CHILDREN ARE DIFFERENT: WHY IOWA SHOULD ADOPT A CATEGORICAL BAN ON LIFE WITHOUT PAROLE SENTENCES FOR JUVENILE HOMICIDE OFFENDERS

ABSTRACT

In 2012, the U. S. Supreme Court decided Miller v. Alabama, in which the Court held that mandatory life without parole sentences for juvenile homicide offenders violate the Eighth Amendment’s prohibition on cruel and unusual punishment. In place of statutorily mandated life without parole sentences, the Court requires an individualized sentencing procedure that takes into account youth and the circumstances of the crime as mitigating factors. In doing so, the Court broke with its decisions in Roper v. Simmons and Graham v. Florida. Both cases emphasized the dangers of individualized sentencing procedures for juveniles and chose instead to institute categorical bans on, respectively, the juvenile death penalty and juvenile life without parole sentences for nonhomicide offenders. This Note examines the trio of Supreme Court cases that consider categorical bans for juveniles in relation to the Eighth Amendment’s prohibition on cruel and unusual punishment and the trio of Iowa Supreme Court cases that arose in August 2013, after the Supreme Court decided Miller. It discusses the psychological studies and international norms that both courts found persuasive in their decisions and argues why both the United States and Iowa should no longer remain the outliers in the area of juvenile life without parole sentences.

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I. INTRODUCTION

The Eighth Amendment mandates that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”¹ It guarantees that individuals will not be subject to “excessive sanctions” and the punishment for crimes will be proportionate both to the offense and the offender.² Yet, currently, the United States allows courts to sentence juveniles to life in prison with no chance of parole—the harshest penalty allowed under the law, short of the death penalty.³ What is often not taken into account is the disproportionate effect that life without parole sentences have on juveniles, as compared to adult offenders.⁴ And because juveniles are sentenced at a younger age, life without parole is an especially

¹. U.S. CONST. amend. VIII.
³. Connie de la Vega & Michelle Leighton, Sentencing Our Children to Die in Prison: Global Law and Practice, 42 U.S.F. L. REV. 983, 983–84 (2008) (“For many of the children who are sentenced to [life without parole], it is effectively a death sentence carried out by the state over a long period of time.”).
⁴. See EQUAL JUSTICE INITIATIVE, CRUEL AND UNUSUAL: SENTENCING 13- AND 14-YEAR OLD CHILDREN TO DIE IN PRISON 14 (2007), available at http://www.eji.org/eji/files/20071017cruelandunusual.pdf. (“Many adolescents suffer horrific abuse for years when sentenced to die in prison. Young inmates are at particular risk of rape in prison. Children sentenced to adult prisons typically are victimized because they have ‘no prison experience, friends, companions or social support.’ Children are five times more likely to be sexually assaulted in adult prisons than in juvenile facilities.” (footnotes omitted)).
harsh punishment. Under this sentence, juveniles serve more years and a greater percentage of their lives in prison than adult offenders.5

In this Note, Part II discusses the trio of Supreme Court decisions that enhanced Eighth Amendment protections for juvenile6 offenders and argues that the rationale from each of these cases can be advanced to support a categorical ban on all juvenile life without parole sentences. Similarly, Part III discusses the trio of Iowa Supreme Court cases from August 2013 that followed the Supreme Court’s decision in *Miller v. Alabama*. Iowa took a more protective stance than the Supreme Court and extended individualized sentencing to more juvenile offenders than the *Miller* decision.7 Part IV discusses the history of juveniles in the penal system and why the recent shift toward severe penalties for juvenile offenders should be reversed. Part V surveys the psychological and other scientific studies that both the U.S. Supreme Court and the Iowa Supreme Court found persuasive and explains why those studies support a categorical ban on juvenile life without parole sentences. Part VI discusses international norms and laws regarding juvenile life without parole sentences and explains why both the United States and Iowa should no longer be outliers in this area.

II. THE SUPREME COURT AND PROTECTIONS FOR JUVENILE OFFENDERS

A. Roper v. Simmons

In *Roper v. Simmons*, the Supreme Court held that it is unconstitutional under the Cruel and Unusual Punishment Clause of the Eighth Amendment to sentence anyone under the age of 18 to death.8 This categorical ban is based on three differences between children and adults that, to the Court, demonstrate why juvenile offenders cannot be classified as “among the worst offenders” deserving of the harshest penalty allowed

6. For the purposes of this Note, “juvenile” and “child” will refer to anyone under the age of 18 unless a different age is specified. The U.S. Code also defines a juvenile as “a person who has not attained his eighteenth birthday.” 18 U.S.C. § 5031 (2012).
under the law.9

First, children are more likely than adults to exhibit a lack of maturity and sense of responsibility.10 Because of these characteristics, every state prohibits children under the age of 18 from participating in certain activities, such as “voting, serving on juries, or marrying without parental consent.”11

Second, “[y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.”12 Children by their very nature tend to have less control over their environment and home life, making them much more susceptible to negative family influences.13 Likewise, they are more vulnerable to other outside influences, including peer pressure from classmates—or codefendants.14

Third, a child offender’s character and personality are not fully formed in the same way as an adult offender’s.15 The personality traits of children are transient.16 Even expert psychologists are unable to differentiate, with any certainty, a juvenile offender who commits a crime due to “transient immaturity” from “the rare juvenile offender whose crime reflects irreparable corruption.”17 And yet, by allowing sentences of life without

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9. Roper, 543 U.S. at 569.
10. Id.
11. Id. The Court indexed state statutes establishing age minimums for voting, serving on juries, and entering into marriage without parental or judicial consent. See id. at 581–87.
12. Id. at 569 (quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).
13. Id.
14. Id.
15. Id. at 570.
16. Id. at 570, 573.
17. Id. at 573 (citing Laurence Steinberg & Elizabeth S. Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 AM. PSYCHOLOGIST 1009, 1014–16 (2003)). At the time of the Roper decision, the American Psychiatric Association (APA) forbade providers from diagnosing anyone under age 18 with antisocial personality disorder (ASPD). Roper, 543 U.S. at 573 (citing AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 701–06 (4th ed., Text Revision 2000)). ASPD is a highly stigmatized disorder “characterized by callousness, cynicism, and contempt for the feelings, rights, and suffering of others.” Id. (citing AM. PSYCHIATRIC ASS’N, supra). These are some of the same characteristics that Professor John DiIulio, Jr. used to describe juvenile offenders in his prediction of a coming era of the juvenile “super-predator.” See discussion infra Part IV.B.
parole for children, sentencing judges are allowed to “issue a far graver condemnation” of a juvenile’s enduring personality traits and inability to change than trained medical professionals are willing to do.\(^{18}\)

B. Graham v. Florida

In *Graham v. Florida*, the Court held that a sentence of life without parole imposed on a juvenile who committed a nonhomicide offense is unconstitutional under the Eighth Amendment.\(^{19}\) This was the first time the Court considered a categorical ban on a life without parole sentence;\(^{20}\) previously, the Court only imposed categorical bans on the use of the death penalty.\(^{21}\)

The Court determined a categorical ban is appropriate as applied to life without parole sentences for nonhomicide juvenile offenses because “none of the goals of penal sanctions that have been recognized as legitimate . . . provides an adequate justification” for such sentences.\(^{22}\) Those four goals are retribution, deterrence, incapacitation, and rehabilitation.\(^{23}\)

The purpose of retribution is to condemn the crime and to attempt to restore moral equilibrium by punishing the offender.\(^{24}\) However, retribution requires that the criminal punishment exacted is proportionate to the personal culpability of the offender.\(^{25}\) The Court found that when it comes to juveniles, offenders are less personally culpable than their adult counterparts.\(^{26}\) A juvenile sentenced to life without parole, however, will “serve more years and a greater percentage of his life in prison than an adult

\(^{18}\) See *Roper*, 543 U.S. at 573.


\(^{20}\) Id. at 61.


\(^{22}\) *Graham*, 560 U.S. at 71.

\(^{23}\) Id. (citing *Ewing v. California*, 538 U.S. 11, 25 (2003) (plurality opinion)).

\(^{24}\) See id.

\(^{25}\) See id. (quoting *Tison v. Arizona*, 481 U.S. 137, 149 (1987)).

\(^{26}\) Id. (quoting *Roper*, 543 U.S. at 571). In *Roper*, the Court found that the death penalty for juveniles is unconstitutional in part because “[r]etribution is not proportional if the law’s most severe penalty is imposed” on a juvenile. *Roper*, 543 U.S. at 571. In *Graham v. Florida*, the Court took the analysis one step further and found that “[t]he considerations underlying that holding [in *Roper*] support as well the conclusion that retribution does not justify imposing the second most severe penalty on the less culpable juvenile nonhomicide offender.” *Graham*, 560 U.S. at 71–72.
This makes the sentence disproportionately harsh for juvenile offenders, thus controverting the retribution rationale.

The *Graham* Court determined that the imposition of a life without parole sentence on a nonhomicide juvenile offender also does not meet the goal of deterrence. Developments in psychology and neuroscience suggest that juveniles are more prone to impetuosity and less likely to evaluate the risks and consequences of their actions. These characteristics also make them less responsive to deterrence.

The Court held the incapacitation rationale also fails to justify imposing life without parole sentences on juvenile nonhomicide offenders. While incapacitating offenders is an important goal, it “cannot override all other considerations.” Life without parole sentences may be appropriate for the same or similar crimes when committed by adults, but the characteristics of youth are considerations that weigh against the same type of incapacitation for children. This is because incapacitating a juvenile forever “requires the sentencer to make a judgment that the juvenile is incorrigible,” and the Court recognizes that “incorrigibility is inconsistent with youth.” Some juveniles may require total incapacitation through incarceration for life. This determination, however, is one properly left to parole boards and for a later time when it is possible to evaluate an offender’s progress toward rehabilitation and to weigh society’s interest in continuing to incapacitate them. The Eighth Amendment “forbid[s] States from making the judgment at the outset that [juvenile nonhomicide] offenders never will be fit to reenter society.”

Finally, the *Graham* Court explained that the possibility of rehabilitation is completely abandoned when a juvenile is sentenced to life

27. *Graham*, 560 U.S. at 70.
28. *Id.* at 72.
29. *See id.* See Part V.A.1–2, for a detailed discussion of these studies.
31. *Id.*
32. *Id.* at 73.
33. *Id.*
34. *Id.* at 72.
35. *Id.* (quoting Workman v. Commonwealth, 429 S.W.2d 374, 378 (Ky. 1968)) (internal quotation marks omitted).
36. *Id.* at 72.
37. *See id.*
38. *Id.* at 75.
without parole.\textsuperscript{39} Juveniles, in general, are more receptive to rehabilitation than adult offenders; and yet, when rehabilitative services are denied to juveniles serving life sentences on the grounds that they will never need to prepare for reentry into society, “the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more evident.”\textsuperscript{40}

C. Miller v. Alabama

In \textit{Miller v. Alabama}, the Court very narrowly held that statutorily mandated life without parole sentences for juvenile homicide offenders violate the Eighth Amendment’s prohibition of cruel and unusual punishment.\textsuperscript{41} The opinion does not, however, go so far as to prevent a state from ever imposing a life without parole sentence for juvenile homicide offenders.\textsuperscript{42}

Instead, \textit{Miller} requires a sentencing court to perform an individualized inquiry and consider mitigating factors, including the characteristic traits of youth; the offender’s family and home life; the circumstances of the crime, including the extent of the offender’s participation and any relevant peer pressures; and the extent to which the offender’s age interferes with their ability to navigate the criminal process.\textsuperscript{43} The Court found that this individualized sentencing process is necessary because:

\begin{quote}
[Mandatory penalties . . . preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it. Under these [mandatory sentencing] schemes, every
\end{quote}

\textsuperscript{39}. \textit{Id.} at 74.

\textsuperscript{40}. \textit{Id.} The Court noted that “defendants serving life without parole sentences are often denied access to vocational training and other rehabilitative services that are available to other inmates.” \textit{Id.}


\textsuperscript{42}. \textit{Id.} The Court specifically declined to address the alternative arguments that the Eighth Amendment requires a categorical ban on juvenile life without parole sentences or that it requires such a categorical ban for juvenile offenders ages 14 and younger. \textit{See id.} at 2469. However, the Court did state that “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” \textit{Id.} As of the time of this Note’s publication, only the Massachusetts Supreme Judicial Court has held that life without parole sentences imposed upon juvenile homicide offenders are unconstitutional under its state constitution. \textit{Diatchenko v. Dist. Att’y for Suffolk Dist., 1 N.E.3d 270, 284–85 (Mass. 2013).}

\textsuperscript{43}. \textit{Id.} at 2468. The Author refers to these sentencing considerations as “\textit{Miller} individualized sentencing factors” throughout this Note.
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 . . . 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.\textsuperscript{44}

The types of consequences that flow from the absence of an individualized sentencing procedure violate the proportionality requirement used to analyze an Eighth Amendment cruel and unusual punishment claim.\textsuperscript{45} Proportionality guarantees “the right not to be subjected to excessive sanctions” and requires that punishments are proportionate to both the offender and the crime.\textsuperscript{46} In determining proportionality, the Court is much less concerned with historical approaches to the question, choosing instead to make proportionality decisions based on “the evolving standards of decency that mark the progress of a maturing society.”\textsuperscript{47}

The Court’s proportionality analysis in Miller was largely based on expanding studies about developmental differences between adolescents and adults and the effect those differences have on the behavior of juveniles.\textsuperscript{48} These studies tend to show that only a minimal proportion of juveniles who participate in criminal activity actually develop a pattern of negative behavior that continues throughout adulthood.\textsuperscript{49} Rather, the very characteristics that may have led to a juvenile’s crime—impulsivity, lack of risk assessment, and inability to weigh consequences—both increase the likelihood that a child is capable of reform and decrease a child’s moral culpability.\textsuperscript{50} The Court emphasized how these differences make children and adolescents “constitutionally different from adults for purposes of

\begin{itemize}
  \item \textsuperscript{44} Id. at 2467–68.
  \item \textsuperscript{45} Id. at 2463.
  \item \textsuperscript{46} Id. (quoting Roper v. Simmons, 543 U.S. 551, 560 (2005)) (internal quotation mark omitted).
  \item \textsuperscript{47} Id. (quoting Estelle v. Gamble, 429 U.S. 97, 102 (1976)) (internal quotation marks omitted).
  \item \textsuperscript{48} Id. at 2464–65 n.5. The Miller Court noted that Roper cited extensively to the work of Elizabeth S. Scott and Laurence Steinberg, whose work is discussed in detail in Part V. See id. at 2464 (citing Roper, 543 U.S. at 570).
  \item \textsuperscript{49} Id. at 2464 (citing Roper, 543 U.S. at 570); see also Steinberg & Scott, supra note 17, at 1014.
  \item \textsuperscript{50} Miller, 132 S. Ct. at 2464–65; Graham v. Florida, 560 U.S. 48, 68 (2010); Roper, 543 U.S. at 570.
\end{itemize}
sentencing."51

D. Lessons from the Roper-Graham-Miller Trio

The rationale used by the Court in Roper, Graham, and Miller can easily be read as an argument in favor of a categorical ban on all life without parole sentences for juveniles. In each case, the Court based its decision on the characteristics of youth that make the sentence in question inequitable, rather than focusing on the characteristics of the crimes committed.52 The psychological studies the Court relied on assert that all juveniles are different from adults in terms of brain development and risk-analysis faculties.53 If all juveniles are subject to these vulnerabilities, the rationale for separating juveniles into two classes—those deserving and those not deserving of life without parole—makes even less sense.54 Furthermore, the individualized sentencing approach the Court adopted in Miller is inconsistent with the pattern of categorical bans embraced in Roper and Graham.55

51.  Miller, 132 S. Ct. at 2464.
52.  Id. at 2465 (“[N]one of what [Graham] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific.”).
53.  See id. at 2464 (“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.’” (quoting Graham, 560 U.S. at 68)); see also Elizabeth S. Scott & Laurence Steinberg, Rethinking Juvenile Justice 34 (2008).
54.  The American Bar Association made this argument in an amicus curiae brief to the Supreme Court in Miller, stating in pertinent part:

[E]very characteristic and difference between children and adults identified in Roper and Graham that supports this Court’s conclusion that juveniles are less morally culpable and have a greater capacity for rehabilitation than adults also supports an extension of Graham’s holding to all juveniles regardless of whether they were convicted of homicide. Similarly, Graham’s holding that the standard penological justifications of sentencing are not served by juvenile life without parole . . . sentences applies with equal force to juveniles convicted of homicide. Moreover, the exclusion of juveniles convicted of homicide from the protection of Graham does not comport with “the evolving standards of decency that mark the progress of a maturing society.”

55.  See Mary Berkheiser, Developmental Detour: How the Minimalism of Miller v. Alabama Led the Court’s “Kids are Different” Eighth Amendment Jurisprudence Down
1. Roper v. Simmons

In \textit{Roper}, members of the Court disagreed on whether to adopt a categorical ban on the death penalty for all juveniles under age 18 or to allow the imposition of death penalty sentences after individualized considerations on a case-by-case basis.\textsuperscript{56} For adults, death penalty sentencing requires an assessment of both aggravating and mitigating circumstances.\textsuperscript{57} Prior to \textit{Roper}, the assessment for juveniles considered youth a mitigating factor.\textsuperscript{58} The Court ultimately decided, however, that even an individualized process that considered youth as a mitigating factor did not measure up to the requirements of the Eighth Amendment because “[a]n 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.”\textsuperscript{59} It is not difficult to see how this same concern can extend to juvenile life without parole sentences—especially considering that, in light of the ban on juvenile death penalty sentences, juvenile life without parole sentences are currently the most severe penalty the law can impose upon a child.

2. Graham v. Florida

Similarly, in \textit{Graham}, the Court considered and rejected an individualized sentencing approach to life without parole sentences for nonhomicide juvenile offenses.\textsuperscript{60} Despite the State of Florida’s argument that its laws took age into account in individualized assessments, the Court ultimately held that “a case-by-case approach presented too great a risk that a juvenile would receive a sentence of life without parole ‘despite insufficient culpability.’”\textsuperscript{61} The Court emphasized that the risk of overpunishment is inconsistent with the Eighth Amendment and cautioned that, based on the


\textsuperscript{57} Berkheiser, \textit{supra} note 55, at 502.

\textsuperscript{58} Id.

\textsuperscript{59} Feld, \textit{supra} note 56 (quoting \textit{Roper}, 543 U.S. at 572–73).

\textsuperscript{60} \textit{Graham v. Florida}, 560 U.S. 48, 77 (2010); \textit{see also} Berkheiser, \textit{supra} note 55, at 505–06.

\textsuperscript{61} Berkheiser, \textit{supra} note 55, at 505–06 (quoting \textit{Graham}, 560 U.S. at 78).
characteristics of youth, judges and jurors are unable to “distinguish the few incorrigible juvenile offenders from the many that have the capacity for change.”

III. THE IOWA SUPREME COURT

At the time Miller was decided, there were 38 individuals incarcerated in Iowa who had been sentenced to mandatory life without parole sentences as juveniles. In response to the Supreme Court’s decision in Miller, Governor Terry Branstad commuted the 38 mandatory life without parole sentences to life sentences with the possibility of parole after 60 years. Under the terms of each commutation, none of the defendants were able to credit time already served toward the 60-year requirement.

In August 2013, the Iowa Supreme Court heard three cases brought by juvenile offenders, now adults, all of whom had been sentenced to various statutorily mandated life without parole or lengthy term-of-years sentences. For each defendant, the court remanded the case for Miller individualized sentencing.

A. State v. Ragland

In State v. Ragland, the Iowa Supreme Court held that Miller applies not only to juveniles sentenced to mandatory life without parole but also to juveniles sentenced to mandatory minimum sentences that are the functional

62. Graham, 560 U.S. at 77. The Court was not persuaded that judges or juries are able to pass the judgment that juveniles are incorrigible and thus deserving of a life without parole sentence when “[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 73 (quoting Roper, 543 U.S. at 572) (internal quotation marks omitted).


65. Ragland, 836 N.W.2d at 110–11.


67. See generally Ragland, 836 N.W.2d 107; Pearson, 836 N.W.2d 88; Null, 836 N.W.2d 41.
equivalent of life without parole.68 Defendant Ragland was 17 years old when he was found guilty of first-degree murder under the felony–murder doctrine.69 He was prosecuted as an adult and sentenced to mandatory life without parole.70

Following the Miller decision, Ragland applied for resentencing.71 The district court held a resentencing hearing in August 2012, after Governor Branstad issued the commutations.72 The district court found that Ragland was entitled to a Miller individualized hearing, held the hearing, and resentenced him to life in prison with the possibility of parole after 25 years.73 On appeal to the Iowa Supreme Court, the parties disagreed over the effect of the commutation—specifically, whether it restructured Ragland’s sentence to a life with parole term that would suffice to circumvent the Miller individualized sentencing requirements.74

Ultimately, the Iowa Supreme Court determined that the commutation could not circumvent the Miller individualized sentencing requirements for two reasons: (1) the commutation did not affect the mandatory nature of the original sentence imposed on Ragland75 and (2) the 60-year commutation was the functional equivalent of a life without parole sentence, which still falls within “[t]he spirit of the constitutional mandates of Miller and Graham.”76

The Iowa Supreme Court emphasized that the spirit of Miller centers on ensuring juvenile offenders are afforded an individualized hearing that takes into consideration the attendant circumstances of youth that make “children . . . constitutionally different from adults for purposes of sentencing.”77 Because the commutation deprived all 38 juvenile defendants in Iowa of the individualized sentencing process, it was insufficient to meet

68. Ragland, 836 N.W.2d at 121–22.
69. Id. at 110. In Iowa, a person commits felony–murder when the person murders someone while participating in a forcible felony. IOWA CODE § 707.2(1)(b) (2013).
70. § 902.1(1) (2013). The Ragland decision found section 902.1(1) unconstitutional after Miller. Ragland, 836 N.W.2d at 119.
71. Ragland, 836 N.W.2d at 110.
72. Id. at 110–12.
73. Id. at 112–13.
74. Id. at 113.
75. Id. at 119.
76. Id. at 121.
77. Id. at 119 (quoting Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012)) (internal quotation marks omitted).
the requirements mandated by *Miller*.78

The court addressed the broader question of whether *Miller* would apply to Ragland’s sentence as commuted to life with the possibility of parole.79 The court rejected the rigid delineation between life without parole sentences and life with the possibility of parole for “geriatric release.”80 The court reasoned instead that:

[T]he rationale of *Miller* . . . reveals that the unconstitutional imposition of a mandatory life-without-parole sentence is not fixed by substituting it with a sentence with parole that is the practical equivalent of a life sentence without parole. . . . [T]he spirit of the law [must] not be lost in the application of the law. . . . The spirit of the constitutional mandates of *Miller* and *Graham* instruct that much more is at stake in the sentencing of juveniles than merely making sure that parole is possible. In light of our increased understanding of the decision making of youths, the sentencing process must be tailored to account in a meaningful way for the attributes of juveniles that are distinct from adult conduct. At the core of all of this also lies the profound sense of what a person loses by beginning to serve a lifetime of incarceration as a youth.81

Ultimately, the Iowa Supreme Court stated that a court system “could hardly call itself a system of justice with a rule that demands individualized sentencing considerations common to all youths apply only to those youths facing a sentence of life without parole and not to those youths facing a sentence of life with no parole until age seventy-eight.”82

B. State v. Null

In *Ragland*, the court determined that *Miller*’s individualized sentencing mandate applies to life with the possibility of parole sentences

78. *Id.* The court chose not to address the contention that the commutation exceeded the governor’s constitutional powers, instead invalidating it on the grounds that it did not meet *Miller* sentencing standards. *Id. But see id.* at 122–23 (Wiggins, J., concurring specially) (identifying the separation of powers, due process, and procedural issues raised by the governor’s commutation order but stating “we need not reach these important constitutional issues today and leave them for another day”).
79. *Id.* at 119. Under the terms of the commutation, Ragland would not have been eligible for parole until age 78 and his life expectancy was estimated at 78.6 years. *Id.*
80. *Id.* at 120–22.
81. *Id.* at 121.
82. *Id.*
that are the functional equivalent of life without parole sentences.83 The court did not, however, determine how many years amount to a functionally equivalent sentence.84 While the court did not determine a set amount of years that trigger Miller protections, it did determine that mandatory sentences of 52.5 years85 and 35 years86 are sufficient to trigger Miller safeguards for juvenile offenders in Iowa.87

In State v. Null, defendant Null was 16 when he committed the crime that led to his conviction.88 Null was charged with first-degree murder but accepted a plea deal that reduced the charges to second-degree murder and first-degree robbery.89 In Iowa, second-degree murder carries an indeterminate sentence of 50 years,90 and first-degree robbery carries an indeterminate sentence of 25 years.91 Null was given a 75-year aggregate sentence.92 Iowa law mandated that 70 percent of each conviction’s sentence be served before Null would be eligible for parole.93 Accordingly, because of the mandatory parole eligibility scheme, Null would have had to serve 52.5 years before he would have been eligible for parole.94 Because the convictions occurred prior to the Miller decision, Null would have received a mandatory life without parole sentence if he had been found guilty of first-degree murder; by taking the plea deal, Null “gained the opportunity to be released from prison on parole.”95

83. Id. at 121–22.
84. See id.
87. More recently, the Iowa Supreme Court concluded that it is unnecessary to arrive at a specific durational threshold because “all mandatory minimum sentences of imprisonment for youthful offenders are unconstitutional under the cruel and unusual punishment clause in article I, section 17 of our constitution.” State v. Lyle, No. 11-1339, 2014 WL 3537026, at *16–18 (Iowa Jul. 18, 2014).
88. Null, 836 N.W.2d at 45.
89. Id.
90. IOWA CODE § 707.3 (2013); Null, 836 N.W.2d at 45; see also § 902.3 (indeterminate sentencing).
91. §§ 711.2, 902.9(2); Null, 836 N.W.2d at 45; see also § 902.3 (indeterminate sentencing).
92. Null, 836 N.W.2d at 45.
93. § 902.12(1), (5) (2011); Null, 836 N.W.2d at 45–46.
94. Id. Null’s life expectancy at the time, as a 20-year-old black male, was assumed to be 51.7 years. Id. at 50–51.
95. Null, 836 N.W.2d at 46; see §§ 707.2, 902.1.
In deciding that a 52.5-year minimum sentence triggers *Miller* protections, the court referenced the Supreme Court’s heavy reliance on evolving scientific support for the idea that juveniles differ from adults in many significant ways; likewise, the Iowa Supreme Court determined that these differences support the idea that juveniles should be treated differently than adults in a cruel and unusual punishment analysis.\(^9\)

Specifically, the court was persuaded by scientific reports that “the human brain continues to mature into the early twenties.”\(^9\) Social science studies on the topic suggest that continuing development in the prefrontal cortex explains why juveniles are less adept than adults at evaluating risks, exercising self-control, regulating emotions, controlling impulsive behavior, anticipating risks and consequences, and ignoring peer pressure.\(^9\)

The culmination of these differences emphasizes “the lessened culpability of juvenile offenders”\(^9\) and highlights the need to grant juveniles a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”\(^9\) A lengthy term-of-years sentence with the possibility of only geriatric release does not provide offenders a sufficiently meaningful opportunity.\(^10\) Because this type of parole eligibility does not allow for the consideration of youth, a *Miller* individualized sentencing hearing is appropriate because “an offender sentenced to a lengthy term-of-years sentence should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing.”\(^10\)

The *Null* opinion also provides guidance for district courts sentencing juvenile offenders in accordance with *Miller*.\(^10\) In *Miller*, the Supreme Court

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\(^9\) Id., 836 N.W.2d at 54. Specifically, the Iowa Supreme Court noted that the U.S. Supreme Court relied extensively on the work of Elizabeth S. Scott and Laurence Steinberg. *Id.* at 54 (citing Miller v. Alabama, 132 S. Ct. 2455, 2464–65 n.5 (2012)). The two had recently published a book synthesizing scientific research on the topic of adolescent psychological development and maturation, which the Iowa Supreme Court cited extensively in its opinion in *Null*. See *id.* at 55 (citing SCOTT & STEINBERG, supra note 53).

\(^9\) *Id.* at 55 (citing SCOTT & STEINBERG, *supra* note 53, at 44).

\(^9\) *Id.* (citing SCOTT & STEINBERG, *supra* note 53, at 38–45, 50–52).

\(^9\) *Id.* at 71–72 (citing Graham v. Florida, 560 U.S. 48, 74 (2010)).

\(^10\) *Id.* at 71–72 (quoting Graham, 560 U.S. at 74) (internal quotation marks omitted).

\(^10\) *Id.* at 71 (citing Graham, 560 U.S. at 74).

\(^10\) *Id.* at 72.

\(^10\) *Id.* at 74–76.
instructed courts to consider everything it said about the characteristics of youth in *Roper* and *Graham*.

The Iowa Supreme Court took this a step further, explaining that *Miller* requires more than simply “taking age into consideration as a factor in sentencing.”

First, a sentencing court must acknowledge that “children are constitutionally different from adults” and thus cannot be automatically matched to a prescribed sentence reflecting a certain level of presumed culpability for a particular offense. These differences—including juveniles’ immaturity, vulnerability to peer pressure, underdeveloped sense of moral responsibility, and impulsivity—are mitigating, not aggravating, factors.

Second, unlike adult offenders, whose crimes may reflect depraved character or habitual criminal behavior outside any realistic hope of eventual reform, “[j]uveniles are more capable of change,” and their crimes are less likely to evince irredeemable character traits or predict an inevitable lifetime of criminal behavior.

Last, “a lengthy prison sentence without the possibility of parole . . . is appropriate, if at all, only in rare or uncommon cases.” If a sentencing court believes this exception applies to a case before it, the court should make specific findings discussing why the offender represents the rare exception to the general rule.

**C. State v. Pearson**

In *State v. Pearson*, defendant Pearson was 17 when she was convicted of two counts of first-degree robbery and two counts of first-degree burglary. Pearson was sentenced to a term of 50 years, which carried

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104. *Id.* at 74 (citing *Miller v. Alabama*, 132 S. Ct. 2455, 2467 (2012)).

105. *Id.*

106. *Id.* (quoting *Miller*, 132 S. Ct. at 2464) (internal quotation marks omitted); see also *State v. Ragland*, 836 N.W.2d 107, 119 (Iowa 2013) (quoting *Miller*, 132 S. Ct. at 2464).


108. *Id.* at 75 (alteration in original) (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)) (internal quotation mark omitted); see also *id.* (“Because ‘incorrigibility is inconsistent with youth,’ care should be taken to avoid ‘an irrevocable judgment about [an offender’s] value and place in society.’” (alteration in original) (quoting *Miller*, 132 S. Ct. at 2465)).

109. *Id.* (citing *Miller*, 132 S. Ct. at 2469)

110. *Id.* at 74; see also *State v. Pearson*, 836 N.W.2d 88, 95 (Iowa 2013).

111. *Pearson*, 836 N.W.2d at 89.
mandatory parole ineligibility for 35 years.\textsuperscript{112} Although Pearson was not sentenced to life without parole, the court held that a mandatory sentence of 35 years before the possibility of parole violates the principles of both \textit{Miller} and \textit{Null}.\textsuperscript{113} The court restated the fundamental principles of \textit{Null}: juveniles are “more capable of change” and less culpable than adults.\textsuperscript{114} Because of these differences, the court emphasized that it should be “rare or uncommon” to sentence a juvenile to a lengthy term-of-years sentence without the possibility of parole for offenses similar to those in this case.\textsuperscript{115} Further, if a sentencing court does determine that an exception to the general rule applies, it should make specific factual findings supporting that decision.\textsuperscript{116}

Here, the district court determined Pearson’s sentence in a manner inconsistent with the process required by \textit{Miller} and \textit{Null}.\textsuperscript{117} The district court emphasized that the primary purpose of the original lengthy sentence was not a concern for Pearson’s rehabilitation but rather a concern for the safety of the public.\textsuperscript{118} At sentencing, the court considered Pearson’s troubled family life, her history, her lack of familial support, and the negative influences present in her life, but the court determined that these factors did not diminish Pearson’s culpability.\textsuperscript{119} To the Iowa Supreme Court, this was directly contrary to the process outlined in \textit{Miller}, \textit{Graham}, and \textit{Null} that requires the sentencer to weigh the possibility of rehabilitation of juvenile offenders as an important factor and consider the characteristics of youth as mitigating factors.\textsuperscript{120}

\begin{itemize}
\item \textsuperscript{112} \textit{Id.} The charges arose out of two separate incidents. \textit{Id.} The sentencing judge ruled that Pearson’s sentences for each criminal incident—one count of robbery and one count of burglary—would run concurrently, but the sentences for each of the two incidents would run consecutively. \textit{Id.} First-degree robbery is normally subject to an indeterminate sentence of 25 years and a mandatory minimum of 70 percent completion. \textit{Id.; see Iowa Code} §§ 711.2, 902.3, 902.9(2) (2013).
\item \textsuperscript{113} \textit{Pearson}, 836 N.W.2d at 89, 96. Pearson would have been 53 years old before being eligible for release under the original sentence. \textit{Id.} at 94.
\item \textsuperscript{114} \textit{Id.} at 96 (quoting \textit{Null}, 836 N.W.2d at 75).
\item \textsuperscript{115} \textit{Id.} (quoting \textit{Null}, 836 N.W.2d at 75) (internal quotation marks omitted).
\item \textsuperscript{116} \textit{Id.} at 95.
\item \textsuperscript{117} \textit{Id.} at 97.
\item \textsuperscript{118} \textit{See id.} at 94. The district court judge said, “I don’t believe that the focus here today should be on the rehabilitation of the defendants, but rather the protection of society in these particular cases.” \textit{Id.} (internal quotation marks omitted).
\item \textsuperscript{119} \textit{Id.} at 93.
\item \textsuperscript{120} \textit{See id.} at 97; \textit{see also} State v. \textit{Null}, 836 N.W.2d 41, 75 (Iowa 2013) (citing \textit{Miller} v. \textit{Alabama}, 132 S. Ct. 2455, 2467–69 (2012)) (identifying characteristics of youths that
D. The Iowa Supreme Court Did Not Go Far Enough

Although the Iowa Supreme Court offered more protections to juvenile offenders than the Miller Court, it still stopped short of imposing a categorical ban on juvenile life without parole sentences. Just like the U.S. Supreme Court in Miller, the Iowa Supreme Court in Null summarily dismissed a categorical ban with no further discussion. However, similar to the issues discussed above, the rationale used by the Iowa Supreme Court in this trio of cases also lends support to the conclusion that a categorical ban on juvenile life without parole sentences is appropriate.

In Null, the Iowa Supreme Court agreed with “the repeated emphasis of the Supreme Court in Roper, Graham, and Miller of the lessened culpability of juvenile offenders, how difficult it is to determine which juvenile offender is one of the very few that is irredeemable, and the importance of a ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’” This sounds like the rationale of a court concerned with the potential for abuse in an individualized sentencing process—not one that plans to uphold the status quo of Miller and vest the authority to impose life without parole sentences in trial court judges—because the difficulty of determining which minors are “redeemable” would presumably undermine the court’s confidence in judges’ evaluations of juvenile offenders at sentencing. Further, it is unclear how juveniles sentenced to life without parole—even with Miller sentencing procedures—would ever actually be afforded a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”

must be treated as mitigating factors); see id. (quoting Graham v. Florida, 560 U.S. 48, 68 (2010)) (discussing juveniles’ capacity for rehabilitation); Pearson, 836 N.W.2d at 97 (applying the rehabilitation and mitigation principles outlined in Miller, Graham, and Null).

121. State v. Ragland, 836 N.W.2d 107, 121–22 (Iowa 2013).
122. Null, 836 N.W.2d at 76 (“Similarly, like in Miller, we do not decide whether lengthy sentences of fifty years in prison or more are categorically banned.”).
123. See supra Part II.D.
125. See also discussion supra Part II.D.1–2.
126. See Graham, 560 U.S. at 77. “As Roper and Graham could have foretold, those who seek [individualized] resentencing under Miller will face a head-on collision with everything those cases warned against.” Berkheiser, supra note 55, at 507.
127. Graham, 560 U.S. at 75.
IV. JUVENILES AND THE PENAL SYSTEM

Although it is common now for juveniles to be transferred to adult court for certain categories of crime,\textsuperscript{128} it was not until the mid-1980s that the United States began to embrace the type of harsh criminal penalties for children that are common today.\textsuperscript{129}

A. Early History of the Juvenile Justice System

At the founding of the United States, there was no separate justice system for juveniles.\textsuperscript{130} Instead, under the common law infancy defense, children younger than seven lacked any criminal capacity, and children between the ages of seven and 14 were presumed to lack criminal capacity.\textsuperscript{131} Children over the age of 14 were presumed to have criminal capacity and were tried and sentenced in adult courts.\textsuperscript{132}

Gradually, the understood characteristics of childhood began to change, and multiple organizations “promoted a more modern vision of children as vulnerable and innocent people who required close attention and control during their transition to adulthood.”\textsuperscript{133} This was reflected not only in the changes in approaches to juvenile justice but also in the establishment of child labor laws and compulsory school attendance laws.\textsuperscript{134} By 1899, many states had begun to establish “reform houses” for child offenders as an alternative to incarceration alongside adults.\textsuperscript{135} Illinois established the first separate juvenile court system in the United States in 1899.\textsuperscript{136} “By 1925, all

\textsuperscript{128} See infra Part IV.B.

\textsuperscript{129} AMNESTY INT’L \& HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 15 (2005) [hereinafter THE REST OF THEIR LIVES].

\textsuperscript{130} Barry C. Feld, Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences, 10 J.L. & FAM. STUD. 11, 13 (2007).

\textsuperscript{131} State v. Null, 836 N.W.2d 41, 52 (Iowa 2013) (citing Feld, supra note 130, at 14 n.11). For children between the ages of seven and 14, the State could only overcome this presumption by demonstrating “that the child knew the wrongfulness of his act.” \textit{Id.} (quoting Andrew Walkover, The Infancy Defense in the New Juvenile Court, 31 UCLA L. REV. 503, 510–11 (1984)) (internal quotation marks omitted).

\textsuperscript{132} Null, 836 N.W.2d at 52 (citing Feld, supra note 130, at 13, 14 n.11).

\textsuperscript{133} Feld, supra note 130, at 15.

\textsuperscript{134} \textit{Id.}

\textsuperscript{135} THE REST OF THEIR LIVES, supra note 129, at 14 (internal quotation marks omitted).

\textsuperscript{136} \textit{Id.} (citing ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 3–4, 138 (2d ed. 1977)).
but two states had followed suit."137

The underlying “Rehabilitative Ideal” of the new juvenile court system focused not on punishment but on “creat[ing] ‘an institution that would intervene forcefully in the lives of all children at risk to effect a rescue.””138 From 1925 to the late 1960s, this ideal was the prevailing model in juvenile justice and rehabilitation, and juveniles “were almost exclusively brought before juvenile courts.”139

B. The Change to Harsher Punishments

By the 1960s, the purpose of the juvenile court system began to shift to a system “more punitive in nature.”140 In 1966 and 1967, the Supreme Court changed the landscape of the juvenile system with its decisions in Kent v. United States and In re Gault, thereby “transform[ing] juvenile courts into scaled-down criminal courts.”141

In Kent, the Court held juvenile courts are not allowed to waive jurisdiction and transfer children to adult courts or jail without first following certain procedural safeguards to ensure that the transfer is appropriate for both society and the juvenile offender.142 The Court went a step further in In re Gault and held that some of the protections guaranteed to adult criminal defendants must also be extended in juvenile courts.143 These two cases, along with others during the same time period, had the effect of introducing a quasi-criminal nature to juvenile delinquency hearings.144 “Though designed to protect juveniles, Kent and In re Gault may have stimulated a mindset of increased exposure of youth to adult criminal sentences.”145

137. Id.
139. THE REST OF THEIR LIVES, supra note 129, at 14.
142. Kent, 383 U.S. at 552–54; THE REST OF THEIR LIVES, supra note 129, at 14 n.19.
143. In re Gault, 387 U.S. at 33–58. The decision requires juvenile courts to provide notice, a fair hearing, assistance of counsel, the opportunity to confront and cross-examine witnesses, protection against self-incrimination, and the right to appeal. Id.
144. See Feld, supra note 130, at 23 (summarizing the Court’s decisions in Breed v. Jones, 412 U.S. 519 (1975); McKeiver v. Pennsylvania, 403 U.S. 528 (1971); and In re Winship, 397 U.S. 358 (1970)).
145. Null, 836 N.W.2d at 52–53.
Despite the public hysteria caused by the prediction of a coming super-predator epidemic, actual crime and arrest rates demonstrated that the juvenile super-predator was nothing more than a myth. The rise in crime that led demographic forecasters to predict the super-predator era was temporary; juvenile crime rates peaked in 1994 but soon after dropped back down to pre-1976 numbers. In fact, “violent juvenile crime [rates] . . . continue[] to decrease through the present.”

Professor DiIulio recently retracted his statements about juvenile super-predators and has expressed regret about the role his iconic phrase played in creating harsher adult punishments for children. Professor DiIulio joined an amicus curiae brief in Miller that repudiated the super-predator myth and argued for a constitutional ban on all juvenile life without parole sentences. It is troubling that, although empirical data demonstrates the rise in juvenile crime was temporary, the harsh penalties put in place to punish juvenile offenders remain the same, even though the scenario they were enacted to address never came to pass.

V. SCIENTIFIC STUDIES

Both the U.S. Supreme Court and the Iowa Supreme Court have embraced developments in psychology and neuroscience to help explain why and how the brains of juveniles function differently than adults—and how those differences make juveniles less morally blameworthy.


154. See THE REST OF THEIR LIVES, supra note 129.
155. Brief of Jeffrey Fagan et al., supra note 146, at 18–22.
156. Id. at 23 fig.3.
157. Id. at 21.
158. Id. at 18–19. Professor DiIulio’s original article actually concluded that long-term prison sentences were not the solution to the predicted epidemic; instead, Professor DiIulio suggested the introduction of faith-based crime-fighting initiatives. Id. at 19 n.26.
159. See generally id.
160. See generally id. at 23 fig.3.
A. Psychological Studies

In the area of psychology, the leading explanation for why juvenile thought processes and decisionmaking differ significantly from adults has been termed “psychosocial immaturity.” Psychosocial immaturity is comprised of four factors that are characteristic of juveniles’ decisionmaking that negatively influence their cost–benefit analyses: “(a) susceptibility to peer influence, (b) attitudes toward and perception of risk, (c) future orientation, and (d) the capacity for self-management.” These four factors reflect such profound differences between juveniles and adults that “to the extent that adolescents are less psychosocially mature than adults, they are likely to be deficient in their decision-making capacity, even if their cognitive processes are mature.”

1. Peer Influence

Juveniles—especially adolescents—are much more susceptible to negative peer influences than adults. This heightened desire for peer approval is particularly dangerous in juveniles because it affects their judgment both directly and indirectly. This means juveniles are more likely to respond to direct, coercive peer pressure than adults. However, it also means that “[m]ore indirectly, adolescents’ desire for peer approval—and fear of rejection—affect their choices, even without direct coercion.” This desire for peer approval is reflected in the number of juvenile defendants who have peer codefendants. It is no coincidence that all of the defendants in the six cases described in this Note acted with peer accomplices.

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163. Steinberg & Scott, supra note 17, at 1012.
164. Id. Self-management in this context is used to describe impulsivity. Id. at 1012–13.
165. Id. at 1012 (citing Elizabeth Cauffman & Laurence Steinberg, (Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable than Adults, 18 BEHAV. SCI. & L. 741 (2000)).
166. Id. at 1012. Steinberg and Scott explain that vulnerability to peer pressure begins to increase during early adolescence, as a juvenile begins to develop individuality apart from parental control. See id. This heightened reaction to peer pressure peaks around age 14 and slowly declines through to ages 17 or 18. Id.; see also Graham, 560 U.S. at 68; Brief of the Am. B. Ass’n as Amicus Curiae Supporting Petitioners, at *11, Miller, 132 S. Ct. 2455 (Nos. 10-9646, 10-9647), 2009 WL 2197339.
167. Steinberg & Scott, supra note 17, at 1012.
168. Id.
169. Id.
170. Evan Miller committed his crime with one friend and Kuntrell Jackson...
2. Attitudes Toward and Perception of Risk

Juveniles in general are much more prone to risky behavior than adults.\textsuperscript{171} Teenagers have higher rates of accidents, suicide, drug use, and unsafe sex than any other age group.\textsuperscript{172} This is due, at least in part, to a proclivity for “[r]isk-taking and sensation-seeking [that] peak[s] around sixteen or seventeen and then decline[s] in adulthood.”\textsuperscript{173} In studies comparing the differences in attitudes toward risky behaviors between adults and adolescents, adolescents are both more likely to engage in risky behavior themselves and to advise peers to engage in risky behavior.\textsuperscript{174} To properly assess the risk of a particular situation, an individual must weigh the potential risks of an action versus the potential rewards. In general, “[a]dolescents underestimate the amount and likelihood of risks, emphasize immediate outcomes, and focus on gains rather than losses to a greater extent than do adults.”\textsuperscript{175} Because juveniles tend to overvalue rewards and undervalue risks in comparison to adults, their risk–reward analysis in any given situation is skewed in favor of more risky behavior.\textsuperscript{176}

This propensity for risk-taking is also reflected in juvenile criminal
activity. Criminologists studying juvenile criminal behavior have found that “[m]any adolescents become involved in criminal activity in their teens and desist by the time they reach young adulthood. . . . [P]articipation in delinquency is a normal part of teen life. For most adolescent delinquents, desistance from antisocial behavior also seems to be a predictable part of the maturation process.”

3. Future Orientation

The ability to envision and weigh future events is also significantly weaker in juveniles than in adults. Adults are substantially more capable of visualizing themselves or their circumstances over long periods of time; for juveniles, on the other hand, “a consequence 5 years in the future may seem very remote.” Professors Laurence Steinberg and Elizabeth Scott offer two possible explanations for why juveniles lack the ability to consider the future. The first explanation is that a juvenile’s cognitive ability to think in hypothetical terms is still developing, making them less able to envision life events that have yet to occur. The second explanation is that juveniles simply have less life experience than adults. Consequently, in light of how long they have been alive, events in the immediate future seem more relevant than those even a few years in the future.

4. Self-Management and Impulsivity

Juveniles are also more impulsive than adults and less able to regulate their moods or behavior. Studies have shown that “impulsivity increases between middle adolescence and early adulthood and declines thereafter.”

177. Feld, supra note 56, at 286 (citing Lawrence D. Cohn et al., Risk-Perception: Differences Between Adolescents and Adults, 14 HEALTH PSYCHOL. 217, 221 (1995)).
179. Steinberg & Scott, supra note 17, at 1012.
180. Id.
181. See id.
182. Id.
183. Id.
184. Id.
185. Id. at 1012–13.
186. Id. at 1013; see also Brief for Am. Med. Ass’n et al., supra note 176, at 10–11.
An inability to control emotional responses or impulses means that “adolescents are less able than adults to consistently reflect before they act,” 187 making them much more prone to acting on reflexes and emotional responses—even when they have planned a more appropriate response. 188

B. Neurobiological Studies

While most studies regarding the differences in decisionmaking between juveniles and adults have been based on psychology, an increasing number of studies are beginning to focus on neurobiology and how patterns in brain activity may also explain those differences. 189

What is most interesting is that studies of brain development during adolescence, and of differences in patterns of brain activation between adolescents and adults, indicate that the most important developments during adolescence occur in regions that are implicated in processes of long-term planning, the regulation of emotion, impulse control, and the evaluation of risk and reward. For example, changes in the limbic system around puberty may stimulate adolescents to seek higher levels of novelty and to take more risks and may contribute to increased emotionality and vulnerability to stress. At the same time, patterns of development in the prefrontal cortex, which is active during the performance of complicated tasks involving long-term planning and judgment and decision making, suggest that these higher order cognitive capacities may be immature well into late adolescence. 190

At this point, neurobiological research in the area is still developing; however, the Supreme Court has indicated that it is willing to consider it—if not alone, then at least as support to bolster the behavioral psychology studies relied on in Roper, Graham, and Miller. 191 At the very least, the emerging neurobiological research supports treating the above-mentioned psychosocial immaturity factors as a basis for a categorical ban on life sentences without parole rather than as factors to consider on a case-by-case basis in individualized sentencing by demonstrating the possibility that they

188. Id. at 4–5, 10.
189. See Steinberg & Scott, supra note 17, at 1013.
190. Id. (citations omitted).
191. See Miller v. Alabama, 132 S. Ct. 2455, 2464 n.5 (2012) (“The 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.”).
are biological in origin.192

VI. INTERNATIONAL NORMS AND STANDARDS REGARDING JUVENILE LIFE WITHOUT PAROLE SENTENCES

The U.S. Supreme Court makes reference to international norms when it comes to the treatment of juvenile offenders and Eighth Amendment jurisprudence.193 “[A]t least from the time of the Court’s decision in Trop v. Dulles in 1958, the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment’s prohibition of ‘cruel and unusual punishments.’”194 In Roper, the Court was persuaded by the overwhelming international consensus against the juvenile death penalty.195 In Graham, it touched on international agreements against juvenile life without parole sentences.196 However, international opinions and treaties against juvenile life without parole sentences for any offender go much further than the Court did in either Graham or Miller.

To begin, the United Nations consistently and vocally opposes sentencing children to life without parole for any crime, including homicide.197 The General Assembly of the United Nations passed a resolution in December 2006 that called on member nations to “abolish by law, as soon as possible, the death penalty and life imprisonment without possibility of release for those under the age of 18 years at the time of the commission of the offence.”198 The resolution passed “[b]y a vote of 185 to one”—the United States was the only member country to vote against it.199

192. Steinberg & Scott, supra note 17, at 1013.
194. Id. (quoting Trop, 356 U.S. at 102–03). Although this is a practice the Court has engaged in for decades, some Justices are still opposed to looking to other countries and international authorities for guidance in the interpretation of the Eighth Amendment. See Roper, 543 U.S. at 622–28 (Scalia, J., dissenting).
195. Roper, 543 U.S. at 578.
199. de la Vega & Leighton, supra note 197, at 1012. A resolution expressing similar goals again passed in December 2007, by a vote of 183 to one. See id. (citing Rights of
Continuing to sentence children to life without parole also violates the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified in 1992. The ICCPR prohibits cruel, unusual, and degrading treatment or punishment, and considers life without parole sentences particularly cruel when applied to juveniles. The Human Rights Committee is charged with monitoring members’ compliance with the ICCPR; in 2006, it determined the United States was not in compliance with the treaty. Similarly, the Committee Against Torture, which is responsible for ensuring compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also determined that the United States was in violation of its treaty. During the United States’s review in 2006, the Committee noted that the United States “should address sentences of life imprisonment of children as these could constitute cruel, inhuman or degrading treatment or punishment.”

The United States is one of only two countries that have refused to ratify the treaty on the Convention on the Rights of the Child (CRC). The CRC forbids sentencing juvenile offenders to either the death penalty or life without parole sentences. Only the United States and Somalia have failed

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201. See id.; see also de la Vega & Leighton, supra note 197, at 1009–10.
202. Human Rights Comm., ICCPR, Concluding Observations of the Human Rights Committee: United States of America, ¶ 34 Dec. 18, 2006, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (2006). The Committee determined that juvenile life without parole sentences violate Article 24(1) of the ICCPR, despite the United States’s reservation when it originally ratified the covenant that it would only sentence children to life without parole sentences under “exceptional circumstances.” Id. The United States, at ratification, had also stated that “the United States considers itself bound by [the treaty] to the extent that ‘cruel, inhuman or degrading treatment or punishment’ means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.” See International Covenant, supra note 200, at 13.
205. Id.
207. See de la Vega & Leighton, supra note 197, at 1009.
to ratify the CRC; however, the United States stands alone as the only nation that continues to sentence children to life without parole sentences.208

VII. CONCLUSION

“The [life without parole] sentence condemns a child to die in prison. Short of the death penalty, [life without parole] is the harshest of sentences that may be imposed on an adult. Imposing such a punishment on a child contradicts our modern understanding that children have enormous potential for growth and maturity as they move from youth to adulthood, and the widely held belief in the possibility of a child’s rehabilitation and redemption.”209

No juvenile, regardless of the nature or seriousness of their crime, should be sentenced at the outset to spend the rest of their life—indeed, their entire adult life—in prison. Although some crimes may carry shock value, the Court has warned time and again of the dangers of letting the details of a crime overshadow the mitigating factors associated with youth in the Eighth Amendment proportionality analysis of a cruel and unusual

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208. *Id.* When *Sentencing Our Children to Die* was written in 2008, there was one other country, Tanzania, that had a child serving a life sentence without parole, but the Tanzanian government was in the process of reforming the sentencing code to prohibit sentencing a child to a life term without parole review. *Id.* at 985 n.10.

punishment claim. A sentencing judge is not the proper gatekeeper for the decision of whether a juvenile should spend the rest of his or her life in prison with no opportunity for release.

“Simply put, because the brain of a juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved. Therefore, it follows that the judge cannot ascertain, with any reasonable degree of certainty, whether imposition of this most severe punishment is warranted.”

Rather, this is a determination that should be placed in the hands of the parole board, which can evaluate the offender’s progress toward rehabilitation and redemption and base a determination on facts rather than projections. This is its function. It is the parole board that should have the final say in whether a juvenile offender is fit to reenter society. The parole board’s consideration offers a much better chance of a meaningful opportunity to return to society than any individualized Miller hearing could ever hope to offer.

What many people in this debate forget is that a life with the possibility of parole sentence does not guarantee that every juvenile is granted parole. There may remain some who are truly unfit to return to society—those who cannot demonstrate a sufficient level of maturation and rehabilitation to justify parole. The parole board is not likely to overlook these considerations. We must remember that children are different. Sentences of life without parole run the risk of abandoning those children who are truly capable of change.

Meredith Lamberti*


211. In July 2014, the Iowa Supreme Court held in State v. Lyle that mandatory minimum sentencing for juveniles is unconstitutional under the Iowa Constitution. State v. Lyle, No. 11-1339, 2014 WL 3537026, at *1 (Iowa July 18, 2014). This move made Iowa the first state in the nation to make mandatory minimum sentencing schemes inapplicable to juveniles. Id. at *6. The case demonstrates that the Iowa Supreme Court is willing to take the rationale of Ragland, Null, and Pearson further and provide more protection in juvenile sentencing than courts have for years. See id. at 14–17. It also indicates, hopefully, that the tide may be finally turning away from the trend of harsh punishments for juveniles that arose out of the so-called super-predator era.

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