Juvenile-Sex-Offender Registration: An Impermissible Life Sentence

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In a recent series of cases, the US Supreme Court has recognized that "children are different" from adults, concluding that these differences must inform how we treat children accused of serious crimes. If "children are different" when they are charged with homicide and face a possible sentence of life without parole, they are also "different" when they are charged with sex offenses and face the possibility of mandatory lifetime sex-offender registration. The same principles that have led the Court to categorically exempt youths from the death penalty, life without parole for nonhomicide crimes, and mandatory life-without-parole sentences should lead to the abolition of mandatory lifetime juvenile-sex-offender registration. This Essay argues that the Court's reasoning and analysis in recent juvenile-justice cases indicate that mandatory lifetime juvenile-sex-offender registration is ripe for successful challenge.

INTRODUCTION

The last decade has seen unprecedented advances in juvenile-justice jurisprudence. In the 2005 case *Roper v Simmons*,[1] the Supreme Court held that the federal Constitution categorically prohibits death sentences for all juvenile offenders convicted of capital crimes.[2] Five years later, in *Graham v Florida*,[3] the Court held that the Constitution categorically prohibits sentences of life in prison without the possibility of parole for juvenile offenders convicted of nonhomicide offenses.[4] In 2011 in *J.D.B. v North Carolina*,[5] the Court held under *Miranda v Arizona*[6] that

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1 543 US 551 (2005).

2 Id at 570–71.

3 560 US 48 (2010).

4 Id at 74.

5 131 S Ct 2394 (2011).

6 384 US 436 (1966).

a child's age properly informs the custody analysis.[7] Finally, in *Miller v Alabama*,[8] the Court held that the Constitution prohibits mandatory sentences of life without the possibility of parole for juveniles convicted of homicide, because such sentences force juvenile offenders to forfeit the opportunity to present mitigating evidence concerning youth development.[9]

All these cases reach the same conclusion: the developmental differences between children and adults must impact how society treats children accused of serious crimes. Or, in other words, "children are different."[10] In *Roper*, the Court reversed itself.[11] In *Graham*, the Court's Eighth Amendment jurisprudence crossed the barrier between capital and noncapital jurisprudence.[12] Lastly, in *J.D.B.*, the Court ratified groundbreaking adolescent-development research in contexts outside sentencing: a pretrial interrogation and juvenile-court proceedings.[13] The Court seems convinced, as Justice Elena Kagan wrote in the *Miller* majority, that in the same way that "death is different"[14] and requires special substantive and procedural protections for capital defendants, "children are different too."[15]

If children are different when they are charged with homicide and face a possible sentence of life without parole, they are also different when they are charged with sex offenses and face the possibility of mandatory lifetime sex-offender registration.

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7 *J.D.B.*, 131 S Ct at 2408.

8 132 S Ct 2455 (2012).

9 Id at 2464–65, 2475.

10 *Miller*, 132 S Ct at 2469. See also *Roper*, 543 US at 569–70; *Graham*, 560 US at 68–69; *J.D.B.*, 131 S Ct at 2403–04.

11 See *Roper*, 543 US at 578–79, revg *Stanford v Kentucky*, 492 US 361, 380 (1989) (holding that capital punishment for a juvenile constitutes cruel and unusual punishment).

12 See Alison Siegler and Barry Sullivan, *"'Death Is Different' No Longer":* Graham v. Florida *and the Future of Eighth Amendment Challenges to Noncapital Sentences*, 2010 S Ct Rev 327, 327–28.

13 See *J.D.B.*, 131 S Ct at 2407–08. See also *Yarborough v Alvarado*, 541 US 652, 668–69 (2004) (holding that a state court's decision not to mention a seventeen-year-old's age as part of the *Miranda* custody analysis was not objectively unreasonable).

14 *Miller*, 132 S Ct at 2488, citing *Ford v Wainwright*, 477 US 399, 411 (1986). Scholars have written extensively on what Justice Clarence Thomas lamented in his dissent in *Graham*—that "death is different no longer." *Graham*, 560 US at 103 (Thomas dissenting) (quotation marks omitted). For examples of such commentary, see Siegler and Sullivan, 2010 S Ct Rev at 328 (cited in note 12). See also generally Mary Berkheiser, *Death Is Not So Different After All:* Graham v. Florida *and the Court's "Kids Are Different" Eighth Amendment Jurisprudence*, 36 Vt L Rev 1 (2011); Elizabeth Bennion, *Death Is Different No Longer: Abolishing the Insanity Defense Is Cruel and Unusual under* Graham v. Florida, 61 DePaul L Rev 1 (2011).

15 *Miller*, 132 S Ct at 2470.

The same principles that have led the Supreme Court to categorically exempt youths from the death penalty, life without parole for nonhomicide crimes, and mandatory life-without-parole sentences should lead it to abolish mandatory lifetime juvenile-sex-offender registration.[16] This Essay argues that the Court's reasoning and analysis in recent juvenile-justice cases indicate that mandatory lifetime juvenile-sex-offender registration is ripe for successful challenge.[17]

I. THE REINVIGORATION OF "CHILDREN ARE DIFFERENT"

The juvenile-justice system was founded on the idea that children are different.[18] In the late nineteenth century, the Child

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[16] For an excellent, comprehensive discussion of this topic, see generally Amy E. Halbrook, *Juvenile Pariahs*, 65 Hastings L J 1 (2013).

[17] Juvenile-justice advocates have taken up the issue of applying the *Miller* rationale to juvenile-sex-offender registration in earnest; leading advocates predict that the Court will hear a case on this exact issue within the next three terms. See, for example, id at 30. Recently, in Pennsylvania, the Juvenile Law Center won a case in which the trial court dedicated an entire section of its opinion to discussing the difference between juvenile and adult sex offending based on affidavits submitted by forensic psychologists. See *Juvenile Court Judge Finds Pennsylvania Juvenile Sex Offender Registration Law Unconstitutional under State and Federal Law* (Juvenile Law Center, Nov 7, 2013), archived at http://perma.cc/W64C-9THK. See also *In re J.B.*, No CP-67-JV-0000726-2010, slip op at 15–20 (Pa Com Pl Nov 4, 2013). The following year, two other Pennsylvania trial courts reached the same conclusion, and both discussed scientific findings on the differences between juveniles and adults. See *In re B.B.*, No 248 J V 2012, slip op at 19–21 (Pa Com Pl Jan 16, 2014); *In re W.E.*, No J1085-2008, slip op at 5 (Pa Com Pl Feb 11, 2014). In *In re J.B.*, the trial court struck down Pennsylvania's sex-offender provisions as unconstitutional with respect to juveniles and ordered the Pennsylvania State Police to remove the names, photographs, and all other pieces of information relating to juveniles that were included on the sex-offender registry. *In re J.B.*, slip op at 41. In December 2014, the Pennsylvania Supreme Court ruled that lifetime registration for juvenile sex offenders is unconstitutional under the Pennsylvania and US constitutions. *In re J.B.*, 2014 WL 7369785, *8, 13 (Pa). The court reasoned that, unlike adult sex offenders, juvenile sex offenders are often motivated by "immaturity, impulsivity, and sexual curiosity." Id at *12. Accordingly, it held that lifetime registration impinges on a juvenile's constitutional right to reputation. Id at *12–13. The court also based its holding on the observation that the "vast majority" of juvenile sex offenders are unlikely to recidivate, the onerousness of lifetime registration, and its capacity to hinder rehabilitation—the ultimate goal of the juvenile-justice system. Id at *11–13. Similarly, in 2012, the Ohio Supreme Court held that automatic lifetime registration-and-notification requirements violate the Eighth Amendment's prohibition against cruel and unusual punishment, as well as the Due Process Clause of the Fourteenth Amendment. *In re C.P.*, 967 NE2d 729, 732 (Ohio 2012).

[18] I canvassed this subject in an earlier article. See generally Robin Walker Sterling, *Fundamental Unfairness:* In re Gault *and the Road Not Taken*, 72 Md L Rev 607 (2013). For articles detailing the origins of the juvenile court from a range of perspectives, see, for example, Barbara Fedders, *Losing Hold of the Guiding Hand: Ineffective Assistance of Counsel in Juvenile Delinquency Representation*, 14 Lewis & Clark L Rev

Savers, a group of Progressive reformers, championed the establishment of self-contained juvenile courts based on the belief that children are less culpable for their actions and more amenable to rehabilitation than adults.[19] Like the Court, the Child Savers understood the commonsense reality that "youth is more than a chronological fact."[20] Like the Court, they considered youth "a moment and 'condition of life when a person may be most susceptible to influence and to psychological damage,'"[21] as well as a time when youth's "signature qualities" are all "transient."[22] And, like the Court, the Child Savers were persuaded that these differences require that children receive treatment recognizing their amenability to rehabilitation.[23]

A. The First Step: *Roper v Simmons*

Roper, which held that the Eighth and Fourteenth Amendments require "reject[ion of] the imposition of the death penalty on juvenile offenders under 18,"[24] was the first case to assign constitutional implications to the developmental deficiencies of

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771, 777–82 (2010); Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 Cornell L Rev 383, 388–97 (2013). See also generally Cheryl Nelson Butler, *Blackness as Delinquency*, 90 Wash U L Rev 1335 (2013). For books recounting the juvenile court's origins, see generally Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago 2d ed 1977); Barry C. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* (Oxford 1999); David S. Tanenhaus, *Juvenile Justice in the Making* (Oxford 2004); David S. Tanenhaus, *The Constitutional Rights of Children:* In re Gault *and Juvenile Justice* (Kansas 2011).

19 See Walker Sterling, 72 Md L Rev at 617–19 (cited in note 18); Barry C. Feld, *The Constitutional Tension between* Apprendi *and* McKeiver*: Sentence Enhancements based on Delinquency Convictions and the Quality of Justice in Juvenile Courts*, 38 Wake Forest L Rev 1111, 1137–38 & n 76 (2003). See also *In re Gault*, 387 US 1, 14–16 (1967).

20 *Eddings v Oklahoma*, 455 US 104, 115 (1982).

21 *Miller*, 132 S Ct at 2467, quoting *Eddings*, 455 US at 115.

22 *Miller*, 132 S Ct at 2467, quoting *Johnson v Texas* 509 US 350, 368 (1993).

23 See Barry C. Feld, *Race, Politics, and Juvenile Justice: The Warren Court and the Conservative "Backlash"*, 87 Minn L Rev 1447, 1455–59 (2003). For instances in which the Court has recognized youths as different, see *Miller*, 132 S Ct at 2455, 2465; *J.D.B.*, 131 S Ct at 2404; *Graham*, 560 US at 68; *Roper*, 543 US at 569–70. See also Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 Tex L Rev 799, 804–05 (2003) ("Two related claims were at the heart of the rehabilitative model of juvenile justice: that young offenders were misguided children rather than culpable wrongdoers, and that the sole purpose of state intervention was to promote their welfare through rehabilitation."); Kim Taylor-Thompson, *States of Mind/States of Development*, 14 Stan L & Pol Rev 143, 146 (2003) ("[T]he state could best address the resulting inappropriate conduct of these children through remedial rather than punitive measures. Common sense and casual observation—buttressed by emerging psychological insight—aided the Progressives' claim that genuine differences existed between a child and an adult.").

24 *Roper*, 543 US at 568.

adolescence.[25] At Christopher Simmons's capital-murder trial, the judge instructed the jurors that they could consider Simmons's age as a mitigating factor, and Simmons's attorney was permitted to offer mitigating evidence about his client's youth.[26]

Roper is instructive for the treatment of juvenile-sex-offender registration for two reasons. First, the *Roper* Court explicitly rejected the petitioner's invitation to adopt a rule that would allow jurors to consider mitigating, youth-related arguments on an ad hoc basis, choosing instead to adopt a categorical rule.[27] The Court found the "likelihood . . . that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course" to be "unacceptable," especially when "the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death."[28] In other words, the Court recognized that, faced with a juvenile offender convicted of a depraved crime, jurors might not be able to resist the allure of believing that the juvenile was just a bad seed, irredeemable to the core, in which case jurors might cast off scientific evidence concerning the nature of youth development.

Second, the *Roper* decision sends a transcendent message about redemption. The Court concluded that no child—not even Simmons, who bragged that he could "get away with" a cold-blooded murder because he was a minor"[29]—is so irredeemable that the state can just forsake the rehabilitative ideal and

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[25] See id at 570–71 ("In *Thompson*, a plurality of the Court recognized the import of these characteristics with respect to juveniles under 16, and relied on them to hold that the Eighth Amendment prohibited the imposition of the death penalty on juveniles below that age."). The Court had commented on the relevance of youth as a mitigating circumstance in prior cases. See, for example, *Johnson*, 509 US at 367 ("There is no dispute that a defendant's youth is a relevant mitigating circumstance."); id at 376 (O'Connor dissenting) ("[T]he vicissitudes of youth bear directly on the young offender's culpability and responsibility for the crime."); *Eddings*, 455 US at 115–16 ("Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.").

[26] *Roper*, 543 US at 558. In direct response to that instruction, the prosecutor pointed to Simmons's youth as an aggravator. "Think about age," the prosecutor entreated. "Seventeen years old. Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary." Id.

[27] See id at 572–73.

[28] Id at 573. Furthermore, the prosecutor's argument that Simmons's youth was "scary" instead of "mitigating" reveals an additional concern—that "[i]n some cases a defendant's youth may even be counted against him." Id.

[29] Id at 556.

"extinguish [the child's] life and his potential to attain a mature understanding of his own humanity."[30]

B. Extension to Nonhomicide Offenses

Four years later, in *Graham*, the Court considered whether a juvenile can be sentenced to life without parole for a nonhomicide offense.[31] Sixteen-year-old Terrance Graham was charged as an adult with armed burglary with assault or battery as well as attempted armed robbery for trying to rob a barbecue restaurant in Jacksonville, Florida, with three other teenagers.[32] The charge for armed burglary with assault or battery carried a maximum sentence of life without parole, and the charge for attempted armed robbery carried a maximum sentence of fifteen years' imprisonment.[33] As part of a plea agreement, Graham pled guilty to both charges.[34] In a typically juvenile letter to the trial court, Graham wrote, "[T]his is my first and last time getting in trouble," and noted that "I've decided to turn my life around. . . . 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]."[35] The court sentenced Graham to concurrent three-year probation terms.[36]

Another run-in with the law soon followed. In December 2004, a year after he had entered his plea, Graham was arrested for participating in two robberies, this time with two twenty-year-old men.[37] Two weeks later, his probation officer filed for revocation of his probation on the grounds that Graham had possessed a firearm, broken the law, and associated with persons engaged in criminal activity.[38] In December 2005 and January 2006, the trial court held hearings on Graham's alleged violations, finding that Graham had admitted to violating his

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30 *Roper*, 543 US at 574. It is notable that, far from shrinking away from the horrifying facts of the case, Justice Anthony Kennedy's opinion for the majority included a detailed recounting of the crime. As Justice Sandra Day O'Connor noted in her dissent, "One can scarcely imagine the terror that this woman must have suffered throughout the ordeal leading to her death." Id at 600–01 (O'Connor dissenting).

31 *Graham*, 560 US at 52–53.

32 Id at 53.

33 Id at 53–54.

34 Id at 54.

35 *Graham*, 560 US at 54.

36 Id.

37 Id at 54–55.

38 Id at 55.

probation by fleeing.[39] The court revoked Graham's probation.[40] Even though no one had recommended the maximum sentence, and even though Graham had never spent significant time incarcerated, had pled guilty in the underlying case, and had admitted to the violation, the court skipped any intermediate sentence and went straight to the maximum.[41] The court sentenced Graham to life without parole on the probation revocation. The trial judge, in explaining the court's sentencing decision, wondered aloud, "I don't know why it is that you threw your life away. I don't know why."[42]

The *Graham* Court held that the Constitution does not abide life-without-parole sentences for juvenile offenders convicted of nonhomicide offenses absent a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[43] In doing so, the Court renounced "more than thirty years of consistent Supreme Court jurisprudence" separating challenges to noncapital and capital sentences.[44]

Before *Graham*, the Court had "drawn a clear and unmistakable line" between capital and noncapital cases challenging the proportionality of sentences under the Eighth Amendment's ban on cruel and unusual punishments.[45] The Court's proportionality test for noncapital cases is a two-step balancing test.[46] The threshold question is whether the defendant has established "an inference of gross disproportionality."[47] Then, if the defendant has established gross disproportionality, the Court compares the defendant's sentence to sentences for the same crime in the same jurisdiction, as well as to sentences for the same crime in different jurisdictions.[48] For capital cases, by contrast, the Court applies a two-step *categorical* test.[49] The first step of this test considers whether "objective indicia of society's standards demonstrate a national consensus against the death penalty" for a particular crime or class of defendants.[50] In the second step,

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39 *Graham*, 560 US at 55.
40 See id.
41 See id at 56–57.
42 Id at 56.
43 *Graham*, 560 US at 75.
44 Siegler and Sullivan, 2010 S Ct Rev at 328 (cited in note 12).
45 Id at 331.
46 See id at 334.
47 Id.
48 See Siegler and Sullivan, 2010 S Ct Rev at 334 (cited in note 12).
49 See id.
50 Id (quotation marks omitted).

the court exercises its own "subjective," "independent judgment" as to whether capital punishment contravenes the Eighth Amendment.[51] The difficulty of establishing an inference of gross disproportionality in noncapital cases and the Court's well-trod "death is different" redoubt[52] meant that, over the almost five decades of the modern death-penalty era, defendants seeking relief from noncapital sentences "saw their chances of gaining relief diminish with each Supreme Court decision."[53]

Against that backdrop, *Graham*'s break with precedent and the impact of adolescent-brain-development research are all the more noteworthy. Even though Graham challenged a noncapital sentence, the Court applied the two-step categorical test.[54] *Graham* marked the first time that the Court struck down a noncapital sentence for an entire class of offenders.[55] In his dissent, Justice Clarence Thomas complained that "'[d]eath is different' no longer."[56] Chief Justice John Roberts, in his concurrence, agreed with Thomas that the majority's analysis "is at odds with our longstanding view that 'the death penalty is different from other punishments in kind rather than degree'"[57] and cast the *Graham* test as "a new constitutional rule" sprung from "dubious provenance."[58]

The *Graham* majority offered several fundamental reasons why juveniles, as a class, should be exempt from life-without-parole sentences.[59] First, the majority reemphasized the developmental deficiencies first described so comprehensively in *Roper* to argue that, as a class, juveniles are less culpable than adults for their actions because they are less mature, more easily swayed by external pressures, and more amenable to rehabilitation.[60] The fact that even adolescent-development experts

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51 Id at 335.

52 Berkheiser, 36 Vt L Rev at 15 (cited in note 14). See also *Woodson v North Carolina*, 428 US 280, 323 (1976) (Rehnquist dissenting) ("One of the principal reasons why death is different is because it is irreversible.").

53 Berkheiser, 36 Vt L Rev at 15 (cited in note 14). This is, of course, relative. Challenges to death-penalty cases were still very difficult to win until *Atkins v Virginia*, 536 US 304 (2002). See Berkheiser, 36 Vt L Rev at 27–28 (cited in note 14).

54 See *Graham*, 560 US at 59–63.

55 Id at 102 (Thomas dissenting) (observing that, "[f]or 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").

56 Id at 103 (Thomas dissenting).

57 Id at 89–90 (Roberts concurring).

58 *Graham*, 560 US at 86 (Roberts concurring).

59 See id at 67–79 (majority).

60 See id at 68–69.

admit to having difficulty identifying "with sufficient accuracy" the "few incorrigible juvenile offenders"[61] who might possess the maturity and neural development to merit the ultimate punishment that a juvenile can receive gave the Court the license that it needed to adopt a categorical approach.[62] Second, the majority explained that, in practice, the "categorical rule gives all juvenile nonhomicide offenders a chance to demonstrate maturity and reform."[63] In other words, the *Graham* Court's categorical rule would allow ad hoc consideration of each juvenile offender's culpability. Third, the Court pointed to the special challenges inherent in representing juveniles accused of crimes in order to support the creation of a categorical rule. Specifically, the *Graham* Court explained that juveniles' "limited understandings of the criminal justice system," their "mistrust [of] adults," and their tendency toward impulsive decisionmaking make them "less likely than adults to work effectively with their lawyers to aid in their defense."[64] Because it is more difficult for juveniles to assist their counsel, the quality of their representation is "likely to [be] impair[ed]," and "a case-by-case approach . . . does not take account of [these] special difficulties encountered by counsel in juvenile representation,"[65] the majority created a categorical rule that "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 offense."[66]

But the normative importance of the *Graham* decision—which has been labeled "landmark,"[67] "pivotal,"[68] "revolutionary,"[69] and "game-changing"[70]—derives from the manner in which the Court underscored that children are different. First,

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61 Id at 77.

62 See *Graham*, 560 US at 77–78.

63 Id at 79.

64 Id at 78.

65 Id.

66 *Graham*, 560 US at 78–79.

67 John "Evan" Gibbs, *Jurisprudential Juxtaposition: Application of* Graham v. Florida *to Adult Sentences*, 38 Fla St U L Rev 957, 957 (2011).

68 Leslie Patrice Wallace, *"And I Don't Know Why It Is That You Threw Your Life Away": Abolishing Life without Parole, the Supreme Court in* Graham v. Florida *Now Requires States to Give Juveniles Hope for Second Chance*, 20 BU Pub Int L J 35, 47 (2010).

69 Neelum Arya, *Using* Graham v. Florida *to Challenge Juvenile Transfer Laws*, 71 La L Rev 99, 102 (2010).

70 Michelle Marquis, Note, Graham v. Florida*: A Game-Changing Victory for Both Juveniles and Juvenile-Rights Advocates*, 45 Loyola LA L Rev 255, 288 (2011).

the alloyed *Graham* test signaled the Court's recognition that the practice of simply applying adult criminal protections and jurisprudence in juvenile court does not comport with modern developmental neuroscience. Second, *Graham* marked the Court's constitutional internalization of the brain-development research discussed in *Roper*.[71] The two-step categorical test was not the only thing that the Court transported from death-penalty jurisprudence to noncapital cases—neuroscience also made the jump.[72] Third, the *Graham* Court explicitly linked sentences of death and life without parole—or what some advocates refer to as "death in prison"[73]—not just through the adoption of the categorical test, but also in an explicit comparison. The majority observed that a life-without-parole sentence and a death sentence are characterized by a hopelessness "that [is] shared by no other sentences."[74] The Court explained that, although "[t]he State does not execute the offender sentenced to life without parole," the punishment is similar to the death penalty because it "alters the offender's life by a forfeiture that is irrevocable," signals "[the] denial of hope," and means that "whatever the future might hold in store for the mind and spirit of [the offender], he will remain in prison for the rest of his days."[75] Fourth, *Graham* has both formalist and functional components.[76] A judge sentencing a youth to a life term in a state with no parole system is not in compliance with *Graham*'s holding, even though the youth is not technically sentenced to life without parole.[77] Finally, *Graham* is important because the Court once again had an opportunity to adopt an ad hoc approach to according importance to youth in sentencing, yet it declined to do so.[78]

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71 See *Roper*, 543 US at 570.

72 See, for example, *Graham*, 560 US at 68.

73 *Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison* *3 (Equal Justice Initiative, Nov 2007), archived at http://perma.cc/SPU2-S7RF.

74 *Graham*, 560 US at 69.

75 Id at 69–70.

76 See Aaron Sussman, *The Paradox of* Graham v. Florida *and the Juvenile Justice System*, 37 Vt L Rev 381, 384 (2012).

77 See id at 384–85.

78 See *Graham*, 560 US at 89–91 (Roberts concurring) (disagreeing with the majority's categorical rule and arguing for reversal of Graham's sentence based on a "case-specific inquiry").

C. Beyond the Eighth Amendment

Possibly signaling eventual relief for juvenile-sex-offender registrants, the Court has not limited its embrace of adolescent-development research to Eighth Amendment sentencing cases. Two years after *Graham*, in *J.D.B.*, the Court turned its focus to the Fifth Amendment and pretrial protections for juveniles. Thirteen-year-old J.D.B., a seventh-grade special education student, was pulled out of his social studies class by a uniformed police officer; taken to a "closed-door conference room" with two police officers, the school's assistant principal, and the assistant principal's intern; and questioned for thirty to forty-five minutes.[79] The interviewers did not read him any *Miranda* warnings or tell him that he was free to leave the room.[80] J.D.B. confessed to two home break-ins and gave a written statement to that effect.[81] When he was charged in juvenile court, his court-appointed public defender moved to suppress the statements on both *Miranda* and due-process-involuntariness grounds.[82] Finding "no reason for police officers or courts to blind themselves to th[e] commonsense reality" that "children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave," the Supreme Court held that "a child's age properly informs the *Miranda* custody analysis."[83]

One of the Court's earlier brushes with the question how age intersects with the *Miranda* custody inquiry illustrates the persuasive force of the children-are-different argument made in *J.D.B.*[84] In *Yarborough v Alvarado*,[85] a federal habeas corpus

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79 *J.D.B.*, 131 S Ct at 2399.

80 Id.

81 Id.

82 Id.

83 *J.D.B.*, 131 S Ct at 2398–99. See also id at 2401–06 (discussing the *Miranda* custody analysis regarding children).

84 Before *J.D.B.*, whether age was a relevant factor in the *Miranda* custody determination was an open question. See id at 2402–03. Although courts took age into account when appraising the voluntariness of a suspect's statements and the suspect's waiver of the right against compelled self-incrimination, age was not part of the *Miranda* custody analysis. See *Fare v Michael C.*, 442 US 707, 725 (1979). When *Miranda* was decided in 1966, the Court had not yet held that youths have a privilege against compelled self-incrimination; that ruling would come one year later. See *In re Gault*, 387 US 1, 4, 12–13 (1967). Accordingly, the *Miranda* custody analysis presumed that a reasonable adult would be the subject of interrogation. See *J.D.B.*, 131 S Ct at 2408 ("[I]gnor[ing] the very real differences between children and adults[ ] would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.").

85 541 US 652 (2004).

case, the Court rejected the Ninth Circuit's conclusion that prior Supreme Court case law allowed consideration of a child's age to inform the *Miranda* custody analysis.[86] Because *Yarborough* was a habeas case, the narrow question before the Court was whether the state court's decision, which omitted mention of seventeen-year-old Michael Alvarado's age in its discussion of the *Miranda* custody analysis, was "objectively unreasonable under the deferential standard of review set forth by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)."[87] Some lower courts thought that *Yarborough* signaled the Court's reluctance to inject age into "the ease and clarity of" *Miranda*'s objective-reasonable-person test for determining custody.[88] The *Yarborough* decision gave courts around the country cover to refuse to consider age in the *Miranda* custody analysis.[89] For example, in both the District of Columbia and North Carolina, in which the issue how age intersects with the *Miranda* custody determination had been an open question, post-*Yarborough* case law preempted consideration of the issue.[90] Worse yet, Iowa and Illinois, which had folded age into the calculus of the *Miranda* custody determination, ended that practice after *Yarborough*.[91]

Against this backdrop, *J.D.B.*'s reasoning broke new ground. The majority opinion was a modest, reasonable, and accessible

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86 Id at 666–68.

87 *J.D.B.*, 131 S Ct at 2405.

88 Id at 2409 (Alito dissenting), quoting *Moran v Burbine*, 475 US 412, 425 (1986) (expressing a view consistent with the lower courts' predictions).

89 See Martin Guggenheim and Randy Hertz, J.D.B. *and the Maturing of Juvenile Confession Suppression Law*, 38 Wash U J L & Pol 109, 147 (2012) (observing that the majority's opinion in *Yarborough* "appeared to signal that the Court was leaning towards the view that the *Miranda* custody determination should not take account of a minor suspect's age").

90 See, for example, *In re J.F.*, 987 A2d 1168, 1175–76 (DC 2010) (refusing to consider the age of fourteen-year-old J.F. because "the Supreme Court has not held that a suspect's age . . . is relevant to the *Miranda* custody analysis," and instead describing the totality of the circumstances as being that J.F. "was never told that he was required to speak with the officers, he was not handcuffed, and he traveled to the station in an unmarked car with plainclothes officers," allowing the court to conclude that J.F. was not in custody); *In re W.R.*, 675 SE2d 342, 344 (NC 2009) (applying the objective-reasonable-person standard without consideration of the age of the juvenile and concluding that fourteen-year-old W.R. was not in custody when he was questioned by authorities).

91 See, for example, *State v Bogan*, 774 NW2d 676, 681 n 1 (Iowa 2009) ("Previously, we . . . use[d] age as part of the analysis in determining a defendant's custodial status. However, subsequent[ly] . . . the Supreme Court decided *Yarborough v. Alvarado*, which questions whether age is a factor to consider under a federal constitutional analysis.") (citations omitted); *People v Croom*, 883 NE2d 681, 689 (Ill App 2008) ("[W]e decline to consider defendant's age [sixteen] when determining whether he was in custody" in light of the "emphasis on objectiveness [in *Yarborough*].").

consideration of the unique vulnerabilities of youth,[92] and it combined social science, precedent, and, above all, common sense.[93] The *J.D.B.* Court drew support for its commonsense proposition that "the differentiating characteristics of youth"[94] inform youths' perception, decisionmaking, and behavior from two lines of cases. First, the Court relied on *Haley v Ohio*[95] and *Gallegos v Colorado*,[96] two voluntariness cases in which juveniles charged with homicides had confessed.[97] Second, the Court drew support from *Roper* and *Graham*, two Eighth Amendment cases.[98] The Court relied on premises from the sentencing stage in these cases (in which juveniles were prosecuted as adults) to bolster protections at the pretrial-interrogation stage in a case in which a juvenile was prosecuted in juvenile court.[99] As with the *Graham* test, the Court again used neuroscience to cross jurisprudential boundaries.[100]

But *J.D.B.*'s great contribution is that it makes youth's unique vulnerabilities accessible to anyone who has had children or has been a child—in other words, everyone. There was a marked difference between the way that the majority used social science data in *Roper* and *Graham* and the way that it used the children-are-different argument in *J.D.B.* While the *Roper* and *Graham* Courts included in-depth discussions of well-researched scientific findings, the *J.D.B.* Court, like the *Haley* and *Gallegos*

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92 Indeed, so "modest and sensible" is the majority opinion that its reasonableness is the target of the very first line of the dissent. See *J.D.B.*, 131 S Ct at 2408 (Alito dissenting) ("The Court's decision in this case may seem on first consideration to be modest and sensible, but in truth it is neither.").

93 See id at 2406–07 (majority).

94 Id at 2404.

95 332 US 596 (1948).

96 370 US 49 (1962).

97 See *J.D.B.*, 131 S Ct at 2403.

98 See id.

99 See id.

100 Normally, the difference between the procedural treatment of youths in the adult system and youths in the juvenile system is quite stark. For example, juveniles do not have a right to trial by jury or indictment by grand jury. See Walker Sterling, 72 Md L Rev at 647–60 (cited in note 18). In addition, in most jurisdictions, youths charged in delinquency proceedings face indeterminate sentencing, and the maximum sentence is removal from the home for the balance of the child's minority. See id at 673–75. With a few notable exceptions, youths charged as adults risk the same determinate sentences faced by similarly charged adults. For a discussion of the procedural and substantive differences between juvenile delinquency and adult criminal proceedings, see generally id.

Courts, relied instead on "commonsense propositions,"[101] for which "citation to social science and cognitive science authorities is unnecessary."[102] As "any parent knows,"[103] and as societal laws limiting youths' rights to marry, vote, drive, and enter contracts acknowledge, the *J.D.B.* Court explained, "A child's age is far more than a chronological fact."[104] The Court all but took judicial notice of the youth vulnerabilities that *Roper* and *Graham* articulated. Youth means youth, whether the youth is charged in adult criminal court with first-degree murder and faces a life sentence or is charged in juvenile court with shoplifting and faces a sentence of probation.

D. The Final Step: Life without Parole

In *Miller*, the Court struck down mandatory life-without-parole sentences for juvenile homicide offenders.[105] Evan Miller, a fourteen-year-old, was prosecuted as an adult and charged with murder in the course of arson, which carries a mandatory minimum punishment of life without parole.[106] At trial, Miller's teenage coconspirator testified against Miller in return for a lesser sentence.[107] Miller was convicted and sentenced to life without parole.[108]

The Court based its holding in *Miller* on two strands of precedent addressing the Eighth Amendment's proportionality requirement. The first strand attends to the categorical culpability of a class of offenders relative to the severity of a particular penalty. *Kennedy v Louisiana*,[109] *Atkins v Virginia*,[110] *Roper*, and

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[101] *J.D.B.*, 131 S Ct at 2403 n 5. Compare id, with *Roper*, 543 US at 569–70, *Graham*, 560 US at 68–69. See also Hertz and Guggenheim, 38 Wash U J L & Pol at 154 (cited at note 89).

[102] *J.D.B.*, 131 S Ct at 2403 n 5. See also Hertz and Guggenheim, 38 Wash U J L & Pol at 156 (cited in note 89).

[103] *J.D.B.*, 131 S Ct at 2403. See also Hertz and Guggenheim, 38 Wash U J L & Pol at 154 (cited in note 89).

[104] *J.D.B.*, 131 S Ct at 2403 (quotation marks omitted). As Hertz and Guggenheim noted, "By shifting from a reliance on social scientific studies to what amounts to judicial notice of generally known facts, [the *J.D.B.* majority] probably has made it easier for the lower courts to apply the standard that emerges from *J.D.B.* in assessing *Miranda* 'custody' in juvenile cases." Hertz and Guggenheim, 38 Wash U J L & Pol at 154–55 (cited in note 89).

[105] Miller, 132 S Ct at 2460.

[106] Id at 2462–63.

[107] Id at 2463.

[108] Id.

[109] 554 US 407 (2008) (abolishing the death penalty for the rape of a child).

Graham all fall into this category. Noting that *Miller* once again presented the issue of appropriate sentences for juveniles—this time in the context of a juvenile who had received a mandatory sentence of life without parole for homicide—the Court reaffirmed its by-now-familiar emphasis on the distinctive attributes of youth, "even when [young people] commit terrible crimes."[111] It quickly zeroed in on *Roper* and *Graham* as support for the proposition that "children are constitutionally different from adults for purposes of sentencing."[112] The Court noted that its previous holdings were based on science, social science, and common sense (or what "any parent knows").[113] Also, the Court described the "foundational principle" of *Roper* and *Graham* as the principle "that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[114]

Because *Graham* specifically compared the finality in juvenile life-without-parole sentences to the irrevocability of capital sentences, the Court applied a second strand of precedent that requires individualized consideration of the characteristics of a defendant—including the mitigating factor of youth and the particulars of the crime—before imposition of a death sentence. *Woodson v North Carolina*[115] and *Lockett v Ohio*[116] fall into this second category. As the Court explained in *Miller*, "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."[117] These two lines of precedent led the Court to conclude that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment."[118]

By the time that the Court decided *Miller*, the maxim that children are different had found purchase. In *Roper*, the principle functioned to place children on the same footing as other

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110 536 US 304 (2002) (concluding that the death penalty is an excessive punishment for individuals with intellectual disabilities).

111 *Miller*, 132 S Ct at 2465.

112 Id at 2464.

113 Id.

114 Id at 2466.

115 428 US 280 (1976).

116 438 US 586 (1978).

117 *Miller*, 132 S Ct at 2466.

118 Id at 2464.

groups exempt from the ultimate penalty.[119] The *Graham* Court held that the fact that children are different means that youths cannot be sentenced to life without parole for nonhomicide offenses and forged an amalgamated, uniquely juvenile-oriented Eighth Amendment test for sentencing review.[120] In *J.D.B.*, the children-are-different idea was expanded to encompass three new axes: First, the *Miranda* custody determination, which is common to many more cases than Eighth Amendment cruel-and-unusual-punishment analysis. Second, juvenile-court proceedings, which encompass many more youths accused of crime than the relatively small percentage of very serious violent crimes prosecuted in adult criminal court. Third, commonsense experience, or what any parent—whether that parent is a police officer, prosecutor, judge, defense attorney, or probation officer—knows.[121] Finally, in *Miller*, the children-are-different notion evolved to include children facing mandatory life-without-parole sentences.[122]

II. JUVENILE-SEX-OFFENDER REGISTRATION AS A VIOLATION OF THE EIGHTH AMENDMENT

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act.[123] The Adam Walsh Act calls for sex-offender registration and community notification, requires maintenance of a national database of sex offenders, subjects certain offenders to lifetime registration-and-notification requirements, and awards federal anticrime funds to states that comply with the Act.[124] The Act applies to children convicted in adult court but does not specifically apply to child offenders adjudicated

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119 See *Roper*, 543 US at 567–68.

120 See Martin Guggenheim, Graham v. Florida *and a Juvenile's Right to Age-Appropriate Sentencing*, 47 Harv CR–CL L Rev 457, 464 (2012):

> The entire focus of Justice Kennedy's opinion was on the special characteristics of juveniles, never suggesting that the decision changed the Court's understanding that death penalty sentencing decisions have no application in non-death penalty cases. In other words, *Graham* is not a variant on death penalty jurisprudence. . . . *Graham* is a case about how and why children are different from adults that states a constitutional principle with broad implications across the entire landscape of juvenile justice.

121 Guggenheim and Hertz, 38 Wash U J L & Pol at 153 (cited in note 89) (citations omitted).

122 See *Miller*, 132 S Ct at 2470.

123 Pub L No 109-248, 120 Stat 587, codified at 42 USC §§ 16901–91.

124 42 USC §§ 16913, 16921, 16919, 16915, 16925.

delinquent of sex offenses in juvenile-court proceedings.[125] The Amie Zyla Provision expanded the scope of the Act to include juvenile-court adjudications for sex offenses comparable to or more serious than "aggravated sexual abuse or sexual abuse" in the Act's definition of "conviction."[126] The Act also established a new federal criminal offense of "failure to register," which is punishable by a term of imprisonment, and required states to do the same.[127] Moreover, it mandates registration for an expanded and broad range of sex offenses, requiring registration to include "any conduct that by its nature is a sex offense against a minor."[128]

When they were first adopted, federal registration-and-notification laws were silent on the inclusion of youth sex offenders in the national registry. But by the mid-1990s, media-stoked fears about the threat to public safety from juvenile offenders of color,[129] concomitant general disillusionment about the efficacy of rehabilitation,[130] victims' rights campaigns,[131] and public outcries for a legislative response that emphasized youth accountability[132] all combined to erode the focus on rehabilitating

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125 See Quyen Nguyen and Nicole Pittman, *A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A Survey of the United States* *14 (Pennsylvania Juvenile Defenders, July 2011), archived at http://perma.cc/SXC9-6QA7.

126 Id. See also Adam Walsh Act, 120 Stat 587, 591, codified at 42 USC § 16911(5).

127 Nguyen and Pittman, *A Snapshot of Juvenile Sex Offender Registration and Notification Laws* at *21 (cited in note 125). See also 18 USC § 2250; 42 USC § 16913.

128 42 USC §§ 16911, 16915.

129 See Perry L. Moriearty, *Framing Justice: Media, Bias and Legal Decisionmaking*, 69 Md L Rev 849, 850–51 (2010) (discussing how the public became "consumed by the looming threat posed by America's youth" of color and a predicted increase in violent juvenile crime).

130 See Ralph A. Rossum, *Holding Juveniles Accountable: Reforming America's "Juvenile Injustice System"*, 22 Pepperdine L Rev 907, 907–09, 918–20 (1995) (stating that the rate of serious juvenile crime increased and that the public's belief in the juvenile-justice system's effectiveness waned, and arguing for a "justice model" in juvenile court that specifically contemplates offender accountability and determinate sentences); Arthur R. Blum, *Disclosing the Identities of Juvenile Felons: Introducing Accountability to Juvenile Justice*, 27 Loyola U Chi L J 349, 363–72 (1996) (discussing the erosion of confidence in the amenability of juvenile-system-involved youth to rehabilitation).

131 See Kristin Henning, *What's Wrong with Victims' Rights in Juvenile Court? Retributive versus Rehabilitative Systems of Justice*, 97 Cal L Rev 1107, 1112–15 (2009) (detailing the punitive-policy trend of the 1980s and 1990s).

132 See Patricia Torbet, et al, *State Responses to Serious and Violent Juvenile Crime* *xi, 1 (US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, July 1996), archived at http://perma.cc/38FJ-TD53 ("Inherent in many of the changes [was] the belief that serious and violent juvenile offenders must be held more accountable for their actions. Accountability [was] . . . defined as punishment or a period of incarceration.").

youth. In the face of rising crime rates, "tough on crime" policies that swept up juveniles with the motto "do the adult crime, do the adult time,"[133] and hysteria over the now-debunked prediction of a generation of juvenile "superpredators,"[134] many states revised their sex-offender-registration laws to include children adjudicated delinquent of sex offenses as well as children convicted of sex offenses in adult court.[135] Currently, thirty-four states may require registration by both children convicted of sex offenses in adult court and those adjudicated in the juvenile system.[136] Thirteen states and the District of Columbia require registration by only those children convicted of sex offenses in adult court.[137]

While the Court has ruled that sex-offender registration is not punishment for adults, the practicalities of registration and the realities of adolescent brain development make such registration punishment for youths. In *Smith v Doe*,[138] the Court held that retroactive application of a sex-offender-registration scheme did not violate the Ex Post Facto Clause because the registration scheme was civil in nature.[139] The *Smith* Court applied a balancing test that incorporates several factors—including whether the sanction implicates the humiliation traditionally associated with shaming punishments—to determine whether the sanction was punitive in nature.[140] While the Court did acknowledge the obvious shaming and stigmatization that accompanies sex-offender

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[133] See generally Paul G. Morrissey, *Do the Adult Crime, Do the Adult Time: Due Process and Cruel and Unusual Implications for a 13-Year-Old Sex Offender Sentenced to Life Imprisonment in* State v. Green, 44 Vill L Rev 707 (1999).

[134] See Joseph E. Kennedy, *Juries for Juveniles*, 46 Tex Tech L Rev 291, 296 (2013).

[135] See Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 Cal L Rev 163, 163–64 (2003).

[136] Nguyen and Pittman, *A Snapshot of Juvenile Sex Offender Registration and Notification Laws* at *31, 40–41 (cited in note 125). The thirty-four jurisdictions in which juveniles adjudicated delinquent are subject to registration are: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, and Wisconsin.

[137] Id. The fourteen jurisdictions are Alaska, Connecticut, the District of Columbia, Georgia, Maine, Nebraska, Nevada, New York, Pennsylvania, Rhode Island, Tennessee, Vermont, West Virginia, and Wyoming. Three additional states—Hawaii, Kentucky, and New Mexico—do not require any registration for juveniles, whether convicted in adult court or adjudged delinquent. Id at *46, 47, 49.

[138] 538 US 84 (2003).

[139] Id at 105–06.

[140] Id at 98–101.

registration, the Court reasoned that "[o]ur system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment" and upheld the scheme as nonpunitive.[141]

The Court has not yet addressed whether sex-offender registration constitutes punishment for juveniles. To date, some states' high courts have upheld mandatory lifetime registration, and others have struck it down.[142] But each of the Court's aforementioned cases contributes to the reasoning necessary to hold that sex-offender registration is punishment for juveniles. First, the *Roper* Court explicitly rejected the petitioner's invitation to adopt a rule that would allow jurors to consider mitigating, youth-related arguments on an ad hoc basis and chose instead to adopt a categorical rule.[143] *Graham* allows for the adoption of a categorical rule to protect juveniles in an area in which adults do not receive similar protections.[144] *Graham* also stands for the proposition that neuroscience research findings dictate that adult criminal jurisprudence should not just be superimposed on delinquent juveniles.[145] Most importantly, *Graham* demonstrates that the Court is willing to back up its words with action: children are different, so they deserve a different proportionality test.[146] As Professor Marsha Levick, Professor Jessica Feierman, and their coauthors have observed, "Together, *Graham* and *Roper* provide the framework for a novel, developmentally driven Eighth Amendment jurisprudence that should force a more rigorous examination of permissible sentencing options for juvenile offenders in the criminal justice system."[147] *J.D.B.* expands the Court's application of adolescent-development research beyond the realm of Eighth Amendment sentencing for juveniles tried as adults to the pretrial *Miranda* determination in juvenile

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141 Id at 98.

142 Compare, for example, *In re C.P.*, 967 NE2d 729, 732 (Ohio 2012) (holding that automatic lifetime registration for juveniles is unconstitutional under both the Ohio and US constitutions), with *In re J.W.*, 787 NE2d 747, 760 (Ill 2003) (holding that mandatory lifetime sex-offender registration for juveniles is constitutional under both the state and federal constitutions).

143 See *Roper*, 543 US at 572–73.

144 See *Graham*, 560 US at 77–79.

145 See id at 68.

146 See id at 74–75.

147 Marsha Levick, et al, *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment through the Lens of Childhood and Adolescence*, 15 U Pa J L & Soc Change 285, 300 (2012).

court.[148] Children are different whether they are being tried as adults or as juveniles, and every parent knows this. *Miller* allows for rejection of any mandatory sentencing scheme for juveniles that does not give them a chance to show their own capacity for rehabilitation.[149] Finally, all these cases assign doctrinal value to the idea that no youth is so incorrigible as to be beyond redemption.

Further, juvenile-sex-offender registration is cruel and unusual. Applying the alloyed test from *Graham*[150]—and observing the Court's commonsense understanding of the limitations of youth in *J.D.B.*[151]—the first step of the analysis involves examining whether "objective indicia of society's standards" demonstrate a national consensus against juvenile-sex-offender registration.[152] But there is no national consensus with respect to juvenile-sex-offender registration. As of 2011, most jurisdictions required children convicted of sex offenses in adult court as well as those adjudged delinquent to register as though they were adult sex offenders.[153] However, of the thirty-four states in which juveniles adjudged delinquent may be subject to sex-offender registration, the reality of registration differs widely. Only fourteen states apply the same community-notification standards to children whether they were convicted in adult or juvenile court.[154] Other states allow judges to decide which youth sex offenders must register. Some jurisdictions allow youths to petition to be removed from the registry after a minimum number of years of compliance. Some states have a minimum age of registration; others require registration of children as young as ten.[155]

The second step involves the court exercising its own "subjective," "independent judgment" as to whether juvenile-sex-offender registration runs afoul of the Eighth Amendment.[156] Given the Court's recent juvenile-justice jurisprudence, the

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148 See *J.D.B.*, 131 S Ct at 2403 n 5. But see text accompanying notes 92–95 (noting the Court's additional reliance in *J.D.B.* on commonsense notions of youth).

149 See *Miller*, 132 S Ct at 2490.

150 See text accompanying notes 45–53.

151 See text accompanying notes 92–104.

152 Siegler and Sullivan, 2010 S Ct Rev at 334 (cited in note 12).

153 See notes 134–35.

154 See Nicole Pittman, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US* *43 (Human Rights Watch, May 2013), archived at http://perma.cc/4JAM-8N4M.

155 See id.

156 See text accompanying note 51.

Court's subjective, independent judgment might call for curtailment of mandatory juvenile-sex-offender registration. Youths are categorically less culpable for their actions than adults because youths are less mature, more easily swayed by external pressures, and more amenable to rehabilitation.[157] And so, whatever charge and collateral consequences a youth faces, lifelong punishments are ill-advised. Adolescent-development experts have trouble discerning which youth sex offenders will reoffend and which will not.[158] Moreover, common sense and every parent's experience prove that children are different. So there is no principled reason why this analysis should not apply to juvenile-sex-offender registration.

CONCLUSION

The transcendent message of the Court's juvenile-justice jurisprudence is that all children, no matter what they have done, can be redeemed. The seminal juvenile-justice cases of the 1960s, which espoused the virtues of the rehabilitative ideal and gave rise to juvenile courts, are full of language that presaged the findings of social scientists in the 2000s. Particularly after *J.D.B.*, there is no reason for the Court to stop at sentencing. The science of adolescent brain development has gone a long way toward unseating the practice of simply imposing adult practices and procedures on children without regard for how children are different. Beyond the Eighth Amendment sentencing considerations or the Fifth Amendment *Miranda* custody inquiry, there could be youth Fourth Amendment search-and-seizure jurisprudence, youth Sixth Amendment right-to-counsel jurisprudence, and on and on. In the same way that pediatrics is its own specialty in medicine, and as adolescent-brain-development research reveals, a comprehensive and distinct body of juvenile-justice jurisprudence should evolve.

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157 See *Graham*, 560 US at 68–69.

158 See id at 68.