *Roper v. Simmons*, 543 U. S. 551 (2005), and *Graham v. Florida*, 560 U. S. ____ (2010). In *Roper*, the Court held that the Constitution prohibits the execution of an offender who was under 18 at the time of his offense. 543 U. S., at 578. The *Roper* Court looked to, among other things, its own sense of parental intuition and “scientific and sociological studies” to conclude that offenders under the age of 18 “cannot with reliability be classified among the worst offenders.” *Id.*, at 569. In *Graham*, the Court relied on similar considerations to conclude that the Constitution prohibits a life-without-parole sentence for a nonhomicide offender who was under the age of 18 at the time of his offense. 560 U. S., at ____ (slip op., at 24).

The Court now concludes that *mandatory* life-without-parole sentences for duly convicted juvenile murderers “contraven[e] *Graham*’s (and also *Roper*’s) foundational principle: that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Ante*, at 11–12. But neither *Roper* nor *Graham* held that specific procedural rules are required for sentencing juvenile homicide offenders. And, the logic of those cases should not be extended to create such a requirement.

The Eighth Amendment, made applicable to the States by the Fourteenth Amendment, provides that: “Excessive

¹I join THE CHIEF JUSTICE’s opinion because it accurately explains that, even accepting the Court’s precedents, the Court’s holding in today’s cases is unsupportable.

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bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” As I have previously explained, “the Cruel and Unusual Punishments Clause was originally understood as prohibiting torturous *methods* of punishment—specifically methods akin to those that had been considered cruel and unusual at the time the Bill of Rights was adopted.” *Graham*, *supra*, at ____ (dissenting opinion) (slip op., at 3) (internal quotation marks and citations omitted).² The clause does not contain a “proportionality principle.” *Ewing v. California*, 538 U. S. 11, 32 (2003) (THOMAS, J., concurring in judgment); see generally *Harmelin v. Michigan*, 501 U. S. 957, 975–985 (1991) (opinion of SCALIA, J.). In short, it does not authorize courts to invalidate any punishment they deem disproportionate to the severity of the crime or to a particular class of offenders. Instead, the clause “leaves the unavoidably moral question of who ‘deserves’ a particular nonprohibited method of punishment to the judgment of the legislatures that authorize the penalty.” *Graham*, *supra*, at ____ (THOMAS, J., dissenting) (slip op., at 5).

The legislatures of Arkansas and Alabama, like those of 27 other jurisdictions, *ante*, at 19–20, have determined

² Neither the Court nor petitioners argue that petitioners’ sentences would have been among “the ‘modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted.’” *Graham*, 560 U. S., at ____ (THOMAS, J., dissenting) (slip op., at 10, n. 3) (quoting *Ford v. Wainwright*, 477 U. S. 399, 405 (1986)). Nor could they. Petitioners were 14 years old at the time they committed their crimes. When the Bill of Rights was ratified, 14-year-olds were subject to trial and punishment as adult offenders. See *Roper v. Simmons*, 543 U. S. 551, 609, n. 1 (2005) (SCALIA, J., dissenting). Further, mandatory death sentences were common at that time. See *Harmelin v. Michigan*, 501 U. S. 957, 994–995 (1991). It is therefore implausible that a 14-year-old’s mandatory prison sentence—of any length, with or without parole—would have been viewed as cruel and unusual.

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that all offenders convicted of specified homicide offenses, whether juveniles or not, deserve a sentence of life in prison without the possibility of parole. Nothing in our Constitution authorizes this Court to supplant that choice.

II

To invalidate mandatory life-without-parole sentences for juveniles, the Court also relies on its cases “prohibit[ing] mandatory imposition of capital punishment.” *Ante*, at 7. The Court reasons that, because *Graham* compared juvenile life-without-parole sentences to the death penalty, the “distinctive set of legal rules” that this Court has imposed in the capital punishment context, including the requirement of individualized sentencing, is “relevant” here. *Ante*, at 12–13. But even accepting an analogy between capital and juvenile life-without-parole sentences, this Court’s cases prohibiting mandatory capital sentencing schemes have no basis in the original understanding of the Eighth Amendment, and, thus, cannot justify a prohibition of sentencing schemes that mandate life-without-parole sentences for juveniles.

A

In a line of cases following *Furman v. Georgia*, 408 U. S. 238 (1972) (*per curiam*), this Court prohibited the mandatory imposition of the death penalty. See *Woodson v. North Carolina*, 428 U. S. 280 (1976) (plurality opinion); *Roberts v. Louisiana*, 428 U. S. 325 (1976) (same); *Sumner v. Shuman*, 483 U. S. 66 (1987). *Furman* first announced the principle that States may not permit sentencers to exercise unguided discretion in imposing the death penalty. See generally 408 U. S. 238. In response to *Furman*, many States passed new laws that made the death penalty mandatory following conviction of specified crimes, thereby eliminating the offending discretion. See *Gregg v. Georgia*, 428 U. S. 153, 180–181 (1976) (joint opinion

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of Stewart, Powell, and Stevens, JJ.). The Court invalidated those statutes in *Woodson*, *Roberts*, and *Sumner*. The Court reasoned that mandatory capital sentencing schemes were problematic, because they failed “to allow the particularized consideration” of “relevant facets of the character and record of the individual offender or the circumstances of the particular offense.” *Woodson*, *supra*, at 303–304 (plurality opinion).³

In my view, *Woodson* and its progeny were wrongly decided. As discussed above, the Cruel and Unusual Punishments Clause, as originally understood, prohibits “torturous *methods* of punishment.” See *Graham*, 560 U. S., at ____ (THOMAS, J., dissenting) (slip op., at 3) (internal quotation marks omitted). It is not concerned with whether a particular lawful method of punishment—whether capital or noncapital—is imposed pursuant to a mandatory or discretionary sentencing regime. See *Gardner v. Florida*, 430 U. S. 349, 371 (1977) (Rehnquist, J., dissenting) (“The prohibition of the Eighth Amendment relates to the character of the punishment, and not to the process by which it is imposed”). In fact, “[i]n the early days of the Republic,” each crime generally had a defined punishment “prescribed with specificity by the legislature.” *United States v. Grayson*, 438 U. S. 41, 45 (1978). Capital sentences, to which the Court analogizes, were

³The Court later extended *Woodson*, requiring that capital defendants be permitted to present, and sentencers in capital cases be permitted to consider, any relevant mitigating evidence, including the age of the defendant. See, e.g., *Lockett v. Ohio*, 438 U. S. 586, 597–608 (1978) (plurality opinion); *Eddings v. Oklahoma*, 455 U. S. 104, 110–112 (1982); *Skipper v. South Carolina*, 476 U. S. 1, 4–5 (1986); *Johnson v. Texas*, 509 U. S. 350, 361–368 (1993). Whatever the validity of the requirement that sentencers be permitted to consider all mitigating evidence when deciding whether to impose a *nonmandatory* capital sentence, the Court certainly was wrong to prohibit *mandatory* capital sentences. See *Graham v. Collins*, 506 U. S. 461, 488–500 (1993) (THOMAS, J., concurring).

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treated no differently. “[M]andatory death sentences abounded in our first Penal Code” and were “common in the several States—both at the time of the founding and throughout the 19th century.” *Harmelin*, 501 U. S., at 994–995; see also *Woodson*, *supra*, at 289 (plurality opinion) (“At the time the Eighth Amendment was adopted in 1791, the States uniformly followed the common-law practice of making death the exclusive and mandatory sentence for certain specified offenses”). Accordingly, the idea that the mandatory imposition of an otherwise-constitutional sentence renders that sentence cruel and unusual finds “no support in the text and history of the Eighth Amendment.” *Harmelin*, *supra*, at 994.

Moreover, mandatory death penalty schemes were “a perfectly reasonable legislative response to the concerns expressed in *Furman*” regarding unguided sentencing discretion, in that they “eliminat[ed] explicit jury discretion and treat[ed] all defendants equally.” *Graham v. Collins*, 506 U. S. 461, 487 (1993) (THOMAS, J., concurring). And, as Justice White explained more than 30 years ago, “a State is not constitutionally forbidden to provide that the commission of certain crimes conclusively establishes that a criminal’s character is such that he deserves death.” *Roberts*, *supra*, at 358 (dissenting opinion). Thus, there is no basis for concluding that a mandatory capital sentencing scheme is unconstitutional. Because the Court’s cases requiring individualized sentencing in the capital context are wrongly decided, they cannot serve as a valid foundation for the novel rule regarding mandatory life-without-parole sentences for juveniles that the Court announces today.

B

In any event, this Court has already declined to extend its individualized-sentencing rule beyond the death penalty context. In *Harmelin*, the defendant was convicted of

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possessing a large quantity of drugs. 501 U. S., at 961 (opinion of SCALIA, J.). In accordance with Michigan law, he was sentenced to a mandatory term of life in prison without the possibility of parole. *Ibid.* Citing the same line of death penalty precedents on which the Court relies today, the defendant argued that his sentence, due to its mandatory nature, violated the Cruel and Unusual Punishments Clause. *Id.*, at 994–995 (opinion of the Court).

The Court rejected that argument, explaining that “[t]here can be no serious contention . . . that a sentence which is not otherwise cruel and unusual becomes so simply because it is ‘mandatory.’” *Id.*, at 995. In so doing, the Court refused to analogize to its death penalty cases. The Court noted that those cases had “repeatedly suggested that there is no comparable [individualized-sentencing] requirement outside the capital context, because of the qualitative difference between death and all other penalties.” *Ibid.* The Court observed that, “even where the difference” between a sentence of life without parole and other sentences of imprisonment “is the greatest,” such a sentence “cannot be compared with death.” *Id.*, at 996. Therefore, the Court concluded that the line of cases requiring individualized sentencing had been drawn at capital cases, and that there was “no basis for extending it further.” *Ibid.*

Harmelin’s reasoning logically extends to these cases. Obviously, the younger the defendant, “the great[er]” the difference between a sentence of life without parole and other terms of imprisonment. *Ibid.* But under *Harmelin*’s rationale, the defendant’s age is immaterial to the Eighth Amendment analysis. Thus, the result in today’s cases should be the same as that in *Harmelin*. Petitioners, like the defendant in *Harmelin*, were not sentenced to death. Accordingly, this Court’s cases “creating and clarifying the individualized capital sentencing doctrine” do not apply. *Id.*, at 995 (internal quotation marks omitted).