184 Cal.App.4th 568
Court of Appeal, Second District, California.

In re E.B. et al., Persons Coming Under the Juvenile Court Law.
Los Angeles County Department of Children and Family Services, Respondent,
v.
T.W. et al., Appellants.

No. B215774.
|
April 9, 2010.

Synopsis
Background: County department of children and family services (DCFS) filed dependency petition regarding son and daughter. The Superior Court, Los Angeles County, No. CK74651, D. Zeke Zeidler, J., sustained petition, removed children from father's custody, allowed them to remain with mother, and allowed father monitored visitation with son only. Both parents appealed.

Holdings: The Court of Appeal, Chaney, J., held that:

[1] evidence supported finding that mother's alcohol abuse endangered children;

[2] evidence supported finding that mother's conduct in domestic altercations endangered children;

[3] use of hearsay statements against father did not violate his due process and confrontation rights; and

[4] father's status as registered sex offender was prima facie evidence that children were subject to dependency jurisdiction.

Affirmed.

Attorneys and Law Firms

****2** Neale B. Gold, under appointment by the Court of Appeal, La Jolla, for Appellant T.W.

Joseph T. Tavano, under appointment by the Court of Appeal, San Diego, for Appellant W.B.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Respondent.

Opinion

CHANEY, J.

***570** T.W. (Mother) and W.B. (Father) appeal from 2009 jurisdiction findings and disposition orders made by the juvenile court that resulted in E.B. (Son, age 11) and J.B. (Daughter, age 8) being detained with Mother, in Father being ordered to complete a family reunification program, and in Mother being ordered to complete a family maintenance program. The court ordered monitored visits between Father ****3** and E.B. and no contact between Father and J.B. Because Mother and Father fail to show any error, insufficiency of the evidence, or abuse of discretion, we affirm the juvenile court's orders.

BACKGROUND

Mother and Father divorced in March 2007, though they lived together periodically until September 2008, when Mother moved with the children to a domestic violence shelter to escape Father's verbal abuse. Father is a registered sex offender, having been convicted in 1989 of violation of Penal Code section 288, subdivision (a) (lewd or lascivious acts with a child under 14), a felony.

On September 15, 2008, the Los Angeles County Department of Children and Family Services (DCFS) received reports from police and nursing staff at the University of Southern California Medical Center that Father had sexually abused Daughter and physically abused Son. Mother alleged Daughter had told her that Father, on separate occasions, had put his penis in her mouth and inserted his fingers inside her vagina. Son had told Mother that at times ***571** Father, naked, would chase him around the house, trying to hit him. In an interview with police officers, Daughter reported Father had entered her room in the middle of the night on approximately eight occasions and inserted his fingers into her vagina and "put[ ] his thing insider [her] butt" and "hump [ed]" her. Daughter told a nurse that Father

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inserted his finger in her vagina. Son told DCFS that Father chased him around the house naked and he was afraid of Father because Father hit him frequently and said he was going to kill him.

Mother stated she had never seen Father sexually abuse Daughter or hit Son but that Father had threatened to kill her and the children.

DCFS detained the children with Mother and filed a petition containing allegations against Father under Welfare and Institutions Code section 300, subdivisions (b) (failure to protect), (d) (sexual abuse), and (j) (abuse of sibling).[1] At the detention hearing the court detained the children from father and placed them with mother. It ordered no contact between Father and Daughter and monitored visits between Father and Son. On October 8, 2008, the court issued a temporary restraining order for the protection of Mother and the children.

In October 2008, a social worker spoke with Dara Holz, the children's therapist, at the domestic violence shelter where Mother and the children resided. Holz reported that Daughter was suicidal, that she exhibited symptoms of anxiety, flashbacks, anger and panic, and that interviewing her regarding the allegations of sexual abuse would traumatize her. Son also exhibited signs of anxiety.

The social worker interviewed the family. Son reported inconsistently that he was not afraid of father and that he was afraid of him when Father was angry and chased him around the house. Father never threatened him but punished him by whipping him on his "butt" with a belt. When Father chased Son, Father was dressed in underwear and no shirt, which is the way he walked around the house. Daughter avoided questioning, but did state that she had seen Mother and Father fight.

Father adamantly denied all allegations, calling them "sickening." According to Father, Mother coerced the children into making the false allegations. He stated that Mother had been prescribed medication ****4** by her psychiatrist, was paranoid, spoke of spirits, at one point refused to comb her hair for six months, and had previously alleged that her own mother sexually molested Son. Father reported that his sex offender status resulted from an incident with a 13–year–old girl that occurred when he was 18 years old. He was ***572** imprisoned for three years after violating the terms of his probation and failing to register as a sex offender. Father denied ever chasing Son while nude or hitting him with a belt. On the contrary, it was Mother who would whip the children with a belt. Father also denied ever having had a physical altercation with Mother. He produced a document showing Mother had been arrested for driving under the influence (DUI) in April 2008, a fact Mother later confirmed.

Mother stated Father rarely spanked the children in front of her, but Son told her Father had beaten him and told him that if he told Mother, Father would kill him. She stated Father abused her emotionally on a regular basis, if she "didn't have his dinner cooked when he wanted it or sex when he wanted it...." He would "call [her] stupid, broke, and say [he has] all the money [she has] nothing and he ... can take these kids from [her]...." This abuse started after Daughter was born. Mother would sometimes leave, taking the children to her mother's home, but would return with them when Father apologized. Mother also reported that Father struck her four times in February 2008, and that the children did not see it happen but heard her screaming. Mother admitted to taking Prozac for depression and, when told it had been reported that she suffered from mild schizophrenia, responded, "I'm feeling better now on medication, away from him. So much stress."

Maternal Grandmother reported that Father verbally abused Mother and "[wore] her down, made her nervous, anxious. Whatever [Father] told her, she believed it." She felt Mother had a drinking problem, using alcohol to self-medicate. She stated that Mother laid in bed all the time, neglecting to wash the children's clothes, and that Father gave Mother only two dollars a day, to keep her from drinking.

Father's nephew reported that Mother has " 'been drinking a lot,' " " 'was drinking beers in the am' " and vodka. " 'She was drinking a lot of things. This is during the day. I've never seen her like this.' "

A Department of Motor Vehicles report indicated that when Mother was arrested for DUI her blood alcohol content was 0.21 percent. The police report indicated Mother was unable to stand without assistance when she exited the car.

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Detective King, of the San Bernardino Police Department, expressed several concerns about the case. He indicated Mother's story had changed several times; Son had told him Mother said she would get a lot of money if Father went to jail; Son became nervous when asked whether Mother had coached him; and although Mother had reported that Father offered her money if she dropped her allegations, Father had recorded messages of ***573** Mother asking him for money. Detective King also reported that Mother had alleged in another spousal abuse complaint that Father had held a knife against her throat and threatened to kill her, but in relating the same incident to social workers she did not say Father held the knife against her or even touched her.

Detective King referred Daughter to The Children's Assessment Center for a forensic interview by Kim Lowenberg, a forensic interview specialist. Lowenberg reported that Daughter stated in the interview that Father " 'did some horrible ****5** stuff' " to her. He put his " 'thing' " in her " 'butt' " and it felt " 'mushy' " and " 'nastiest' " and he put his finger in her " 'front private' " and it felt " 'nastiest.' " She recalled that this happened eight times in her room. She also stated that on three occasions Father put his " 'thing' " in her mouth and it felt " 'nastiest.' " Daughter said that Father made her sit down and watch nasty movies, including one with " '2 gay' " girls and one with a " 'man and a woman,' " that the people in the movies were doing " 'nasty stuff,' " and that Father told her that " 'if you don't watch it, I wanna just kill you.' " Daughter said Mother was in Father's room at the time and she thought Mother knew about what was happening to her because " 'stuff from up in heaven makes me know.' "

Lowenberg acknowledged that some of Daughter's statements were inconsistent, but that she was consistent in saying Father sexually abused her.

DCFS provided mother with a referral for random alcohol and drug testing on December 22, 2008. Mother missed three alcohol/drug tests, on December 30, 2008 and January 7 and 21, 2009. On February 13, 2009 she tested positive for opiates. Mother explained she had been unable to test because she had no identification, and she tested positive for opiates because she was taking prescription Vicodin. DCFS scheduled an appointment to provide Mother with identification to enable her to test, but she did not appear.

DCFS recommended that the children remain placed with Mother at the domestic abuse shelter, that family maintenance services be offered to Mother, and that Mother be ordered to participate in parenting classes, a sexual abuse awareness program, a domestic violence program, individual counseling, random alcohol testing, and a substance abuse program. It recommended that reunification services be offered to Father and that Father be ordered to participate in parenting classes, a sexual abuse program for perpetrators, and individual counseling.

DCFS filed a first amended petition on February 27, 2009, striking several counts and adding count b–5, in which DCFS alleged Mother's "history of drinking alcohol" renders her "incapable of providing regular care and ***574** supervision of the children," "endangers the children's physical and emotional health and safety," and places them "at risk of physical and emotional harm, damage and danger." DCFS also amended count b–4, pertaining to the danger that domestic violence between Father and Mother presents to the children, to allege that both parents' conduct (not just Father's) in their history of domestic altercations (not "violence") endangers the children's physical and emotional health. DCFS alleged in count b–3 that Father inappropriately physically disciplined Son and in d–1 that he is a registered sex offender who had sexually abused Daughter. DCFS recommended that the allegations that Father had sexually abused Son be dropped.

Mother enrolled in a substance abuse program on April 20, 2009, the day before trial.

At the jurisdiction and disposition hearing on April 21, 2009, the court asked if anyone objected to admission of the DCFS reports. No one responded. It then asked if anyone had additional documentary evidence or witnesses to present. Mother and Father indicated they did not, intending to present only argument.

Mother asked that the count regarding her alcohol abuse be dismissed. Father argued that the allegations against him were fabricated by Mother and asked that they be dismissed. The children's attorney ****6** asked that the amended petition be sustained.

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The court found amended counts b–3, b–4, b–5 and d–1 to be true and declared the children dependents of the juvenile court pursuant to section 300, subdivisions (b) and (d). It adopted DCFS's proposed case plan, ordering the children removed from Father's custody and allowing them to remain with Mother. It ordered Mother to complete drug and alcohol testing, complete a parent education program, and participate in individual counseling. It ordered Father to complete a parenting education program, participate in individual counseling to address sex abuse and domestic violence, and complete a program called "Project Fatherhood," if it was available. The court ordered Father to have only monitored visits with Son and no contact with Daughter.

Mother appeals all April 21, 2009 findings and orders of the court except the order that the children reside with her. Father appeals all April 21, 2009 findings and orders.

DISCUSSION

A. Standard of Review

[1] "On appeal, the 'substantial evidence' test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citation.] The ***575** term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]" (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433, 95 Cal.Rptr.3d 235.) "In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court's determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]" (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564, 135 Cal.Rptr.2d 72.)

B. Mother's Appeal

1. Count B–5: Mother's Alcohol Abuse

[2] Mother contends evidence of her past alcohol use is insufficient to show she is incapable of providing regular care and supervision of the children or presents a danger to them. Characterizing the record as showing evidence only of an isolated, past incident of alcohol abuse, she argues nothing indicates the abuse will reoccur. We disagree. "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (Welf. & Inst.Code, § 300.2.)

Mother was arrested for DUI in April 2008. Her own mother and Father's nephew both reported she had an alcohol problem, her mother indicating Mother neglected the children. She missed her first three substance abuse tests and did not enroll in a substance abuse program until the day before trial. The juvenile court thus had ample evidence from which to conclude Mother's continued alcohol abuse rendered her incapable of providing regular care and supervision of the children and endangered their physical and emotional health.

2. Count B–4: Domestic Violence

[3] As amended, count b–4 of the petition alleges that both parents' conduct in domestic "altercations" endangers the children's physical and emotional health. Mother contends she was exclusively the victim of domestic violence; nothing she ****7** did or is likely to do endangers the children.

[4] A child is within the jurisdiction of the juvenile court under subdivision (b) of section 300 if he or she "has suffered, or there is a substantial risk that the child will suffer, serious physical harm," harm that is either "inflicted nonaccidentally upon the child by the child's parent or ***576** guardian" or results from "the failure or inability of his or her parent or guardian to adequately supervise or protect the child...." "[D]omestic violence in the same household where children are living ... is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194, 60 Cal.Rptr.2d 315.) Children can be "put in a position of physical danger from [spousal] violence" because, "for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg...." (*Ibid.*)

"Both common sense and expert opinion indicate spousal abuse is detrimental to children." (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, p. 1470, fn. 5, 278 Cal.Rptr. 468; see *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562, 64 Cal.Rptr.2d 93; Fields, *The Impact of Spouse Abuse on Children and Its Relevance in Custody and Visitation*

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Decisions in New York State (1994) 3 Cornell J.L. & Pub. Policy 221, 228 ["Studies show that violence by one parent against another harms children even if they do not witness it."]; Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions* (1991) 44 Vand.L.Rev. 1041, 1055–1056 ["First, children of these relationships appear more likely to experience physical harm from both parents than children of relationships without woman abuse. Second, even if they are not physically harmed, children suffer enormously from simply witnessing the violence between their parents.... [¶] Third, children of abusive fathers are likely to be physically abused themselves." (Fns. omitted.)].)

Father's past violent behavior toward Mother is an ongoing concern. "[P]ast violent behavior in a relationship is 'the best predictor of future violence.' Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of those relationships.... Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner." (Comment, *Beating Again and Again and Again: Why Washington Needs a New Rule of Evidence Admitting Prior Acts of Domestic Violence* (2000) 75 Wash.L.Rev. 973, 978.)

Mother admitted to DCFS that father abused her emotionally and physically, the latter within the hearing of the children. When he verbally berated her after Daughter was born she would sometimes leave, but she always returned when he apologized. In February 2008 he struck her four times and the children heard her screaming, yet she stayed with him another seven months. Mother's remaining in the abusive relationship, and her record of returning to Father despite being abused by him, supports the juvenile court's finding that her conduct in the domestic altercations endangered the children.

***577 C. Father's Appeal**

1. Hearsay Evidence

[5] Father contends the juvenile court's sustaining the allegations against him on the basis of hearsay statements recorded in DCFS reports violated his due process and confrontation rights under the ****8** United States and California constitutions. He is incorrect.

"A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d)." (§ 355, subd. (b).) Our Supreme Court instructs that such a study "fits within the class of 'legally admissible' evidence on which a court can rely in a jurisdictional hearing, despite the fact that a social study is itself hearsay and may contain multiple levels of hearsay." (*In re Cindy L.* (1997) 17 Cal.4th 15, 21, 69 Cal.Rptr.2d 803, 947 P.2d 1340.) Only "[i]f any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study" may the specific hearsay evidence "be [in]sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based...." (§ 355, subd. (c)(1).)

Father raised no objection at trial to the DCFS reports. Therefore, admission of the reports, and the juvenile court's reliance on hearsay statements within them, was proper.

2. Sufficiency of the Evidence

Father contends evidence contained in the DCFS reports was insufficient to support the juvenile court's jurisdiction and disposition orders. We disagree.

[6] **[7]** Preliminarily, we note that the juvenile court's finding that Father is a registered sex offender is itself prima facie evidence that Son and Daughter are persons described by subdivisions (b) and (d) of section 300 and are at substantial risk of abuse or neglect. (§ 355.1, subd. (d).) This "prima facie evidence constitutes a presumption affecting the burden of producing evidence." (*Ibid.*) The presumption "survives until there is rebuttal evidence submitted." (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1041, 14 Cal.Rptr.2d 179.) Because Father admitted to being a registered sex offender and presented no evidence contesting jurisdiction, the juvenile court's finding of jurisdiction under subdivisions (b) and (d) of section 300 is supported by the section 355.1 presumption alone. We affirm the finding on this basis.

***578** Father challenges the evidence supporting the juvenile court's disposition orders on the ground that statements by Mother, Son, and Daughter contained in the DCFS reports were unreliable.

Father essentially asks us to reweigh the evidence and to substitute our judgment for that of the juvenile court. We decline to do so. "It is the trial court's role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citation.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53, 82 Cal.Rptr.2d 426.)

[8] The juvenile court was entitled to find the Mother and the children to be credible. Their statements to police, interviewers and DCFS provided substantial evidence to support the juvenile court's conclusion that Father sexually abused Daughter, physically abused Son, and emotionally and physically abused Mother. It supported the conclusion that Father presented ****9** a substantial risk of serious physical harm to both children.

Father appears to argue that even if substantial evidence supports a finding of jurisdiction under a preponderance standard, it does not support the juvenile court's dispositional orders under a clear and convincing standard.

[9] **[10]** The argument is meritless. The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750, 106 Cal.Rptr. 187, 505 P.2d 1027.) The substantial evidence rule applies no matter what the standard of proof at trial. "Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears ... [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' [Citation.]" (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 881, 101 Cal.Rptr.2d 187.) As noted, statements made by Mother, Son and Daughter to police, interviewers and the DCFS constitute substantial evidence that Father sexually abused Daughter, physically abused Son, and emotionally and physically abused Mother, presenting a substantial risk of serious physical harm to the children. For purposes of appeal, this evidence suffices under either the preponderance or clear and convincing standard of proof.

***579 DISPOSITION**

The orders are affirmed.

We concur: MALLANO, P.J., and JOHNSON, J.

All Citations

184 Cal.App.4th 568, 109 Cal.Rptr.3d 1, 10 Cal. Daily Op. Serv. 5643, 2010 Daily Journal D.A.R. 6742

Footnotes

1 Undesignated section references will be to the Welfare and Institutions Code.

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132 S.Ct. 2455
Supreme Court of the United States

Evan MILLER, Petitioner
v.
ALABAMA.
Kuntrell Jackson, Petitioner
v.
Ray Hobbs, Director, Arkansas
Department of Correction.

Nos. 10–9646, 10–9647.
|
Argued March 20, 2012.
|
Decided June 25, 2012.

Synopsis

Background: Following transfer from state juvenile court to state circuit court and affirmation of transfer, 928 So.2d 1081, defendant was convicted in the Alabama Circuit Court, Lawrence County, No. CC–06–08, A. Phillip Reich II, J., of capital murder committed when he was 14 years old. Defendant appealed his conviction and the resulting sentence of life in prison without possibility of parole. The Alabama Court of Criminal Appeals, 63 So.3d 676, affirmed. In another case, after affirmance of a defendant's convictions in Arkansas for capital felony murder and aggravated robbery committed at age 14, 359 Ark. 87, 194 S.W.3d 757, defendant petitioned for state habeas relief, challenging his sentence of life in prison without possibility of parole. The Arkansas Circuit Court, Jefferson County, dismissed the petition. Defendant appealed. The Arkansas Supreme Court, 378 S.W.3d 103, 2011 WL 478600, affirmed. Certiorari was granted in each case.

[Holding:] The Supreme Court, Justice Kagan, held that mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments.

Reversed and remanded.

Justice Breyer filed a concurring opinion, in which Justice Sotomayor joined.

Chief Justice Roberts filed a dissenting opinion, in which Justices Scalia, Thomas, and Alito joined.

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

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

West Codenotes

Limited on Constitutional Grounds

LSA–R.S. 14:30(C), 14:30.1(B)V.T.C.A., Penal Code § 12.31(a)Code 1975, § 13A–5–45(f)West's A.C.A. § 5–4–104(b)Code 1975, § 13A–6–2(c)A.R.S. § 13–752C.G.S.A. § 53a–35a(1)11 Del.C. § 4209(a)West's F.S.A. § 775.082(1)HRS § 706–656(1) (1993)I.C. § 18–4004M.C.L.A. § 791.234(6)(a)M.S.A. § 609.106, subd. 2Neb.Rev.St. § 29–2522RSA 630:1–a(III)18 Pa.C.S.A. § 1102(a, b)61 Pa.C.S.A. § 6137(a)(1)SDCL §§ 22–6–1(1), 24–15–413 V.S.A. § 2311(c)West's RCWA 10.95.030(1)

****2457** *Syllabus* [*]

In each of these cases, a 14–year–old was convicted of murder and sentenced to a mandatory term of life imprisonment without the possibility of parole. In No. 10–9647, petitioner Jackson accompanied two other boys to a video store to commit a robbery; on the way to the store, he learned that one of the boys was carrying a shotgun. Jackson stayed outside the store for most of the robbery, but after he entered, one of his co-conspirators shot and killed the store clerk. Arkansas charged Jackson as an adult with capital felony murder and aggravated robbery, and a jury convicted him of both crimes. The trial court imposed a statutorily mandated sentence of life imprisonment without the possibility of parole. Jackson filed a state habeas petition, arguing that a mandatory life-without-parole term for a 14–year–old violates the Eighth Amendment. Disagreeing, the court granted the State's motion to dismiss. The Arkansas Supreme Court affirmed.

In No. 10–9646, petitioner Miller, along with a friend, beat Miller's neighbor and set fire to his trailer after an evening

of drinking and drug use. The neighbor died. Miller was initially charged as a juvenile, but his case was removed to adult court, where he was charged with murder in the course of arson. A jury found Miller guilty, and the trial court imposed a statutorily mandated punishment of life without parole. The Alabama Court of Criminal Appeals affirmed, holding that Miller's sentence was not overly harsh when compared to his crime, and that its mandatory nature was permissible under the Eighth Amendment.

Held: The Eighth Amendment forbids a sentencing scheme that mandates ****2458** life in prison without possibility of parole for juvenile homicide offenders. Pp. 2463 – 2475.

(a) The Eighth Amendment's prohibition of cruel and unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions." *Roper v. Simmons,* 543 U.S. 551, 560, 125 S.Ct. 1183, 161 L.Ed.2d 1. That right "flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned' " to both the offender and the offense. *Ibid.*

Two strands of precedent reflecting the concern with proportionate punishment come together here. The first has adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. See, *e.g., Kennedy v. Louisiana,* 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525. Several cases in this group have specially focused on juvenile offenders, because of their lesser culpability. Thus, *Roper v. Simmons* held that the Eighth Amendment bars capital punishment for children, and *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825, concluded that the Amendment prohibits a sentence of life without the possibility of parole for a juvenile convicted of a nonhomicide offense. *Graham* further likened life without parole for juveniles to the death penalty, thereby evoking a second line of cases. In those decisions, this Court has required sentencing authorities to consider the characteristics of a defendant and the details of his offense before sentencing him to death. See, *e.g., Woodson v. North Carolina,* 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (plurality opinion). Here, the confluence of these two lines of precedent leads to the conclusion that mandatory life without parole for juveniles violates the Eighth Amendment.

As to the first set of cases: *Roper* and *Graham* establish that children are constitutionally different from adults for sentencing purposes. Their " 'lack of maturity' " and " 'underdeveloped sense of responsibility' " lead to recklessness, impulsivity, and heedless risk-taking. *Roper,* 543 U.S., at 569, 125 S.Ct. 1183. They "are more vulnerable ... to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid.* And because a child's character is not as "well formed" as an adult's, his traits are "less fixed" and his actions are less likely to be "evidence of irretrievabl[e] deprav[ity]." *Id.,* at 570, 125 S.Ct. 1183. *Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.

While *Graham* 's flat ban on life without parole was for nonhomicide crimes, nothing that *Graham* said about children is crime-specific. Thus, its reasoning implicates any life-without-parole sentence for a juvenile, even as its categorical bar relates only to nonhomicide offenses. Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. The mandatory penalty schemes at issue here, however, prevent the sentencer from considering youth and from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. This contravenes *Graham* 's (and also *Roper* 's) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.

****2459** *Graham* also likened life-without-parole sentences for juveniles to the death penalty. That decision recognized that life-without-parole sentences "share some characteristics with death sentences that are shared by no other sentences." 560 U.S., at 69, 130 S.Ct., at 2027. And it treated life without parole for juveniles like this Court's cases treat the death penalty, imposing a categorical bar on its imposition for nonhomicide offenses. By likening life-without-parole sentences for juveniles to the death penalty, *Graham* makes relevant this Court's cases demanding individualized sentencing in capital cases. In particular, those cases have emphasized that sentencers must be able to consider the mitigating qualities of youth.

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In light of *Graham* 's reasoning, these decisions also show the flaws of imposing mandatory life-without-parole sentences on juvenile homicide offenders. Pp. 2463 – 2469.

(b) The counterarguments of Alabama and Arkansas are unpersuasive. Pp. 2469 – 2475.

(1) The States first contend that *Harmelin v. Michigan,* 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836, forecloses a holding that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment. *Harmelin* declined to extend the individualized sentencing requirement to noncapital cases "because of the qualitative difference between death and all other penalties." *Id.,* at 1006, 111 S.Ct. 2680 (KENNEDY, J., concurring in part and concurring in judgment). But *Harmelin* had nothing to do with children, and did not purport to apply to juvenile offenders. Indeed, since *Harmelin,* this Court has held on multiple occasions that sentencing practices that are permissible for adults may not be so for children. See *Roper,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1; *Graham,* 560 U.S. 48, 130 S.Ct. 2011.

The States next contend that mandatory life-without-parole terms for juveniles cannot be unconstitutional because 29 jurisdictions impose them on at least some children convicted of murder. In considering categorical bars to the death penalty and life without parole, this Court asks as part of the analysis whether legislative enactments and actual sentencing practices show a national consensus against a sentence for a particular class of offenders. But where, as here, this Court does not categorically bar a penalty, but instead requires only that a sentencer follow a certain process, this Court has not scrutinized or relied on legislative enactments in the same way. See, *e.g., Sumner v. Shuman,* 483 U.S. 66, 107 S.Ct. 2716, 97 L.Ed.2d 56.

In any event, the "objective indicia of society's standards," *Graham,* 560 U.S., at 61, 130 S.Ct., at 2022, that the States offer do not distinguish these cases from others holding that a sentencing practice violates the Eighth Amendment. Fewer States impose mandatory life-without-parole sentences on juvenile homicide offenders than authorized the penalty (life-without-parole for nonhomicide offenders) that this Court invalidated in *Graham*. And as *Graham* and *Thompson v. Oklahoma,* 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702, explain, simply counting legislative enactments can present a distorted view. In those cases, as here, the relevant penalty applied to juveniles based on two separate provisions: One allowed the transfer of certain juvenile offenders to adult court, while another set out penalties for any and all individuals tried there. In those circumstances, this Court reasoned, it was impossible to say whether a legislature had endorsed a given penalty for children (or would do so if presented with the choice). The same is true here. Pp. 2469 – 2474.

****2460** (2) The States next argue that courts and prosecutors sufficiently consider a juvenile defendant's age, as well as his background and the circumstances of his crime, when deciding whether to try him as an adult. But this argument ignores that many States use mandatory transfer systems. In addition, some lodge the decision in the hands of the prosecutors, rather than courts. And even where judges have transfer-stage discretion, it has limited utility, because the decisionmaker typically will have only partial information about the child or the circumstances of his offense. Finally, because of the limited sentencing options in some juvenile courts, the transfer decision may present a choice between a light sentence as a juvenile and standard sentencing as an adult. It cannot substitute for discretion at post-trial sentencing. Pp. 2473 – 2475.

No. 10–9646, 63 So.3d 676, and No. 10–9647, 2011 Ark. 49, 378 S. W.3d 103, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. BREYER, J., filed a concurring opinion, in which SOTOMAYOR, J., joined. ROBERTS, C.J., filed a dissenting opinion, in which SCALIA, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined. ALITO, J., filed a dissenting opinion, in which SCALIA, J., joined.

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Opinion

Justice KAGAN delivered the opinion of the Court.

***465** The two 14–year–old offenders in these cases were convicted of murder and sentenced to life imprisonment without the possibility of parole. In neither case did the sentencing authority have any discretion to impose a different punishment. State law mandated that each juvenile die in prison even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life *with* the possibility of parole) more appropriate. Such a scheme prevents those meting out punishment from considering a juvenile's "lessened culpability" and greater "capacity for change," *Graham v. Florida,* 560 U.S. 48, 68, 74, 130 S.Ct. 2011, 2026–2027, 2029–2030, 176 L.Ed.2d 825 (2010), and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties. We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on "cruel and unusual punishments."

****2461** I

A

In November 1999, petitioner Kuntrell Jackson, then 14 years old, and two other boys decided to rob a video store. En route to the store, Jackson learned that one of the boys, Derrick Shields, was carrying a sawed-off shotgun in his coat sleeve. Jackson decided to stay outside when the two other boys entered the store. Inside, Shields pointed the gun at the store clerk, Laurie Troup, and demanded that she "give up the money." *Jackson v. State,* 359 Ark. 87, 89, 194 S.W.3d 757, 759 (2004) (internal quotation marks omitted). Troup refused. A few moments later, Jackson went into the store to find Shields continuing to demand money. At trial, the parties disputed whether Jackson warned Troup that "[w]e ain't playin'," or instead told his friends, "I thought you all was playin'." *Id.,* at 91, 194 S.W.3d, at 760 (internal ***466** quotation marks omitted). When Troup threatened to call the police, Shields shot and killed her. The three boys fled empty-handed. See *id.,* at 89–92, 194 S.W.3d, at 758–760.

Arkansas law gives prosecutors discretion to charge 14–year–olds as adults when they are alleged to have committed certain serious offenses. See Ark.Code Ann. § 9–27–318(c)(2) (1998). The prosecutor here exercised that authority by charging Jackson with capital felony murder and aggravated robbery. Jackson moved to transfer the case to juvenile court, but after considering the alleged facts of the crime, a psychiatrist's examination, and Jackson's juvenile arrest history (shoplifting and several incidents of car theft), the trial court denied the motion, and an appellate court affirmed. See *Jackson v. State,* No. 02–535, 2003 WL 193412, *1 (Ark.App., Jan. 29, 2003); §§ 9–27–318(d), (e). A jury later convicted Jackson of both crimes. Noting that "in view of [the] verdict, there's only one possible punishment," the judge sentenced Jackson to life without parole. App. in No. 10–9647, p. 55 (hereinafter Jackson App.); see Ark.Code Ann. § 5–4–104(b) (1997) ("A defendant convicted of capital murder or treason shall be sentenced to death or life imprisonment without parole").[1] Jackson did not challenge the sentence on appeal, and the Arkansas Supreme Court affirmed the convictions. See 359 Ark. 87, 194 S.W.3d 757.

[1] Following *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), in which this Court invalidated the death penalty for all juvenile offenders under the age of 18, Jackson filed a state petition for habeas corpus. He argued, based on *Roper* 's reasoning, that a mandatory sentence of life without parole for a 14–year–old also violates the Eighth Amendment. The circuit court rejected that argument and granted the State's motion to dismiss. See Jackson App. 72–76. While that ruling was on appeal, this Court held in *Graham v. Florida* ***467** that life without parole violates the Eighth Amendment when imposed on juvenile nonhomicide offenders. After the parties filed briefs addressing that decision, the Arkansas Supreme Court affirmed the dismissal of Jackson's petition. See *Jackson v. Norris,* 2011 Ark. 49, 378 S.W.3d 103. The majority found that *Roper* and *Graham* were "narrowly tailored" to their contexts: "death-penalty cases involving a juvenile and

life-imprisonment-without-parole cases for nonhomicide offenses involving a juvenile." *Id.,* at 5, 378 S.W.3d, at 106. Two justices dissented. They noted that Jackson ****2462** was not the shooter and that "any evidence of intent to kill was severely lacking." *Id.,* at 10, 378 S.W.3d, at 109 (Danielson, J., dissenting). And they argued that Jackson's mandatory sentence ran afoul of *Graham* 's admonition that " '[a]n offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed.' " *Id.,* at 10–11, 378 S.W.3d, at 109 (quoting *Graham,* 560 U.S., at 76, 130 S.Ct., at 2031). [2]

B

Like Jackson, petitioner Evan Miller was 14 years old at the time of his crime. Miller had by then been in and out of foster care because his mother suffered from alcoholism and drug addiction and his stepfather abused him. Miller, too, regularly used drugs and alcohol; and he had attempted suicide four times, the first when he was six years old. See ***468** *E.J.M. v. State,* 928 So.2d 1077, 1081 (Ala.Crim.App.2004) (Cobb, J., concurring in result); App. in No. 10–9646, pp. 26–28 (hereinafter Miller App.).

One night in 2003, Miller was at home with a friend, Colby Smith, when a neighbor, Cole Cannon, came to make a drug deal with Miller's mother. See 6 Record in No. 10–9646, p. 1004. The two boys followed Cannon back to his trailer, where all three smoked marijuana and played drinking games. When Cannon passed out, Miller stole his wallet, splitting about $300 with Smith. Miller then tried to put the wallet back in Cannon's pocket, but Cannon awoke and grabbed Miller by the throat. Smith hit Cannon with a nearby baseball bat, and once released, Miller grabbed the bat and repeatedly struck Cannon with it. Miller placed a sheet over Cannon's head, told him " 'I am God, I've come to take your life,' " and delivered one more blow. 63 So.3d 676, 689 (Ala.Crim.App.2010). The boys then retreated to Miller's trailer, but soon decided to return to Cannon's to cover up evidence of their crime. Once there, they lit two fires. Cannon eventually died from his injuries and smoke inhalation. See *id.,* at 683–685, 689.

Alabama law required that Miller initially be charged as a juvenile, but allowed the District Attorney to seek removal of the case to adult court. See Ala.Code § 12–15–34 (1977). The D.A. did so, and the juvenile court agreed to the transfer after a hearing. Citing the nature of the crime, Miller's "mental maturity," and his prior juvenile offenses (truancy and "criminal mischief"), the Alabama Court of Criminal Appeals affirmed. *E.J.M. v. State,* No. CR–03–0915, pp. 5–7 (Aug. 27, 2004) (unpublished memorandum). [3] The State ***469** accordingly ****2463** charged Miller as an adult with murder in the course of arson. That crime (like capital murder in Arkansas) carries a mandatory minimum punishment of life without parole. See Ala.Code §§ 13A–5–40(a)(9), 13A–6–2(c) (1982).

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

We granted certiorari in both cases, see 565 U.S. 1013, 132 S.Ct. 548, 181 L.Ed.2d 395 (2011) (No. 10–9646); 565 U.S. 1013, 132 S.Ct. 548, 181 L.Ed.2d 395 (2011) (No. 10–9647), and now reverse.

II

[2] [3] [4] The Eighth Amendment's prohibition of cruel and unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions." *Roper,* 543 U.S., at 560, 125 S.Ct. 1183. That right, we have explained, "flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned' " to both the offender and the offense. *Ibid.* (quoting *Weems v. United States,* 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910)). As we noted the last time we considered life-without-parole sentences imposed on juveniles, "[t]he concept of proportionality is central to the Eighth Amendment." *Graham,* 560 U.S., at 59, 130 S.Ct., at 2021. And we view that concept less through a historical prism than according to " 'the evolving standards of decency that mark the progress of a maturing society.' " ***470** *Estelle v. Gamble,* 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (quoting *Trop v. Dulles,* 356

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U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion)).

[5] [6] [7] [8] The cases before us implicate two strands of precedent reflecting our concern with proportionate punishment. The first has adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. See *Graham,* 560 U.S., at 60–61, 130 S.Ct., at 2022–2023 (listing cases). So, for example, we have held that imposing the death penalty for nonhomicide crimes against individuals, or imposing it on mentally retarded defendants, violates the Eighth Amendment. See *Kennedy v. Louisiana,* 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Atkins v. Virginia,* 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). Several of the cases in this group have specially focused on juvenile offenders, because of their lesser culpability. Thus, *Roper* held that the Eighth Amendment bars capital punishment for children, and *Graham* concluded that the Amendment also prohibits a sentence of life without the possibility of parole for a child who committed a nonhomicide offense. *Graham* further likened life without parole for juveniles to the death penalty itself, thereby evoking a second line of our precedents. In those cases, we have prohibited mandatory imposition of capital punishment, requiring that sentencing authorities consider the characteristics of a defendant and the details of his ****2464** offense before sentencing him to death. See *Woodson v. North Carolina,* 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion); *Lockett v. Ohio,* 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978). Here, the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment. [4]

[9] ***471** To start with the first set of cases: *Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, "they are less deserving of the most severe punishments." *Graham,* 560 U.S., at 68, 130 S.Ct., at 2026. Those cases relied on three significant gaps between juveniles and adults. First, children have a " 'lack of maturity and an underdeveloped sense of responsibility,' " leading to recklessness, impulsivity, and heedless risk-taking. *Roper,* 543 U.S., at 569, 125 S.Ct. 1183. Second, children "are more vulnerable ... to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid.* And third, a child's character is not as " well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievabl[e] deprav[ity]." *Id.,* at 570, 125 S.Ct. 1183.

Our decisions rested not only on common sense—on what "any parent knows"—but on science and social science as well. *Id.,* at 569, 125 S.Ct. 1183. In *Roper,* we cited studies showing that " '[o]nly a relatively small proportion of adolescents' " who engage in illegal activity " 'develop entrenched patterns of problem behavior.' " *Id.,* at 570, 125 S.Ct. 1183 (quoting Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003)). And in *Graham*, we noted that "developments in psychology and brain science continue to show fundamental differences between ***472** juvenile and adult minds"—for example, in "parts of the brain involved in behavior control." 560 U.S., at 68, 130 S.Ct., at 2026. [5] We reasoned that those findings— ****2465** of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's "moral culpability" and enhanced the prospect that, as the years go by and neurological development occurs, his " 'deficiencies will be reformed.' " *Ibid.* (quoting *Roper,* 543 U.S., at 570, 125 S.Ct. 1183).

[10] *Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because " '[t]he heart of the retribution rationale' " relates to an offender's blameworthiness, " 'the case for retribution is not as strong with a minor as with an adult.' " *Graham,* 560 U.S., at 71, 130 S.Ct., at 2028 (quoting *Tison v. Arizona,* 481 U.S. 137, 149, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987); *Roper,* 543 U.S., at 571, 125 S.Ct. 1183). Nor can deterrence do the work in this context, because " 'the same characteristics that render juveniles less culpable than adults' "—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment. *Graham,* 560 U.S., at 72, 130 S.Ct., at 2028 (quoting *Roper,* 543 U.S., at 571, 125 S.Ct. 1183). Similarly, incapacitation could not support the life-without-parole sentence in *Graham* : Deciding that a "juvenile offender forever will be a danger to society" would ***473** require

"mak[ing] a judgment that [he] is incorrigible"—but " 'incorrigibility is inconsistent with youth.' " 560 U.S., at 72–73, 130 S.Ct., at 2029 (quoting *Workman v. Commonwealth,* 429 S.W.2d 374, 378 (Ky.App.1968)). And for the same reason, rehabilitation could not justify that sentence. Life without parole "forswears altogether the rehabilitative ideal." *Graham,* 560 U.S., at 74, 130 S.Ct., at 2030. It reflects "an irrevocable judgment about [an offender's] value and place in society," at odds with a child's capacity for change. *Ibid.*

Graham concluded from this analysis that life-without-parole sentences, like capital punishment, may violate the Eighth Amendment when imposed on children. To be sure, *Graham* 's flat ban on life without parole applied only to nonhomicide crimes, and the Court took care to distinguish those offenses from murder, based on both moral culpability and consequential harm. See *id.,* at 69, 130 S.Ct., at 2027. But none of what it said about children —about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. Those features are evident in the same way, and to the same degree, when (as in both cases here) a botched robbery turns into a killing. So *Graham* 's reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses.

[11] Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. In the circumstances there, juvenile status precluded a life-without-parole sentence, even though an adult could receive it for a similar crime. And in other contexts as well, the characteristics of youth, and the ****2466** way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate. Cf. *id.,* at 71–74, 130 S.Ct., at 2028–2032 (generally doubting the penological justifications for imposing life without parole on juveniles). "An offender's age," we made clear in *Graham*, "is relevant to the Eighth Amendment," and so "criminal procedure laws that fail to take defendants' youthfulness into account at all ***474** would be flawed." *Id.,* at 76, 130 S.Ct., at 2031. THE CHIEF JUSTICE, concurring in the judgment, made a similar point. Although rejecting a categorical bar on life-without-parole sentences for juveniles, he acknowledged "*Roper* 's conclusion that juveniles are typically less culpable than adults," and accordingly wrote that "an offender's juvenile status can play a central role" in considering a sentence's proportionality. *Id.,* at 90, 130 S.Ct., at 2039; see *id.,* at 96, 130 S.Ct., at 2042 (Graham's "youth is one factor, among others, that should be considered in deciding whether his punishment was unconstitutionally excessive"). [6]

[12] But the mandatory penalty schemes at issue here prevent the sentencer from taking account of these central considerations. By removing youth from the balance—by subjecting a juvenile to the same life-without-parole sentence applicable to an adult—these laws prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham* 's (and also *Roper* 's) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.

And *Graham* makes plain these mandatory schemes' defects in another way: by likening life-without-parole sentences imposed on juveniles to the death penalty itself. Life-without-parole terms, the Court wrote, "share some characteristics with death sentences that are shared by no other sentences." 560 U.S., at 69, 130 S.Ct., at 2027. Imprisoning an offender until he dies alters the remainder of his life "by a forfeiture ***475** that is irrevocable." *Ibid.* (citing *Solem v. Helm,* 463 U.S. 277, 300–301, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983)). And this lengthiest possible incarceration is an "especially harsh punishment for a juvenile," because he will almost inevitably serve "more years and a greater percentage of his life in prison than an adult offender." *Graham,* 560 U.S., at 70, 130 S.Ct., at 2028. The penalty when imposed on a teenager, as compared with an older person, is therefore "the same ... in name only." *Ibid.,* All of that suggested a distinctive set of legal rules: In part because we viewed this ultimate penalty for juveniles as akin to the death penalty, we treated it similarly to that most severe punishment. We imposed a categorical ban on the sentence's use, in a way unprecedented for a term of imprisonment. See *id.,* at 60, 130 S.Ct., at 2022; *id.,* at 102, 130 S.Ct., at 2046 (THOMAS, J., dissenting) ("For the first time in its history, the Court declares an entire class of offenders immune from a noncapital sentence using the categorical approach it ****2467** previously reserved for death penalty cases alone"). And the bar we adopted mirrored a proscription first established in the death penalty context—that the punishment cannot be imposed for any nonhomicide crimes against individuals. See *Kennedy,* 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d

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525; *Coker v. Georgia,* 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977).

[13] That correspondence—*Graham* 's "[t]reat[ment] [of] juvenile life sentences as analogous to capital punishment," 560 U.S., at ——, 130 S.Ct., at 2038–2039 (ROBERTS, C.J., concurring in judgment)—makes relevant here a second line of our precedents, demanding individualized sentencing when imposing the death penalty. In *Woodson,* 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944, we held that a statute mandating a death sentence for first-degree murder violated the Eighth Amendment. We thought the mandatory scheme flawed because it gave no significance to "the character and record of the individual offender or the circumstances" of the offense, and "exclud[ed] from consideration ... the possibility of compassionate or mitigating factors." *Id.,* at 304, 96 S.Ct. 2978. Subsequent decisions have elaborated on the requirement that capital defendants have an opportunity to advance, and the judge or ***476** jury a chance to assess, any mitigating factors, so that the death penalty is reserved only for the most culpable defendants committing the most serious offenses. See, *e.g., Sumner v. Shuman,* 483 U.S. 66, 74–76, 107 S.Ct. 2716, 97 L.Ed.2d 56 (1987); *Eddings v. Oklahoma,* 455 U.S. 104, 110–112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); *Lockett,* 438 U.S., at 597–609, 98 S.Ct. 2954 (plurality opinion).

Of special pertinence here, we insisted in these rulings that a sentencer have the ability to consider the "mitigating qualities of youth." *Johnson v. Texas,* 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993). Everything we said in *Roper* and *Graham* about that stage of life also appears in these decisions. As we observed, "youth is more than a chronological fact." *Eddings,* 455 U.S., at 115, 102 S.Ct. 869. It is a time of immaturity, irresponsibility, "impetuousness[,] and recklessness." *Johnson,* 509 U.S., at 368, 113 S.Ct. 2658. It is a moment and "condition of life when a person may be most susceptible to influence and to psychological damage." *Eddings,* 455 U.S., at 115, 102 S.Ct. 869. And its "signature qualities" are all "transient." *Johnson,* 509 U.S., at 368, 113 S.Ct. 2658. *Eddings* is especially on point. There, a 16–year–old shot a police officer point-blank and killed him. We invalidated his death sentence because the judge did not consider evidence of his neglectful and violent family background (including his mother's drug abuse and his father's physical abuse) and his emotional disturbance. We found that evidence "particularly relevant"—more so than it would have been in the case of an adult offender. 455 U.S., at 115, 102 S.Ct. 869. We held: "[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered" in assessing his culpability. *Id.,* at 116, 102 S.Ct. 869.

In light of *Graham* 's reasoning, these decisions too show the flaws of imposing mandatory life-without-parole sentences on juvenile homicide offenders. Such mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, ***477** every juvenile will receive the same sentence as every other—the 17–year–old and the 14–year–old, the shooter and the accomplice, the child from a stable household and the child from ****2468** a chaotic and abusive one. And still worse, each juvenile (including these two 14–year–olds) will receive the same sentence as the vast majority of adults committing similar homicide offenses—but really, as *Graham* noted, a *greater* sentence than those adults will serve.[7] IN METING OUT THE death penalty, the elision of all these differences would be strictly forbidden. And once again, *Graham* indicates that a similar rule should apply when a juvenile confronts a sentence of life (and death) in prison.

So *Graham* and *Roper* and our individualized sentencing cases alike teach that in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult. To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him —and from which he cannot usually extricate himself —no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers ***478** or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, *e.g., Graham,* 560 U.S., at 78, 130 S.Ct., at 2032 ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in

criminal proceedings"); *J.D.B. v. North Carolina,* 564 U.S. 261, 269, 131 S.Ct. 2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children's responses to interrogation). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Both cases before us illustrate the problem. Take Jackson's first. As noted earlier, Jackson did not fire the bullet that killed Laurie Troup; nor did the State argue that he intended her death. Jackson's conviction was instead based on an aiding-and-abetting theory; and the appellate court affirmed the verdict only because the jury could have believed that when Jackson entered the store, he warned Troup that "[w]e ain't playin'," rather than told his friends that "I thought you all was playin'." See 359 Ark., at 90–92, 194 S.W.3d, at 759–760; *supra,* at 2461. To be sure, Jackson learned on the way to the video store that his friend Shields was carrying a gun, but his age could well have affected his calculation of the risk that posed, as well as his willingness to walk away at that point. All these circumstances go to Jackson's culpability for the offense. See *Graham,* 560 U.S., at 69, 130 S.Ct., at 2027 ("[W]hen compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability"). And so too does Jackson's family background and immersion in violence: Both his mother and his grandmother had previously shot other individuals. See Record in No. 10–9647, ****2469** pp. 80–82. At the least, a sentencer should look at such facts before depriving a 14–year–old of any prospect of release from prison.

That is true also in Miller's case. No one can doubt that he and Smith committed a vicious murder. But they did it when high on drugs and alcohol consumed with the adult victim. And if ever a pathological background might have ***479** contributed to a 14–year–old's commission of a crime, it is here. Miller's stepfather physically abused him; his alcoholic and drug-addicted mother neglected him; he had been in and out of foster care as a result; and he had tried to kill himself four times, the first when he should have been in kindergarten. See 928 So.2d, at 1081 (Cobb, J., concurring in result); Miller App. 26–28; *supra,* at 2461 – 2462. Nonetheless, Miller's past criminal history was limited—two instances of truancy and one of "second-degree criminal mischief." No. CR–03–0915, at 6 (unpublished memorandum). That Miller deserved severe punishment for killing Cole Cannon is beyond question. But once again, a sentencer needed to examine all these circumstances before concluding that life without any possibility of parole was the appropriate penalty.

[14] [15] We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. Cf. *Graham,* 560 U.S., at 75, 130 S.Ct., at 2030 ("A State is not required to guarantee eventual freedom," but must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"). By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. Because that holding is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. But given all we have said in *Roper, Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable ***480** corruption." *Roper,* 543 U.S., at 573, 125 S.Ct. 1183; *Graham,* 560 U.S., at 68, 130 S.Ct., at 2026–2027. Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. [8]

III

Alabama and Arkansas offer two kinds of arguments against requiring individualized ****2470** consideration before sentencing a juvenile to life imprisonment without possibility of parole. The States (along with the dissents) first contend that the rule we adopt conflicts with aspects of our Eighth Amendment caselaw. And they next assert that the rule is unnecessary because individualized circumstances come into play in deciding whether to try a juvenile offender as an adult. We think the States are wrong on both counts.

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A

The States (along with Justice THOMAS) first claim that *Harmelin v. Michigan,* 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991), precludes our holding. The defendant in *Harmelin* was sentenced to a mandatory life-without-parole term for possessing more than 650 grams of cocaine. The Court upheld that penalty, reasoning ***481** that "a sentence which is not otherwise cruel and unusual" does not "becom[e] so simply because it is 'mandatory.' " *Id.,* at 995, 111 S.Ct. 2680. We recognized that a different rule, requiring individualized sentencing, applied in the death penalty context. But we refused to extend that command to noncapital cases "because of the qualitative difference between death and all other penalties." *Ibid.*; see *id.,* at 1006, 111 S.Ct. 2680 (KENNEDY, J., concurring in part and concurring in judgment). According to Alabama, invalidating the mandatory imposition of life-without-parole terms on juveniles "would effectively overrule *Harmelin*." Brief for Respondent in No. 10–9646, p. 59 (hereinafter Alabama Brief); see Arkansas Brief 39.

We think that argument myopic. *Harmelin* had nothing to do with children and did not purport to apply its holding to the sentencing of juvenile offenders. We have by now held on multiple occasions that a sentencing rule permissible for adults may not be so for children. Capital punishment, our decisions hold, generally comports with the Eighth Amendment—except it cannot be imposed on children. See *Roper,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1; *Thompson,* 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702. So too, life without parole is permissible for nonhomicide offenses—except, once again, for children. See *Graham,* 560 U.S., at 75, 130 S.Ct., at 2030. Nor are these sentencing decisions an oddity in the law. To the contrary, " '[o]ur history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults." *J.D.B.,* 564 U.S., at 274, 131 S.Ct., at 2404 (quoting *Eddings,* 455 U.S., at 115–116, 102 S.Ct. 869, citing examples from criminal, property, contract, and tort law). So if (as *Harmelin* recognized) "death is different," children are different too. Indeed, it is the odd legal rule that does *not* have some form of exception for children. In that context, it is no surprise that the law relating to society's harshest punishments recognizes such a distinction. Cf. *Graham,* 560 U.S., at 91, 130 S.Ct., at 2040 (ROBERTS, C.J., concurring in judgment) ("*Graham* 's age ***482** places him in a significantly different category from the defendan[t] in ... *Harmelin* "). Our ruling thus neither overrules nor undermines nor conflicts with *Harmelin.*

[16] Alabama and Arkansas (along with THE CHIEF JUSTICE and Justice ALITO) next contend that because many States impose mandatory life-without-parole sentences on juveniles, we may not hold the practice unconstitutional. In considering categorical bars to the death penalty and life without parole, we ask as part of the analysis whether " 'objective indicia of society's standards, as expressed in legislative enactments and state practice,' " show a "national consensus" against a sentence for a particular class of offenders. ****2471** *Graham,* 560 U.S., at 61, 130 S.Ct., at 2022 (quoting *Roper,* 543 U.S., at 563, 125 S.Ct. 1183). By our count, 29 jurisdictions (28 States and the Federal Government) make a life-without-parole term mandatory for some juveniles convicted of murder in adult court. [9] The States argue that this number precludes our holding.

We do not agree; indeed, we think the States' argument on this score *weaker* than the one we rejected in *Graham*. ***483** For starters, the cases here are different from the typical one in which we have tallied legislative enactments. Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty. And in so requiring, our decision flows straightforwardly from our precedents: specifically, the principle of *Roper, Graham*, and our individualized sentencing cases that youth matters for purposes of meting out the law's most serious punishments. When both of those circumstances have obtained in the past, we have not scrutinized or relied in the same way on legislative enactments. See, *e.g., Sumner v. Shuman,* 483 U.S. 66, 107 S.Ct. 2716, 97 L.Ed.2d 56 (relying on *Woodson* 's logic to prohibit the mandatory death penalty for murderers already serving life without parole); *Lockett,* 438 U.S., at 602–608, 98 S.Ct. 2954 (plurality opinion) (applying *Woodson* to require that judges and juries consider all mitigating evidence); *Eddings,* 455 U.S., at 110–117, 102 S.Ct. 869 (similar). We see no difference here.

In any event, the "objective indicia" that the States offer do not distinguish these cases from others holding that a sentencing practice violates the Eighth Amendment. In *Graham*, we prohibited life-without-parole terms for juveniles committing nonhomicide offenses even though 39 jurisdictions permitted that sentence. See 560 U.S., at 62, 130 S.Ct., at 2023. That is 10 *more* than impose life without parole on juveniles on a mandatory basis. [10] And ****2472** in *Atkins, Roper,* and *Thompson,* ***484** we similarly banned the death penalty in circumstances in which "less than half" of the "States that permit [ted] capital punishment (for whom the issue exist [ed])" had previously chosen to do so. *Atkins,* 536 U.S., at 342, 122 S.Ct. 2242 (SCALIA, J., dissenting) (emphasis deleted); see *id.,* at 313–315, 122 S.Ct. 2242 (majority opinion); *Roper,* 543 U.S., at 564–565, 125 S.Ct. 1183; *Thompson,* 487 U.S., at 826–827, 108 S.Ct. 2687 ***U.S.485** (plurality opinion). So we are breaking no new ground in these cases. [11]

Graham and *Thompson* provide special guidance, because they considered the same kind of statutes we do and explained why simply counting them would present a distorted view. Most jurisdictions authorized the death penalty or life without parole for juveniles only through the combination of two independent statutory provisions. One allowed the transfer of certain juvenile offenders to adult court, while another (often in a far-removed part of the code) set out the penalties for any and all individuals tried there. We reasoned that in those circumstances, it was impossible to say whether a legislature had endorsed a given penalty for children (or would do so if presented with the choice). In *Thompson,* we found that the statutes "t[old] us that the States consider 15–year–olds to be old enough to be tried in criminal court for serious crimes (or too old to be dealt with effectively in juvenile court), but t[old] us nothing about the ****2473** judgment these States have made regarding the appropriate punishment for such youthful offenders." 487 U.S., at 826, n. 24, 108 S.Ct. 2687 (plurality opinion) (emphasis deleted); see also *id.,* at 850, 108 S.Ct. 2687 (O'Connor, J., concurring in judgment); *Roper,* 543 U.S., at 596, n., 125 S.Ct. 1183 (O'Connor, J., dissenting). And *Graham* echoed that reasoning: Although the confluence of state laws "ma[de] life without parole possible for some juvenile nonhomicide offenders," it did not "justify a judgment" that many States ***486** actually " intended to subject such offenders" to those sentences. 560 U.S., at 67, 130 S.Ct., at 2025. [12]

All that is just as true here. Almost all jurisdictions allow some juveniles to be tried in adult court for some kinds of homicide. See Dept. of Justice, H. Snyder & M. Sickmund, Juvenile Offenders and Victims: 2006 National Report 110–114 (hereinafter 2006 National Report). But most States do not have separate penalty provisions for those juvenile offenders. Of the 29 jurisdictions mandating life without parole for children, more than half do so by virtue of generally applicable penalty provisions, imposing the sentence without regard to age. [13] And indeed, some of those States set no minimum age for who may be transferred to adult court in the first instance, thus applying life-without-parole mandates to children of any age—be it 17 or 14 or 10 or 6. [14] As in *Graham*, we think that "underscores that the ***487** statutory eligibility of a juvenile offender for life without parole does not indicate that the penalty has been endorsed through deliberate, express, and full legislative consideration." 560 U.S., at 67, 130 S.Ct., at 2026. That Alabama and Arkansas can count to 29 by including these possibly (or probably) inadvertent legislative outcomes does not preclude our determination that mandatory life without parole for juveniles violates the Eighth Amendment.

****2474** B

Nor does the presence of discretion in some jurisdictions' transfer statutes aid the States here. Alabama and Arkansas initially ignore that many States use mandatory transfer systems: A juvenile of a certain age who has committed a specified offense will be tried in adult court, regardless of any individualized circumstances. Of the 29 relevant jurisdictions, about half place at least some juvenile homicide offenders in adult court automatically, with no apparent opportunity to seek transfer to juvenile court. [15] Moreover, several States at times lodge this decision exclusively in the ***488** hands of prosecutors, again with no statutory mechanism for judicial reevaluation. [16] And those "prosecutorial discretion laws are usually silent regarding standards, protocols, or appropriate considerations for decisionmaking." Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, P. Griffin, S. Addie, B. Adams, & K. Firestine, Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting 5 (2011).

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

Second and still more important, the question at transfer hearings may differ dramatically from the issue at a post-trial sentencing. Because many juvenile systems require that the offender be released at a particular age or after a certain number of years, transfer decisions often present a choice between extremes: light punishment as a child or standard sentencing as an adult (here, life without parole). In many States, for example, a child convicted in juvenile court must be released from custody by the age of 21. See, ***489** *e.g.,* Ala.Code § 12–15–117(a) (Cum. Supp. 2011); see generally 2006 National Report 103 (noting limitations on the length of juvenile court sanctions). Discretionary sentencing in adult court would provide different options: There, a judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term *with* the possibility ****2475** of parole or a lengthy term of years. it is easy to imagine a judge deciding that a minor deserves a (much) harsher sentence than he would receive in juvenile court, while still not thinking life-without-parole appropriate. For that reason, the discretion available to a judge at the transfer stage cannot substitute for discretion at post-trial sentencing in adult court—and so cannot satisfy the Eighth Amendment.

IV

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

It is so ordered.

Justice BREYER, with whom Justice SOTOMAYOR joins, concurring.

I join the Court's opinion in full. I add that, if the State continues to seek a sentence of life without the possibility of parole for Kuntrell Jackson, there will have to be a determination ***490** whether Jackson "kill[ed] or intend[ed] to kill" the robbery victim. *Graham v. Florida,* 560 U.S. 48, 69, 130 S.Ct. 2011, 2027, 176 L.Ed.2d 825 (2010). In my view, without such a finding, the Eighth Amendment as interpreted in *Graham* forbids sentencing Jackson to such a sentence, regardless of whether its application is mandatory or discretionary under state law.

In *Graham* we said that "when compared to an adult murderer, a juvenile offender *who did not kill or intend to kill* has a twice diminished moral culpability." *Ibid.* (emphasis added). For one thing, "compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed." *Id.,* at 68, 130 S.Ct., at 2026 (internal quotation marks omitted). See also *ibid.* ("[P]sychology and brain science continue to show fundamental differences between juvenile and adult minds" making their actions "less likely to be evidence of 'irretrievably depraved character' than are the actions of adults" (quoting *Roper v. Simmons,* 543 U.S. 551, 570, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005))); *ante,* at 2464. For another thing, *Graham* recognized that lack of intent normally diminishes the "moral culpability" that attaches to the crime in question, making those that do not intend to kill "categorically less deserving of the most serious forms of punishment than are murderers."

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560 U.S., at 69, 130 S.Ct., at 2027 (citing *Kennedy v. Louisiana,* 554 U.S. 407, 434–435, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Enmund v. Florida,* 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982); *Tison v. Arizona,* 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987)). And we concluded that, because of this "twice diminished moral culpability," the Eighth Amendment forbids the imposition upon juveniles of a sentence of life without parole for nonhomicide cases. *Graham, supra,* at 69, 82, 130 S.Ct., at 2027, 2034.

Given *Graham* 's reasoning, the kinds of homicide that can subject a juvenile offender ****2476** to life without parole must exclude instances where the juvenile himself neither kills nor intends to kill the victim. Quite simply, if the juvenile either kills or intends to kill the victim, he lacks "twice diminished" ***491** responsibility. But where the juvenile neither kills nor intends to kill, both features emphasized in *Graham* as extenuating apply. The Chief Justice's dissent itself here would permit life without parole for "juveniles who commit the worst types of murder," *post,* at 2480 (opinion of ROBERTS, C.J.), but that phrase does not readily fit the culpability of one who did not himself kill or intend to kill.

I recognize that in the context of felony-murder cases, the question of intent is a complicated one. The felony-murder doctrine traditionally attributes death caused in the course of a felony to all participants who intended to commit the felony, regardless of whether they killed or intended to kill. See 2 W. LaFave, Substantive Criminal Law §§ 14.5(a) and (c) (2d ed. 2003). This rule has been based on the idea of "transferred intent"; the defendant's intent to commit the felony satisfies the intent to kill required for murder. See S. Kadish, S. Schulhofer, & C. Steiker, Criminal Law and Its Processes 439 (8th ed. 2007); 2 C. Torcia, Wharton's Criminal Law § 147 (15th ed. 1994).

But in my opinion, this type of "transferred intent" is not sufficient to satisfy the intent to murder that could subject a juvenile to a sentence of life without parole. As an initial matter, this Court has made clear that this artificially constructed kind of intent does not count as intent for purposes of the Eighth Amendment. We do not rely on transferred intent in determining if an adult may receive the death penalty. Thus, the Constitution forbids imposing capital punishment upon an aider and abettor in a robbery, where that individual did not intend to kill and simply was "in the car by the side of the road ..., waiting to help the robbers escape." *Enmund, supra,* at 788, 102 S.Ct. 3368. Cf. *Tison, supra,* at 157–158, 107 S.Ct. 1676 (capital punishment permissible for aider and abettor where kidnaping led to death because he was "actively involved" in every aspect of the kidnaping and his behavior showed "a reckless disregard for human life"). Given *Graham*, this holding applies to juvenile sentences of life without ***492** parole *a fortiori.* see *ante,* at 2466 – 2467. indeed, even juveniles who meet the *Tison* standard of "reckless disregard" may not be eligible for life without parole. Rather, *Graham* dictates a clear rule: The only juveniles who may constitutionally be sentenced to life without parole are those convicted of homicide offenses who "kill or intend to kill." 560 U.S., at 69, 130 S.Ct., at 2027.

Moreover, regardless of our law with respect to adults, there is no basis for imposing a sentence of life without parole upon a juvenile who did not himself kill or intend to kill. At base, the theory of transferring a defendant's intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed, even by a confederate. See 2 LaFave, *supra,* § 14.5(c). Yet the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack capacity to do effectively. *Ante,* at 2464 – 2465. Justice Frankfurter cautioned, "Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to a determination of a State's duty toward children." *May v. Anderson,* 345 U.S. 528, 536, 73 S.Ct. 840, 97 L.Ed. 1221 (1953) (concurring opinion). To apply the doctrine of transferred intent here, where the juvenile did not kill, to sentence a juvenile ****2477** to life without parole would involve such "fallacious reasoning." *Ibid.*

This is, as far as I can tell, precisely the situation present in Kuntrell Jackson's case. Jackson simply went along with older boys to rob a video store. On the way, he became aware that a confederate had a gun. He initially stayed outside the store, and went in briefly, saying something like "We ain't playin' " or " 'I thought you all was playin,' " before an older confederate shot and killed the store clerk. *Jackson v. State,* 359 Ark. 87, 91, 194 S.W.3d 757, 760 (2004). Crucially, the jury found him guilty of first-degree murder under a statute that permitted them to convict if Jackson ***493** "attempted to commit or committed an aggravated robbery, and,

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in the course of that offense, he, or an accomplice, caused [the clerk's] death under circumstance manifesting extreme indifference to the value of human life." *Ibid.* See Ark.Code Ann. § 5–10–101(a)(1) (1997); *ante,* at 2468. Thus, to be found guilty, Jackson did not need to kill the clerk (it is conceded he did not), nor did he need to have intent to kill or even "extreme indifference." As long as one of the teenage accomplices in the robbery acted with extreme indifference to the value of human life, Jackson could be convicted of capital murder. *Ibid.*

The upshot is that Jackson, who did not kill the clerk, might not have intended to do so either. See *Jackson v. Norris,* 2011 Ark. 49, at 10, 378S.W.3d 103 (Danielson, J., dissenting) ("[A]ny evidence of [Jackson's] intent to kill was severely lacking"). In that case, the Eighth Amendment simply forbids imposition of a life term without the possibility of parole. If, on remand, however, there is a finding that Jackson did intend to cause the clerk's death, the question remains open whether the Eighth Amendment prohibits the imposition of life without parole upon a juvenile in those circumstances as well. *Ante,* at 2469.

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

The parties agree that nearly 2,500 prisoners are presently serving life sentences without the possibility of parole for ***494** murders they committed before the age of 18. Brief for Petitioner in No. 10–9647, p. 62, n. 80 (Jackson Brief); Brief for Respondent in No. 10–9646, p. 30 (Alabama Brief). The Court accepts that over 2,000 of those prisoners received that sentence because it was mandated by a legislature. *Ante,* at 2471 – 2472, n. 10. And it recognizes that the Federal Government and most States impose such mandatory sentences. *Ante,* at 2470 – 2471. Put simply, if a 17–year–old is convicted of deliberately murdering an innocent victim, it is not " unusual" for the murderer to receive a mandatory sentence of life without parole. That reality should preclude finding that mandatory life imprisonment for juvenile killers violates the Eighth Amendment.

Our precedent supports this conclusion. When determining whether a punishment is cruel and unusual, this Court typically begins with " 'objective indicia of society's standards, as expressed in legislative enactments and state practice.' " *Graham v.* ****2478** *Florida,* 560 U.S. 48, 61, 130 S.Ct. 2011, 2022, 176 L.Ed.2d 825 (2010); see also, *e.g., Kennedy v. Louisiana,* 554 U.S. 407, 422, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Roper v. Simmons,* 543 U.S. 551, 564, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). We look to these "objective indicia" to ensure that we are not simply following our own subjective values or beliefs. *Gregg v. Georgia,* 428 U.S. 153, 173, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). Such tangible evidence of societal standards enables us to determine whether there is a "consensus against" a given sentencing practice. *Graham, supra,* at 61, 130 S.Ct., at 2022–2023. If there is, the punishment may be regarded as "unusual." But when, as here, most States formally require and frequently impose the punishment in question, there is no objective basis for that conclusion.

Our Eighth Amendment cases have also said that we should take guidance from "evolving standards of decency that mark the progress of a maturing society." *Ante,* at 2463 (quoting *Estelle v. Gamble,* 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); internal quotation marks omitted). Mercy toward the guilty can be a form of decency, and a maturing society may abandon harsh ***495** punishments that it comes to view as unnecessary or unjust. But decency is not the same as leniency. A decent society protects the innocent from violence. A mature society may determine that this requires removing those guilty of the most heinous murders from its midst, both as protection for its other members and as a concrete expression of its standards of decency. As judges we have no basis for deciding that progress toward greater decency can move only in the direction of easing sanctions on the guilty.

In this case, there is little doubt about the direction of society's evolution: For most of the 20th century, American sentencing practices emphasized rehabilitation of the offender and the availability of parole. But

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by the 1980's, outcry against repeat offenders, broad disaffection with the rehabilitative model, and other factors led many legislatures to reduce or eliminate the possibility of parole, imposing longer sentences in order to punish criminals and prevent them from committing more crimes. See, *e.g.,* Alschuler, The Changing Purposes of Criminal Punishment, 70 U. Chi. L.Rev. 1, 1–13 (2003); see generally Crime and Public Policy (J. Wilson & J. Petersilia eds. 2011). Statutes establishing life without parole sentences in particular became more common in the past quarter century. See *Baze v. Rees,* 553 U.S. 35, 78, and n. 10, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008) (Stevens, J., concurring in judgment). And the parties agree that most States have changed their laws relatively recently to expose teenage murderers to mandatory life without parole. Jackson Brief 54–55; Alabama Brief 4–5.

The Court attempts to avoid the import of the fact that so many jurisdictions have embraced the sentencing practice at issue by comparing these cases to the Court's prior Eighth Amendment cases. The Court notes that *Graham* found a punishment authorized in 39 jurisdictions unconstitutional, whereas the punishment it bans today is mandated in 10 fewer. *Ante,* at 2471. But *Graham* went to considerable lengths to show that although theoretically allowed in many ***496** States, the sentence at issue in that case was "exceedingly rare" in practice. 560 U.S., at 67, 130 S.Ct., at 2026. The Court explained that only 123 prisoners in the entire Nation were serving life without parole for nonhomicide crimes committed as juveniles, with more than half in a single State. It contrasted that with statistics showing nearly 400,000 juveniles were arrested for serious nonhomicide ****2479** offenses in a single year. Based on the sentence's rarity despite the many opportunities to impose it, *Graham* concluded that there was a national consensus against life without parole for juvenile nonhomicide crimes. *Id.,* at 64–67, 130 S.Ct., at 2024–2026.

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

The Court disregards these numbers, claiming that the prevalence of the sentence in question results from the number of statutes requiring its imposition. *Ante,* at 2471 – 2472, n. 10. True enough. The sentence at issue is statutorily mandated life without parole. Such a sentence can only result from statutes requiring its imposition. In *Graham* the Court relied on the low number of actual sentences to explain why the high number of statutes allowing such sentences was not dispositive. Here, the Court excuses the high number of actual sentences by citing the high number of statutes imposing ***497** it. To say that a sentence may be considered unusual *because* so many legislatures approve it stands precedent on its head. [2]

The Court also advances another reason for discounting the laws enacted by Congress and most state legislatures. Some of the jurisdictions that impose mandatory life without parole on juvenile murderers do so as a result of two statutes: one providing that juveniles charged with serious crimes may be tried as adults, and another generally mandating that those convicted of murder be imprisoned for life. According to the Court, our cases suggest that where the sentence results from the interaction of two such statutes, the legislature can be considered to have imposed the resulting sentences "inadvertent[ly]." *Ante,* at 2472 – 2474. The Court relies on *Graham* and *Thompson v. Oklahoma,* 487 U.S. 815, 826, n. 24, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion), for the proposition that these laws are therefore not valid evidence of society's views on the punishment at issue.

It is a fair question whether this Court should ever assume a legislature is so ignorant of its own laws that it does not understand that two of them interact ****2480** with each other, especially on an issue of such importance as the one before us. But in *Graham* and *Thompson* it was at least plausible as a practical matter. In *Graham*, the extreme rarity with ***498** which the sentence in question was imposed could suggest that legislatures did not really intend the inevitable result of the laws they passed. See 560 U.S., at 66–67, 130 S.Ct., at 2025–2026. In *Thompson,* the sentencing practice was even rarer—only 20 defendants had received it in the last century. 487 U.S., at 832, 108 S.Ct. 2687 (plurality opinion). Perhaps under those facts it could be argued that the legislature was not fully aware that a teenager could receive the particular sentence in question. But here the widespread and recent imposition of the sentence makes it implausible to characterize this sentencing practice as a collateral consequence of legislative ignorance. [3]

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

In the end, the Court does not actually conclude that mandatory life sentences for juvenile murderers are unusual. It instead claims that precedent "leads to" today's decision, primarily relying on *Graham* and *Roper*. *Ante,* at 2464. Petitioners argue that the reasoning of those cases "compels" finding in their favor. Jackson Brief 34. The Court is apparently unwilling to go so far, asserting only that precedent points in that direction. But today's decision invalidates the laws of dozens of legislatures and Congress. This Court is ***499** not easily led to such a result. See, *e.g., United States v. Harris,* 106 U.S. 629, 635, 1 S.Ct. 601, 27 L.Ed. 290 (1883) (courts must presume an Act of Congress is constitutional "unless the lack of constitutional authority ... is clearly demonstrated"). Because the Court does not rely on the Eighth Amendment's text or objective evidence of society's standards, its analysis of precedent alone must bear the "heavy burden [that] rests on those who would attack the judgment of the representatives of the people." *Gregg,* 428 U.S., at 175, 96 S.Ct. 2909. If the Court is unwilling to say that precedent compels today's decision, perhaps it should reconsider that decision.

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

That *Graham* does not imply today's result could not be clearer. In barring life ****2481** without parole for juvenile nonhomicide offenders, *Graham* stated that "[t]here is a line 'between homicide and other serious violent offenses against the individual.' " 560 U.S., at 69, 130 S.Ct., at 2027 (quoting *Kennedy,* 554 U.S., at 438, 128 S.Ct. 2641). The whole point of drawing a line between one issue and another is to say that they are different and should be treated differently. In other words, the two are in different categories. Which *Graham* also said: "defendants who do not kill, intend to kill, or foresee that life will be taken are *categorically* less deserving of the most serious forms of punishment than are murderers." 560 U.S., at 69, 130 S.Ct., at 2027 (emphasis added). Of course, to be especially clear that what is said about one issue does not apply to another, one could say that the two issues cannot be compared. *Graham* said that too: "Serious nonhomicide crimes ... cannot be compared to murder." ***500** *Ibid.* (internal quotation marks omitted). A case that expressly puts an issue in a different category from its own subject, draws a line between the two, and states that the two should not be compared, cannot fairly be said to control that issue.

Roper provides even less support for the Court's holding. In that case, the Court held that the death penalty could not be imposed for offenses committed by juveniles, no matter how serious their crimes. In doing so, *Roper* also set itself in a different category than these cases, by expressly invoking "special" Eighth Amendment analysis for death penalty cases. 543 U.S., at 568–569, 125 S.Ct. 1183. But more importantly, *Roper* reasoned that the death penalty was not needed to deter juvenile murderers in part because "life imprisonment without the possibility of parole" was available. *Id.,* at 572, 125 S.Ct. 1183. In a classic bait and switch, the Court now tells state legislatures that—*Roper* 's promise notwithstanding—they do not have power to guarantee that once someone commits a heinous murder, he will never do so again. It would be enough if today's decision proved Justice SCALIA's prescience in writing that *Roper* 's "reassurance ... gives little comfort." *Id.,* at 623, 125 S.Ct. 1183 (dissenting opinion). To claim that *Roper* actually "leads to" revoking its own reassurance surely goes too far.

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

appropriate punishment for crime. The Court's analysis focuses on the mandatory nature of the sentences in these cases. See *ante,* at 2466 – 2469. But then—although doing so is entirely unnecessary to the rule it announces—the Court states that even when a life without parole sentence is not mandatory, "we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Ante,* at 2469. Today's holding may be limited to mandatory sentences, but the Court has already announced that discretionary ***501** life without parole for juveniles should be "uncommon"—or, to use a common synonym, "unusual."

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

This process has no discernible end point—or at least none consistent with our Nation's legal traditions. *Roper* and *Graham* ****2482** attempted to limit their reasoning to the circumstances they addressed—*Roper* to the death penalty, and *Graham* to nonhomicide crimes. Having cast aside those limits, the Court cannot now offer a credible substitute, and does not even try. After all, the Court tells us, "none of what [*Graham*] said about children ... is crime-specific." *Ante,* at 2465. The principle behind today's decision seems to be only that because juveniles are different from adults, they must be sentenced differently. See *ante,* at 2467 – 2469. There is no clear reason that principle would not bar all mandatory sentences for juveniles, or any juvenile sentence as harsh as what a similarly situated adult would receive. Unless confined, the only stopping point for the Court's analysis would be never permitting juvenile offenders to be tried as adults. Learning that an Amendment that bars only "unusual" punishments requires the abolition of this uniformly established practice would be startling indeed.

* * *

It is a great tragedy when a juvenile commits murder —most of all for the innocent victims. But also for the murderer, whose life has gone so wrong so early. And for society as well, which has lost one or more of its members to deliberate violence, and must harshly punish another. In recent years, our society has moved toward requiring that the ***502** murderer, his age notwithstanding, be imprisoned for the remainder of his life. Members of this Court may disagree with that choice. Perhaps science and policy suggest society should show greater mercy to young killers, giving them a greater chance to reform themselves at the risk that they will kill again. See *ante,* at 2464 – 2466. But that is not our decision to make. Neither the text of the Constitution nor our precedent prohibits legislatures from requiring that juvenile murderers be sentenced to life without parole. I respectfully dissent.

Justice THOMAS, with whom Justice SCALIA joins, dissenting.

Today, the Court holds that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.' " *Ante,* at 2460. To reach that result, the Court relies on two lines of precedent. The first involves the categorical prohibition of certain punishments for specified classes of offenders. The second requires individualized sentencing in the capital punishment context. Neither line is consistent with the original understanding of the Cruel and Unusual Punishments Clause. The Court compounds its errors by combining these lines of precedent and extending them to reach a result that is even less legitimate than the foundation on which it is built. Because the Court upsets the legislatively enacted sentencing regimes of 29 jurisdictions without constitutional warrant, I respectfully dissent. [1]

I

The Court first relies on its cases "adopt[ing] categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty." *Ante,* at 2463. Of these categorical proportionality ***503** cases, the Court places particular emphasis on *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), and *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). In *Roper,* the Court held that the Constitution prohibits the execution of an offender who was under 18 at the time of his offense. ****2483** 543 U.S., at 578, 125 S.Ct. 1183. The *Roper* Court looked to, among other things, its own sense of parental intuition and "scientific and sociological

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studies" to conclude that offenders under the age of 18 "cannot with reliability be classified among the worst offenders." *Id.,* at 569, 125 S.Ct. 1183. In *Graham*, the Court relied on similar considerations to conclude that the Constitution prohibits a life-without-parole sentence for a nonhomicide offender who was under the age of 18 at the time of his offense. 560 U.S., at 74, 130 S.Ct., at 2030.

The Court now concludes that *mandatory* life-without-parole sentences for duly convicted juvenile murderers "contraven[e] *Graham* 's (and also *Roper* 's) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Ante,* at 2466. But neither *Roper* nor *Graham* held that specific procedural rules are required for sentencing juvenile homicide offenders. And, the logic of those cases should not be extended to create such a requirement.

The Eighth Amendment, made applicable to the States by the Fourteenth Amendment, provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." As I have previously explained, "the Cruel and Unusual Punishments Clause was originally understood as prohibiting torturous *methods* of punishment—specifically methods akin to those that had been considered cruel and unusual at the time the Bill of Rights was adopted." *Graham, supra,* at 99, 130 S.Ct., at 2044 (dissenting opinion) (internal quotation marks and citations omitted).[2] The Clause does not contain a "proportionality ***504** principle." *Ewing v. California,* 538 U.S. 11, 32, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003) (THOMAS, J., concurring in judgment); see generally *Harmelin v. Michigan,* 501 U.S. 957, 975–985, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (opinion of SCALIA, J.). In short, it does not authorize courts to invalidate any punishment they deem disproportionate to the severity of the crime or to a particular class of offenders. Instead, the clause "leaves the unavoidably moral question of who 'deserves' a particular nonprohibited method of punishment to the judgment of the legislatures that authorize the penalty." *Graham, supra,* at 101, 130 S.Ct., at 2045 (THOMAS, J., dissenting).

The legislatures of Arkansas and Alabama, like those of 27 other jurisdictions, *ante,* at 2470 – 2471, have determined that all offenders convicted of specified homicide offenses, whether juveniles or not, deserve a sentence of life in prison without the possibility of parole. Nothing in our Constitution authorizes this Court to supplant that choice.

II

To invalidate mandatory life-without-parole sentences for juveniles, the Court also ****2484** relies on its cases "prohibit[ing] mandatory imposition of capital punishment." *Ante,* at 2463. The Court reasons that, because *Graham* compared juvenile life-without-parole sentences to the death penalty, the "distinctive set of legal rules" that this Court has imposed in the capital punishment context, including the requirement of individualized sentencing, is "relevant" here. *Ante,* at 2466 – 2467. But even accepting an analogy between capital and juvenile life-without-parole sentences, this Court's cases prohibiting ***505** mandatory capital sentencing schemes have no basis in the original understanding of the Eighth Amendment, and, thus, cannot justify a prohibition of sentencing schemes that mandate life-without-parole sentences for juveniles.

A

In a line of cases following *Furman v. Georgia,* 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) *(per curiam),* this Court prohibited the mandatory imposition of the death penalty. See *Woodson v. North Carolina,* 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion); *Roberts v. Louisiana,* 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976) (same); *Sumner v. Shuman,* 483 U.S. 66, 107 S.Ct. 2716, 97 L.Ed.2d 56 (1987). *Furman* first announced the principle that States may not permit sentencers to exercise unguided discretion in imposing the death penalty. See generally 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346. In response to *Furman,* many States passed new laws that made the death penalty mandatory following conviction of specified crimes, thereby eliminating the offending discretion. See *Gregg v. Georgia,* 428 U.S. 153, 180–181, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). The Court invalidated those statutes in *Woodson, Roberts,* and *Sumner*. The Court reasoned that mandatory capital sentencing schemes were problematic, because they failed "to allow the particularized consideration" of "relevant facets of the character and record of the

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individual offender or the circumstances of the particular offense." *Woodson, supra,* at 303–304, 96 S.Ct. 2978 (plurality opinion). [3]

***506** In my view, *Woodson* and its progeny were wrongly decided. As discussed above, the Cruel and Unusual Punishments Clause, as originally understood, prohibits "torturous *methods* of punishment." See *Graham,* 560 U.S., at 99, 130 S.Ct., at 2044 (THOMAS, J., dissenting) (internal quotation marks omitted). It is not concerned with whether a particular lawful method of punishment —whether capital or noncapital—is imposed pursuant to a mandatory or discretionary sentencing regime. See *Gardner v. Florida,* 430 U.S. 349, 371, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977) (Rehnquist, J., dissenting) ("The prohibition of the Eighth Amendment relates to the character of the punishment, and not to the process by which it is ****2485** imposed"). In fact, "[i]n the early days of the Republic," each crime generally had a defined punishment "prescribed with specificity by the legislature." *United States v. Grayson,* 438 U.S. 41, 45, 98 S.Ct. 2610, 57 L.Ed.2d 582 (1978). Capital sentences, to which the Court analogizes, were treated no differently. "[M]andatory death sentences abounded in our first Penal Code" and were "common in the several States —both at the time of the founding and throughout the 19th century." *Harmelin, supra,* at 994–995, 111 S.Ct. 2680; see also *Woodson, supra,* at 289, 96 S.Ct. 2978 (plurality opinion) ("At the time the Eighth Amendment was adopted in 1791, the States uniformly followed the common-law practice of making death the exclusive and mandatory sentence for certain specified offenses"). Accordingly, the idea that the mandatory imposition of an otherwise-constitutional sentence renders that sentence cruel and unusual finds "no support in the text and history of the Eighth Amendment." *Harmelin, supra,* at 994, 111 S.Ct. 2680.

Moreover, mandatory death penalty schemes were "a perfectly reasonable legislative response to the concerns expressed in *Furman* " regarding unguided sentencing discretion, in that they "eliminat[ed] explicit jury discretion and treat[ed] all defendants equally." *Graham v. Collins,* 506 U.S. 461, 487, 113 S.Ct. 892, 122 L.Ed.2d 260 (1993) (THOMAS, J., concurring). And, as Justice White explained more than 30 years ago, "a State is not constitutionally forbidden to provide that the commission of certain crimes conclusively establishes that a criminal's character ***507** is such that he deserves death." *Roberts, supra,* at 358, 96 S.Ct. 3001 (dissenting opinion). Thus, there is no basis for concluding that a mandatory capital sentencing scheme is unconstitutional. Because the Court's cases requiring individualized sentencing in the capital context are wrongly decided, they cannot serve as a valid foundation for the novel rule regarding mandatory life-without-parole sentences for juveniles that the Court announces today.

B

In any event, this Court has already declined to extend its individualized-sentencing rule beyond the death penalty context. In *Harmelin,* the defendant was convicted of possessing a large quantity of drugs. 501 U.S., at 961, 111 S.Ct. 2680 (opinion of SCALIA, J.). In accordance with Michigan law, he was sentenced to a mandatory term of life in prison without the possibility of parole. *Ibid.* Citing the same line of death penalty precedents on which the Court relies today, the defendant argued that his sentence, due to its mandatory nature, violated the Cruel and Unusual Punishments Clause. *Id.,* at 994–995, 111 S.Ct. 2680 (opinion of the Court).

The Court rejected that argument, explaining that "[t]here can be no serious contention ... that a sentence which is not otherwise cruel and unusual becomes so simply because it is 'mandatory.' " *Id.,* at 995, 111 S.Ct. 2680. In so doing, the Court refused to analogize to its death penalty cases. The Court noted that those cases had "repeatedly suggested that there is no comparable [individualized-sentencing] requirement outside the capital context, because of the qualitative difference between death and all other penalties." *Ibid.* The Court observed that, "even where the difference" between a sentence of life without parole and other sentences of imprisonment "is the greatest," such a sentence "cannot be compared with death." *Id.,* at 996, 111 S.Ct. 2680. Therefore, the Court concluded that the line of cases requiring individualized sentencing had been drawn at capital cases, and that there was "no basis for extending it further." *Ibid.*

****2486** ***508** *Harmelin* 's reasoning logically extends to these cases. Obviously, the younger the defendant, "the great[er]" the difference between a sentence of life without parole and other terms of imprisonment. *Ibid.* But under *Harmelin* 's rationale, the defendant's age is immaterial to the Eighth Amendment analysis. Thus, the

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result in today's cases should be the same as that in *Harmelin*. Petitioners, like the defendant in *Harmelin,* were not sentenced to death. Accordingly, this Court's cases "creating and clarifying the individualized capital sentencing doctrine" do not apply. *Id.,* at 995, 111 S.Ct. 2680 (internal quotation marks omitted).

Nothing about our Constitution, or about the qualitative difference between any term of imprisonment and death, has changed since *Harmelin* was decided 21 years ago. What *has* changed (or, better yet, "evolved") is this Court's ever-expanding line of categorical proportionality cases. The Court now uses *Roper* and *Graham* to jettison *Harmelin* 's clear distinction between capital and noncapital cases and to apply the former to noncapital juvenile offenders.[4] The Court's decision to do so is even less supportable than the precedents used to reach it.

III

As THE CHIEF JUSTICE notes, *ante,* at 2481 – 2482 (dissenting opinion), the Court lays the groundwork for future incursions on the States' authority to sentence criminals. In its categorical proportionality cases, the Court has considered " 'objective indicia of society's standards, as expressed in legislative enactments and state practice' to determine whether ***509** there is a national consensus against the sentencing practice at issue." *Graham,* 560 U.S., at 61, 130 S.Ct.at 2022 (quoting *Roper,* 543 U.S., at 563, 125 S.Ct. 1183). In *Graham*, for example, the Court looked to "[a]ctual sentencing practices" to conclude that there was a national consensus against life-without-parole sentences for juvenile nonhomicide offenders. 560 U.S., at 62–65, 130 S.Ct., at 2023–2025; see also *Roper, supra,* at 564–565, 125 S.Ct. 1183; *Atkins v. Virginia,* 536 U.S. 304, 316, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002).

Today, the Court makes clear that, even though its decision leaves intact the discretionary imposition of life-without-parole sentences for juvenile homicide offenders, it "think[s] appropriate occasions for sentencing juveniles to [life without parole] will be uncommon." *Ante,* at 2469. That statement may well cause trial judges to shy away from imposing life without parole sentences and embolden appellate judges to set them aside when they are imposed. And, when a future petitioner seeks a categorical ban on sentences of life without parole for juvenile homicide offenders, this Court will most assuredly look to the "actual sentencing practices" triggered by these cases. The Court has, thus, gone from "merely" divining the societal consensus of today to shaping the societal consensus of tomorrow.

* * *

Today's decision invalidates a constitutionally permissible sentencing system based on nothing more than the Court's belief that "its own sense of morality ... ****2487** pre-empts that of the people and their representatives." *Graham, supra,* at 124, 130 S.Ct., at 2058 (THOMAS, J., dissenting). Because nothing in the Constitution grants the Court the authority it exercises today, I respectfully dissent.

Justice ALITO, with whom Justice SCALIA joins, dissenting.

The Court now holds that Congress and the legislatures of the 50 States are prohibited by the Constitution from identifying ***510** any category of murderers under the age of 18 who must be sentenced to life imprisonment without parole. Even a 17 $^{1}/_{2}$–year–old who sets off a bomb in a crowded mall or guns down a dozen students and teachers is a "child" and must be given a chance to persuade a judge to permit his release into society. Nothing in the Constitution supports this arrogation of legislative authority.

The Court long ago abandoned the original meaning of the Eighth Amendment, holding instead that the prohibition of "cruel and unusual punishment" embodies the "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles,* 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion); see also *Graham v. Florida,* 560 U.S. 48, 58, 130 S.Ct. 2011, 2020–2021, 176 L.Ed.2d 825 (2010); *Kennedy v. Louisiana,* 554 U.S. 407, 419, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Roper v. Simmons,* 543 U.S. 551, 560–561, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); *Atkins v. Virginia,* 536 U.S. 304, 311–312, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002); *Hudson v. McMillian,* 503 U.S. 1, 8, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992); *Ford v. Wainwright,* 477 U.S. 399, 406, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986); *Rhodes v. Chapman,* 452 U.S. 337, 346, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981); *Estelle v. Gamble,* 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Both the provenance and philosophical basis for

this standard were problematic from the start. (Is it true that our society is inexorably evolving in the direction of greater and greater decency? Who says so, and how did this particular philosophy of history find its way into our fundamental law? And in any event, aren't elected representatives more likely than unaccountable judges to reflect changing societal standards?) But at least at the start, the Court insisted that these "evolving standards" represented something other than the personal views of five Justices. See *Rummel v. Estelle,* 445 U.S. 263, 275, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980) (explaining that "the Court's Eighth Amendment judgments should neither be nor appear to be merely the subjective views of individual Justices"). Instead, the Court looked for objective indicia of our society's moral standards and the trajectory of our moral "evolution." See *id.,* at 274–275, 100 S.Ct. 1133 (emphasizing that " 'judgment should be informed by objective factors to the maximum possible extent' " (quoting ***511** *Coker v. Georgia,* 433 U.S. 584, 592, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (plurality opinion))).

In this search for objective indicia, the Court toyed with the use of public opinion polls, see *Atkins, supra,* at 316, n. 21, 122 S.Ct. 2242, and occasionally relied on foreign law, see *Roper v. Simmons, supra,* at 575, 125 S.Ct. 1183; *Enmund v. Florida,* 458 U.S. 782, 796, n. 22, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982); *Thompson v. Oklahoma,* 487 U.S. 815, 830–831, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988); *Coker,* 433 U.S., at 596, n. 10, 97 S.Ct. 2861 (plurality opinion).

In the main, however, the staple of this inquiry was the tallying of the positions taken by state legislatures. Thus, in *Coker,* which held that the Eighth Amendment prohibits the imposition of the death penalty ****2488** for the rape of an adult woman, the Court noted that only one State permitted that practice. *Id.,* at 595–596, 97 S.Ct. 2861. In *Enmund,* where the Court held that the Eighth Amendment forbids capital punishment for ordinary felony murder, both federal law and the law of 28 of the 36 States that authorized the death penalty at the time rejected that punishment. 458 U.S., at 789, 102 S.Ct. 3368.

While the tally in these early cases may be characterized as evidence of a national consensus, the evidence became weaker and weaker in later cases. In *Atkins,* which held that low-IQ defendants may not be sentenced to death, the Court found an anti-death-penalty consensus even though more than half of the States that allowed capital punishment permitted the practice. See 536 U.S., at 342, 122 S.Ct. 2242 (SCALIA, J., dissenting) (observing that less than half of the 38 States that permit capital punishment have enacted legislation barring execution of the mentally retarded). The Court attempted to get around this problem by noting that there was a pronounced trend against this punishment. See *id.,* at 313–315, 122 S.Ct. 2242 (listing 18 States that had amended their laws since 1986 to prohibit the execution of mentally retarded persons).

The importance of trend evidence, however, was not long lived. In *Roper,* which outlawed capital punishment for defendants between the ages of 16 and 18, the lineup of the ***512** States was the same as in *Atkins,* but the trend in favor of abolition—five States during the past 15 years—was less impressive. *Roper,* 543 U.S., at 564–565, 125 S.Ct. 1183. Nevertheless, the Court held that the absence of a strong trend in support of abolition did not matter. See *id.,* at 566, 125 S.Ct. 1183 ("Any difference between this case and *Atkins* with respect to the pace of abolition is thus counterbalanced by the consistent direction of the change").

In *Kennedy v. Louisiana,* the Court went further. Holding that the Eighth Amendment prohibits capital punishment for the brutal rape of a 12–year–old girl, the Court disregarded a nascent legislative trend *in favor of permitting capital punishment* for this narrowly defined and heinous crime. See 554 U.S., at 433, 128 S.Ct. 2641 (explaining that, although "the total number of States to have made child rape a capital offense ... is six," "[t]his is not an indication of a trend or change in direction comparable to the one supported by data in *Roper* "). The Court felt no need to see whether this trend developed further—perhaps because true moral evolution can lead in only one direction. And despite the argument that the rape of a young child may involve greater depravity than some murders, the Court proclaimed that homicide is categorically different from all (or maybe almost all) other offenses. See *id.,* at 438, 128 S.Ct. 2641 (stating that nonhomicide crimes, including child rape, "may be devastating in their harm ... but in terms of moral depravity and of the injury to the person and to the public, they cannot be compared to murder in their severity and irrevocability" (internal quotation marks omitted)). As the Court had previously put it, "death is different." *Ford, supra,* at 411, 106 S.Ct. 2595 (plurality opinion).

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Two years after *Kennedy,* in *Graham v. Florida,* any pretense of heeding a legislative consensus was discarded. In *Graham*, federal law and the law of 37 States and the District of Columbia permitted a minor to be sentenced to life imprisonment without parole for nonhomicide crimes, but ***513** despite this unmistakable evidence of a national consensus, the ****2489** Court held that the practice violates the Eighth Amendment. See 560 U.S., at 97, 130 S.Ct., at 2043–2044 (THOMAS, J., dissenting). The Court, however, drew a distinction between minors who murder and minors who commit other heinous offenses, so at least in that sense the principle that death is different lived on.

Today, that principle is entirely put to rest, for here we are concerned with the imposition of a term of imprisonment on offenders who kill. The two (carefully selected) cases before us concern very young defendants, and despite the brutality and evident depravity exhibited by at least one of the petitioners, it is hard not to feel sympathy for a 14–year–old sentenced to life without the possibility of release. But no one should be confused by the particulars of the two cases before us. The category of murderers that the Court delicately calls "children" (murderers under the age of 18) consists overwhelmingly of young men who are fast approaching the legal age of adulthood. Evan Miller and Kuntrell Jackson are anomalies; much more typical are murderers like Christopher Simmons, who committed a brutal thrill-killing just seven months shy of his 18th birthday. *Roper, supra,* at 556, 125 S.Ct. 1183.

Seventeen-year-olds commit a significant number of murders every year, [1] and some of these crimes are incredibly brutal. Many of these murderers are at least as mature as the average 18–year–old. See *Thompson,* 487 U.S., at 854, 108 S.Ct. 2687 (O'Connor, J., concurring in judgment) (noting that maturity may "vary widely among different individuals of the same age"). Congress and the legislatures of 43 States have concluded that at least some of these murderers should be sentenced to prison without parole, and 28 States and the ***514** Federal Government have decided that for some of these offenders life without parole should be mandatory. See *ante,* at 2471 – 2472, and nn. 9–10. The majority of this Court now overrules these legislative judgments. [2]

It is true that, at least for now, the Court apparently permits a trial judge to make an individualized decision that a particular minor convicted of murder should be sentenced to life without parole, but do not expect this possibility to last very long. The majority goes out of its way to express the view that the imposition of a sentence of life without parole on a "child" (*i.e.,* a murderer under the age of 18) should be uncommon. Having held in *Graham* that a trial judge with discretionary sentencing authority may not impose a sentence of life without parole on a minor ****2490** who has committed a nonhomicide offense, the Justices in the majority may soon extend that holding to minors who commit murder. We will see.

What today's decision shows is that our Eighth Amendment cases are no longer tied to any objective indicia of society's standards. Our Eighth Amendment case law is now entirely inward looking. After entirely disregarding objective ***515** indicia of our society's standards in *Graham*, the Court now extrapolates from *Graham*. Future cases may extrapolate from today's holding, and this process may continue until the majority brings sentencing practices into line with whatever the majority views as truly evolved standards of decency.

The Eighth Amendment imposes certain limits on the sentences that may be imposed in criminal cases, but for the most part it leaves questions of sentencing policy to be determined by Congress and the state legislatures —and with good reason. Determining the length of imprisonment that is appropriate for a particular offense and a particular offender inevitably involves a balancing of interests. If imprisonment does nothing else, it removes the criminal from the general population and prevents him from committing additional crimes in the outside world. When a legislature prescribes that a category of killers must be sentenced to life imprisonment, the legislature, which presumably reflects the views of the electorate, is taking the position that the risk that these offenders will kill again outweighs any countervailing consideration, including reduced culpability due to immaturity or the possibility of rehabilitation. When the majority of this Court countermands that democratic decision, what the majority is saying is that members of society must be exposed to the risk that these convicted murderers, if released from custody, will murder again.

Unless our cases change course, we will continue to march toward some vision of evolutionary culmination that the Court has not yet disclosed. The Constitution does not authorize us to take the country on this journey.

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All Citations

567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407, 12 Cal. Daily Op. Serv. 7078, 2012 Daily Journal D.A.R. 8634, 23 Fla. L. Weekly Fed. S 455, 78 A.L.R. Fed. 2d 547

Footnotes

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

1 Jackson was ineligible for the death penalty under *Thompson v. Oklahoma,* 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion), which held that capital punishment of offenders under the age of 16 violates the Eighth Amendment.

2 For the first time in this Court, Arkansas contends that Jackson's sentence was not mandatory. On its view, state law then in effect allowed the trial judge to suspend the life-without-parole sentence and commit Jackson to the Department of Human Services for a "training-school program," at the end of which he could be placed on probation. Brief for Respondent in No. 10–9647, pp. 36–37 (hereinafter Arkansas Brief) (citing Ark.Code Ann. § 12–28–403(b)(2) (1999)). But Arkansas never raised that objection in the state courts, and they treated Jackson's sentence as mandatory. We abide by that interpretation of state law. See, *e.g., Mullaney v. Wilbur,* 421 U.S. 684, 690–691, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975).

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

4 The three dissenting opinions here each take issue with some or all of those precedents. See *post,* at 2479 – 2480 (opinion of ROBERTS, C.J.); *post,* at 2482 – 2485 (opinion of THOMAS, J.); *post,* at 2487 – 2489 (opinion of ALITO, J.). That is not surprising: Their authors (and joiner) each dissented from some or all of those precedents. See, *e.g., Kennedy,* 554 U.S., at 447, 128 S.Ct. 2641 (ALITO, J., joined by ROBERTS, C.J., and SCALIA and THOMAS, JJ., dissenting); *Roper,* 543 U.S., at 607, 125 S.Ct. 1183 (SCALIA, J., joined by, inter alia, THOMAS, J., dissenting); *Atkins,* 536 U.S., at 337, 122 S.Ct. 2242 (SCALIA, J., joined by, inter alia, THOMAS, J., dissenting); *Thompson,* 487 U.S., at 859, 108 S.Ct. 2687 (SCALIA, J., dissenting); *Graham v. Collins,* 506 U.S. 461, 487, 113 S.Ct. 892, 122 L.Ed.2d 260 (1993) (THOMAS, J., concurring) (contending that *Woodson* was wrongly decided). In particular, each disagreed with the majority's reasoning in *Graham*, which is the foundation stone of our analysis. See *Graham,* 560 U.S., at 86, 130 S.Ct., at 2036 (ROBERTS, C.J., concurring in judgment); *id.,* at 97, 130 S.Ct., at 2043–2056 (THOMAS, J., joined by SCALIA and ALITO, JJ., dissenting); *id.,* at ——, 130 S.Ct., at 2058 (ALITO, J., dissenting). While the dissents seek to relitigate old Eighth Amendment battles, repeating many arguments this Court has previously (and often) rejected, we apply the logic of *Roper, Graham*, and our individualized sentencing decisions to these two cases.

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

6 In discussing *Graham*, the dissents essentially ignore all of this reasoning. See *post,* at 2478 – 2480 (opinion of ROBERTS, C.J.); *post,* at 2488 – 2489 (opinion of ALITO, J.). Indeed, THE CHIEF JUSTICE ignores the points made in his own concurring opinion. The only part of *Graham* that the dissents see fit to note is the distinction it drew between homicide and nonhomicide offenses. See *post,* at 2480 – 2481 (opinion of ROBERTS, C.J.); *post,* at 2488 – 2489 (opinion

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of ALITO, J.). But contrary to the dissents' charge, our decision today retains that distinction: *Graham* established one rule (a flat ban) for nonhomicide offenses, while we set out a different one (individualized sentencing) for homicide offenses.

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

8 Given our holding, and the dissents' competing position, we see a certain irony in their repeated references to 17–year–olds who have committed the "most heinous" offenses, and their comparison of those defendants to the 14–year–olds here. See *post,* at 2477 (opinion of ROBERTS, C.J.) (noting the "17–year old [who] is convicted of deliberately murdering an innocent victim"); *post,* at 2478 ("the most heinous murders"); *post,* at 2480 ("the worst types of murder"); *post,* at 2489 (opinion of ALITO, J.) (warning the reader not to be "confused by the particulars" of these two cases); *post,* at 2489 (discussing the "17 $^{1}/_{2}$–year–old who sets off a bomb in a crowded mall"). Our holding requires factfinders to attend to exactly such circumstances—to take into account the differences among defendants and crimes. By contrast, the sentencing schemes that the dissents find permissible altogether preclude considering these factors.

9 The States note that 26 States and the Federal Government make life without parole the mandatory (or mandatory minimum) punishment for some form of murder, and would apply the relevant provision to 14–year–olds (with many applying it to even younger defendants). See Alabama Brief 17–18. In addition, life without parole is mandatory for older juveniles in Louisiana (age 15 and up) and Texas (age 17). See La. Child. Code Ann., Arts. 857(A), (B) (West Supp. 2012); La.Rev.Stat. Ann. §§ 14:30(C), 14:30.1(B) (West Supp.2012); Tex. Fam. Code Ann. §§ 51.02(2)(A), 54.02(a)(2)(A) (West Supp.2011); Tex. Penal Code Ann. § 12.31(a) (West 2011). In many of these jurisdictions, life without parole is the mandatory punishment only for aggravated forms of murder. That distinction makes no difference to our analysis. We have consistently held that limiting a mandatory death penalty law to particular kinds of murder cannot cure the law's "constitutional vice" of disregarding the "circumstances of the particular offense and the character and propensities of the offender." *Roberts v. Louisiana,* 428 U.S. 325, 333, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976) (plurality opinion); see *Sumner v. Shuman,* 483 U.S. 66, 107 S.Ct. 2716, 97 L.Ed.2d 56 (1987). The same analysis applies here, for the same reasons.

10 In assessing indicia of societal standards, *Graham* discussed "actual sentencing practices" in addition to legislative enactments, noting how infrequently sentencers imposed the statutorily available penalty. 560 U.S., at 62, 130 S.Ct., at 2023. Here, we consider the constitutionality of mandatory sentencing schemes—which by definition remove a judge's or jury's discretion—so no comparable gap between legislation and practice can exist. Rather than showing whether sentencers consider life without parole for juvenile homicide offenders appropriate, the number of juveniles serving this sentence, see *post,* at 2477, 2478 – 2479 (ROBERTS, C.J., dissenting), merely reflects the number who have committed homicide in mandatory-sentencing jurisdictions. For the same reason, THE CHIEF JUSTICE's comparison of ratios in these cases and *Graham* carries little weight. He contrasts the number of mandatory life-without-parole sentences for juvenile murderers, relative to the number of juveniles arrested for murder, with "the corresponding number" of sentences in *Graham* (*i.e.,* the number of life-without-parole sentences for juveniles who committed serious nonhomicide crimes, as compared to arrests for those crimes). *Post,* at 2461 – 2462. But because the mandatory nature of the sentences here necessarily makes them more common, THE CHIEF JUSTICE's figures do not "correspon[d]" at all. The higher ratio is mostly a function of removing the sentencer's discretion.

Where mandatory sentencing does not itself account for the number of juveniles serving life-without-parole terms, the evidence we have of practice supports our holding. Fifteen jurisdictions make life without parole discretionary for juveniles. See Alabama Brief 25 (listing 12 States); Cal.Penal Code Ann. § 190.5(b) (West 2008); Ind.Code § 35–50–2–3(b) (2011); N.M. Stat. Ann. §§ 31–18–13(B), 31–18–14, 31–18–15.2 (2010). According to available data, only about 15% of all juvenile life-without-parole sentences come from those 15 jurisdictions, while 85% come from the 29 mandatory ones. See Tr. of Oral Arg. in No. 10–9646, p. 19; Human Rights Watch, State Distribution of Youth Offenders Serving Juvenile Life Without Parole (JLWOP), Oct. 2, 2009, online at http://www. hrw.org/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole (as visited June 21, 2012, and available in Clerk of Court's case file). That figure indicates that when given the choice, sentencers impose life without parole on children relatively rarely. And contrary to THE CHIEF JUSTICE's argument, see *post,* at 2462, n. 2, we have held that when judges and juries do not often choose to impose a sentence, it at least should not be mandatory. See *Woodson v. North Carolina,* 428 U.S. 280, 295–296, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion) (relying on the infrequency with which juries imposed the death penalty when given discretion to hold that its mandatory imposition violates the Eighth Amendment).

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11 In response, THE CHIEF JUSTICE complains: “To say that a sentence may be considered unusual *because* so many legislatures approve it stands precedent on its head.” *Post,* at 2479. To be clear: That description in no way resembles our opinion. We hold that the sentence violates the Eighth Amendment because, as we have exhaustively shown, it conflicts with the fundamental principles of *Roper, Graham*, and our individualized sentencing cases. We then show why the number of States imposing this punishment does not preclude our holding, and note how its mandatory nature (in however many States adopt it) makes use of actual sentencing numbers unilluminating.

12 THE CHIEF JUSTICE attempts to distinguish *Graham* on this point, arguing that there “the extreme rarity with which the sentence in question was imposed could suggest that legislatures did not really intend the inevitable result of the laws they passed.” *Post,* at 2480. But neither *Graham* nor *Thompson* suggested such reasoning, presumably because the timeframe makes it difficult to comprehend. Those cases considered what legislators intended when they enacted, at different moments, separate juvenile-transfer and life-without-parole provisions—by definition, before they knew or could know how many juvenile life-without-parole sentences would result.

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

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

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

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

1 *Graham* stated that 123 prisoners were serving life without parole for nonhomicide offenses committed as juveniles, while in 2007 alone 380,480 juveniles were arrested for serious nonhomicide crimes. 560 U.S., at 64–65, 130 S.Ct., at 2024–2025. I use 2,000 as the number of prisoners serving mandatory life without parole sentences for murders committed as juveniles, because all seem to accept that the number is at least that high. And the same source *Graham* used reports that 1,170 juveniles were arrested for murder and nonnegligent homicide in 2009. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, C. Puzzanchera & B. Adams, Juvenile Arrests 2009, p. 4 (Dec. 2011).

2 The Court's reference to discretionary sentencing practices is a distraction. See *ante,* at 2471 – 2472, n. 10. The premise of the Court's decision is that mandatory sentences are categorically different from discretionary ones. So under the Court's own logic, whether discretionary sentences are common or uncommon has nothing to do with whether mandatory sentences are unusual. In any event, if analysis of discretionary sentences were relevant, it would not provide objective support for today's decision. The Court states that “about 15% of all juvenile life-without-parole sentences”—meaning nearly 400 sentences—were imposed at the discretion of a judge or jury. *Ante,* at 2471 – 2472, n. 10. Thus the number of discretionary life without parole sentences for juvenile murderers, relative to the number of juveniles arrested for murder, is about 1,000 times higher than the corresponding number in *Graham.*

3 The Court claims that I “take issue with some or all of these precedents” and “seek to relitigate” them. *Ante,* at 2464, n. 4. Not so: Applying this Court's cases exactly as they stand, I do not believe they support the Court's decision in these cases.

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

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2 Neither the Court nor petitioners argue that petitioners' sentences would have been among "the 'modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted.' " *Graham,* 560 U.S., at 106, n. 3, 130 S.Ct., at 2048, n. 3 (THOMAS, J., dissenting) (quoting *Ford v. Wainwright,* 477 U.S. 399, 405, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986)). Nor could they. Petitioners were 14 years old at the time they committed their crimes. When the Bill of Rights was ratified, 14–year–olds were subject to trial and punishment as adult offenders. See *Roper v. Simmons,* 543 U.S. 551, 609, n. 1, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (SCALIA, J., dissenting). Further, mandatory death sentences were common at that time. See *Harmelin v. Michigan,* 501 U.S. 957, 994–995, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991). It is therefore implausible that a 14–year–old's mandatory prison sentence—of any length, with or without parole—would have been viewed as cruel and unusual.

3 The Court later extended *Woodson,* requiring that capital defendants be permitted to present, and sentencers in capital cases be permitted to consider, any relevant mitigating evidence, including the age of the defendant. See, *e.g., Lockett v. Ohio,* 438 U.S. 586, 597–608, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion); *Eddings v. Oklahoma,* 455 U.S. 104, 110–112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); *Skipper v. South Carolina,* 476 U.S. 1, 4–5, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986); *Johnson v. Texas,* 509 U.S. 350, 361–368, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993). Whatever the validity of the requirement that sentencers be permitted to consider all mitigating evidence when deciding whether to impose a *nonmandatory* capital sentence, the Court certainly was wrong to prohibit *mandatory* capital sentences. See *Graham v. Collins,* 506 U.S. 461, 488–500, 113 S.Ct. 892, 122 L.Ed.2d 260 (1993) (THOMAS, J., concurring).

4 In support of its decision not to apply *Harmelin* to juvenile offenders, the Court also observes that " '[o]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.' " *Ante,* at 2470 (quoting *J.D.B. v. North Carolina,* 564 U.S. 261, 274, 131 S.Ct. 2394, 2404, 180 L.Ed.2d 310 (2011); some internal quotation marks omitted). That is no doubt true as a general matter, but it does not justify usurping authority that rightfully belongs to the people by imposing a constitutional rule where none exists.

1 Between 2002 and 2010, 17–year–olds committed an average combined total of 424 murders and nonnegligent homicides per year. See Dept. of Justice, Bureau of Justice Statistics, § 4, Arrests, Age of persons arrested (Table 4.7).

2 As the Court noted in *Mistretta v. United States,* 488 U.S. 361, 366, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989), Congress passed the Sentencing Reform Act of 1984 to eliminate discretionary sentencing and parole because it concluded that these practices had led to gross abuses. The Senate Report for the 1984 bill rejected what it called the "outmoded rehabilitation model" for federal criminal sentencing. S.Rep. No. 98–225, p. 38 (1983). According to the Report, "almost everyone involved in the criminal justice system now doubts that rehabilitation can be induced reliably in a prison setting, and it is now quite certain that no one can really detect whether or when a prisoner is rehabilitated." *Ibid.* The Report also "observed that the indeterminate-sentencing system had two 'unjustifi[ed]', and 'shameful' consequences. The first was the great variation among sentences imposed by the different judges upon similarly situated offenders. The second was uncertainty as to the time the offender would spend in prison. Each was a serious impediment to an evenhanded and effective operation of the criminal justice system." *Mistretta, supra,* at 366, 109 S.Ct. 647 (quoting S.Rep. No. 98–225, pp. 38, 65 (citation omitted)).

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136 S.Ct. 718
Supreme Court of the United States

Henry MONTGOMERY, Petitioner
v.
LOUISIANA.

No. 14–280.
|
Argued Oct. 13, 2015.
|
Decided Jan. 25, 2016.
|
As Revised Jan. 27, 2016.

Synopsis
Background: State prisoner, who had been convicted of murder and sentenced to life without parole for a crime he committed as a juvenile, moved to correct an illegal sentence. The Louisiana District Court for the 19th Judicial District, Parish of East Baton Rouge, No. 48–489, entered an order denying the motion. Prisoner applied for a supervisory writ. The Louisiana Supreme Court, 141 So.3d 264, entered an order denying the application. Certiorari was granted.

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

[1] Supreme Court has jurisdiction to review a state collateral review court's failure to give retroactive effect to a new rule which the Constitution requires to be applied retroactively;

[2] federal Constitution requires state collateral review courts to give retroactive effect to new substantive rules of federal constitutional law under the *Teague* framework; and

[3] Supreme Court's decision in *Miller v. Alabama*, prohibiting under Eighth Amendment mandatory life sentences without parole for juvenile offenders, announced a new substantive constitutional rule that was retroactive on state collateral review, abrogating *Martin v. Symmes*, 782 F.3d 939, *Johnson v. Ponton*, 780 F.3d 219, *Chambers v. State*, 831 N.W.2d 311, and *State v. Tate*, 130 So.3d 829.

Reversed and remanded.

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

Justice Thomas filed a dissenting opinion.

***723** *Syllabus* [*]

Petitioner Montgomery was 17 years old in 1963, when he killed a deputy sheriff in Louisiana. The jury returned a verdict of "guilty without capital punishment," which carried an automatic sentence of life without parole. Nearly 50 years after Montgomery was taken into custody, this Court decided that mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on " 'cruel and unusual punishments.' " *Miller v. Alabama,* 567 U.S. ——, ——, 132 S.Ct. 2455, 2460, 183 L.Ed.2d 407. Montgomery sought state collateral relief, arguing that *Miller* rendered his mandatory life-without-parole sentence illegal. The trial court denied his motion, and his application for a supervisory writ was denied by the Louisiana Supreme Court, which had previously held that *Miller* does not have retroactive effect in cases on state collateral review.

Held :

1. This Court has jurisdiction to decide whether the Louisiana Supreme Court correctly refused to give retroactive effect to *Miller*. Pp. 727 – 733.

(a) *Teague v. Lane,* 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334, a federal habeas case, set forth a framework for the retroactive application of a new constitutional rule to convictions that were final when the new rule was announced. While the Court held that new constitutional rules of criminal procedure are generally not retroactive, it recognized that courts must give retroactive effect to new watershed procedural rules and to substantive rules of constitutional law. Substantive constitutional rules include "rules forbidding criminal punishment of certain primary conduct" and "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense," *Penry v. Lynaugh,* 492 U.S. 302, 330, 109 S.Ct. 2934, 106 L.Ed.2d 256. Court-

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appointed *amicus* contends that because *Teague* was an interpretation of the federal habeas statute, not a constitutional command, its retroactivity holding has no application in state collateral review proceedings. However, neither *Teague* nor *Danforth v. Minnesota,* 552 U.S. 264, 128 S.Ct. 1029, 169 L.Ed.2d 859—which concerned only *Teague*'s general retroactivity bar for new constitutional rules of criminal procedure—had occasion to address whether States are required as a constitutional matter to give retroactive effect to new substantive rules. Pp. 727 – 729.

(b) When a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. This conclusion is established by precedents addressing the nature of substantive rules, their differences from procedural rules, and their history of retroactive application. As *Teague, supra,* at 292, 312, 109 S.Ct. 1060, and *Penry, supra,* at 330, 109 S.Ct. 2934, indicate, substantive rules set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful. In contrast, where procedural error has infected a trial, a conviction or sentence may still be accurate and the defendant's continued confinement may still be lawful, see *Schriro v. Summerlin,* 542 U.S. 348, 352–353, 124 S.Ct. 2519, 159 L.Ed.2d 442; for this ***724** reason, a trial conducted under a procedure found unconstitutional in a later case does not automatically invalidate a defendant's conviction or sentence. The same possibility of a valid result does not exist where a substantive rule has eliminated a State's power to proscribe the defendant's conduct or impose a given punishment. See *United States v. United States Coin & Currency,* 401 U.S. 715, 724, 91 S.Ct. 1041, 28 L.Ed.2d 434. By holding that new substantive rules are, indeed, retroactive, *Teague* continued a long tradition of recognizing that substantive rules must have retroactive effect regardless of when the defendant's conviction became final; for a conviction under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment," *Ex parte Siebold,* 100 U.S. 371, 376–377, 25 L.Ed. 717. The same logic governs a challenge to a punishment that the Constitution deprives States of authority to impose, *Penry, supra,* at 330, 109 S.Ct. 2934. It follows that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced. This Court's precedents may not directly control the question here, but they bear on the necessary analysis, for a State that may not constitutionally insist that a prisoner remain in jail on federal habeas review may not constitutionally insist on the same result in its own postconviction proceedings. Pp. 729 – 733.

2. *Miller*'s prohibition on mandatory life without parole for juvenile offenders announced a new substantive rule that, under the Constitution, is retroactive in cases on state collateral review. The "foundation stone" for *Miller*'s analysis was the line of precedent holding certain punishments disproportionate when applied to juveniles, 567 U.S., at ––––, n. 4, 132 S.Ct., at 2464, n. 4. Relying on *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1, and *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825, *Miller* recognized that children differ from adults in their "diminished culpability and greater prospects for reform," 567 U.S., at ––––, 132 S.Ct., at 2464, and that these distinctions "diminish the penological justifications" for imposing life without parole on juvenile offenders, *id.,* at ––––, 132 S.Ct., at 2465. Because *Miller* determined that sentencing a child to life without parole is excessive for all but " 'the rare juvenile offender whose crime reflects irreparable corruption,' " *id.,* at ––––, 132 S.Ct., at 2469, it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—*i.e.,* juvenile offenders whose crimes reflect the transient immaturity of youth, *Penry,* 492 U.S., at 330, 109 S.Ct. 2934. *Miller* therefore announced a substantive rule of constitutional law, which, like other substantive rules, is retroactive because it " 'necessarily carr[ies] a significant risk that a defendant' "—here, the vast majority of juvenile offenders —" 'faces a punishment that the law cannot impose upon him.' " *Schriro, supra,* at 352, 124 S.Ct. 2519.

A State may remedy a *Miller* violation by extending parole eligibility to juvenile offenders. This would neither impose an onerous burden on the States nor disturb the finality of state convictions. And it would afford someone like Montgomery, who submits that he has evolved from a troubled, misguided youth to a model member of the prison community, the opportunity to demonstrate the truth of *Miller*'s central intuition—that children who

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commit even heinous crimes are capable of change. Pp. 732 – 736.

2013–1163 (La.6/20/14), 141 So.3d 264, reversed and remanded.

***725** KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C.J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion.

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Opinion

Justice KENNEDY delivered the opinion of the Court.

[1] This is another case in a series of decisions involving the sentencing of offenders who were juveniles when their crimes were committed. In *Miller v. Alabama,* 567 U.S. ——, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the Court held that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing. In the wake of *Miller*, the question has arisen whether its holding is retroactive to juvenile offenders whose convictions and sentences were final when *Miller* was decided. Courts have reached different conclusions on this point. Compare, *e.g., Martin v. Symmes,* 782 F.3d 939, 943 (C.A.8 2015); *Johnson v. Ponton,* 780 F.3d 219, 224–226 (C.A.4 2015); *Chambers v. State,* 831 N.W.2d 311, 331 (Minn.2013); and *State v. Tate,* 2012–2763, p. 17 (La.11/5/13), 130 So.3d 829, 841, with *Diatchenko v. District Attorney for Suffolk Dist.,* 466 Mass. 655, 661–667, 1 N.E.3d 270, 278–282 (2013); *Aiken v. Byars,* 410 S.C. 534, 548, 765 S.E.2d 572, 578 (2014); *State v. Mares,* 2014 WY 126, ¶¶ 47–63, 335 P.3d 487, 504–508; and *People v. Davis,* 2014 IL 115595, ¶ 41, 379 Ill.Dec. 381, 6 N.E.3d 709, 722. Certiorari was granted in this case to resolve the question.

I

Petitioner is Henry Montgomery. In 1963, Montgomery killed Charles Hurt, a deputy sheriff in East Baton Rouge, Louisiana. Montgomery was 17 years old at the time of the crime. He was convicted of murder and sentenced to death, but the Louisiana Supreme Court reversed his conviction after finding that public prejudice had prevented a fair trial. *State v. Montgomery,* 248 La. 713, 181 So.2d 756, 762 (1966).

Montgomery was retried. The jury returned a verdict of "guilty without capital punishment." ***726** *State v. Montgomery,* 257 La. 461, 242 So.2d 818 (1970). Under Louisiana law, this verdict required the trial court to impose a sentence of life without parole. The sentence was automatic upon the jury's verdict, so Montgomery had no opportunity to present mitigation evidence to justify a less severe sentence. That evidence might have included Montgomery's young age at the time of the crime; expert testimony regarding his limited capacity for foresight, self-discipline, and judgment; and his potential for rehabilitation. Montgomery, now 69 years old, has spent almost his entire life in prison.

[2] **[3]** **[4]** Almost 50 years after Montgomery was first taken into custody, this Court decided *Miller v. Alabama,* 567 U.S. ——, 132 S.Ct. 2455, 183 L.Ed.2d 407. *Miller* held that mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's

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prohibition on " 'cruel and unusual punishments.' " *Id.,* at ––––, 132 S.Ct., at 2460. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence," mandatory life without parole "poses too great a risk of disproportionate punishment." *Id.,* at ––––, 132 S.Ct., at 2469. *Miller* required that sentencing courts consider a child's "diminished culpability and heightened capacity for change" before condemning him or her to die in prison. *Ibid.* Although *Miller* did not foreclose a sentencer's ability to impose life without parole on a juvenile, the Court explained that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect " 'irreparable corruption.' " *Ibid.* (quoting *Roper v. Simmons,* 543 U.S. 551, 573, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)).

After this Court issued its decision in *Miller*, Montgomery sought collateral review of his mandatory life-without-parole sentence. In Louisiana there are two principal mechanisms for collateral challenge to the lawfulness of imprisonment. Each begins with a filing in the trial court where the prisoner was convicted and sentenced. La.Code Crim. Proc. Ann., Arts. 882, 926 (West 2008). The first procedure permits a prisoner to file an application for postconviction relief on one or more of seven grounds set forth in the statute. Art. 930.3. The Louisiana Supreme Court has held that none of those grounds provides a basis for collateral review of sentencing errors. See *State ex rel. Melinie v. State,* 93–1380 (La.1/12/96), 665 So.2d 1172 (*per curiam*). Sentencing errors must instead be raised through Louisiana's second collateral review procedure.

This second mechanism allows a prisoner to bring a collateral attack on his or her sentence by filing a motion to correct an illegal sentence. See Art. 882. Montgomery invoked this procedure in the East Baton Rouge Parish District Court.

[5] **[6]** The state statute provides that "[a]n illegal sentence may be corrected at any time by the court that imposed the sentence." *Ibid.* An illegal sentence "is primarily restricted to those instances in which the *term* of the prisoner's sentence is not authorized by the statute or statutes which govern the penalty" for the crime of conviction. *State v. Mead,* 2014–1051, p. 3 (La.App. 4 Cir. 4/22/15), 165 So.3d 1044, 1047; see also *State v. Alexander,* 2014–0401 (La.11/7/14), 152 So.3d 137 (*per curiam*). In the ordinary course Louisiana courts will not consider a challenge to a disproportionate sentence on collateral review; rather, as a general matter, it appears that prisoners must raise Eighth Amendment sentencing challenges on direct review. See *State v. Gibbs,* 620 So.2d 296, 296–297 (La.App.1993); *Mead,* 165 So.3d, at 1047.

[7] Louisiana's collateral review courts will, however, consider a motion to correct ***727** an illegal sentence based on a decision of this Court holding that the Eighth Amendment to the Federal Constitution prohibits a punishment for a type of crime or a class of offenders. When, for example, this Court held in *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), that the Eighth Amendment bars life-without-parole sentences for juvenile nonhomicide offenders, Louisiana courts heard *Graham* claims brought by prisoners whose sentences had long been final. See, *e.g., State v. Shaffer,* 2011–1756, pp. 1–4 (La.11/23/11), 77 So.3d 939, 940–942 (*per curiam*) (considering motion to correct an illegal sentence on the ground that *Graham* rendered illegal a life-without-parole sentence for a juvenile nonhomicide offender). Montgomery's motion argued that *Miller* rendered his mandatory life-without-parole sentence illegal.

The trial court denied Montgomery's motion on the ground that *Miller* is not retroactive on collateral review. Montgomery then filed an application for a supervisory writ. The Louisiana Supreme Court denied the application. 2013–1163 (6/20/14), 141 So.3d 264. The court relied on its earlier decision in *State v. Tate,* 2012–2763, 130 So.3d 829, which held that *Miller* does not have retroactive effect in cases on state collateral review. Chief Justice Johnson and Justice Hughes dissented in *Tate*, and Chief Justice Johnson again noted her dissent in Montgomery's case.

This Court granted Montgomery's petition for certiorari. The petition presented the question "whether *Miller* adopts a new substantive rule that applies retroactively on collateral review to people condemned as juveniles to die in prison." Pet. for Cert. i. In addition, the Court directed the parties to address the following question: "Do we have jurisdiction to decide whether the Supreme Court of Louisiana correctly refused to give retroactive effect in this case to our decision in *Miller*?" 575 U.S. ––––, 135 S.Ct. 1546, 191 L.Ed.2d 635 (2015).

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II

The parties agree that the Court has jurisdiction to decide this case. To ensure this conclusion is correct, the Court appointed Richard D. Bernstein as *amicus curiae* to brief and argue the position that the Court lacks jurisdiction. He has ably discharged his assigned responsibilities.

Amicus argues that a State is under no obligation to give a new rule of constitutional law retroactive effect in its own collateral review proceedings. As those proceedings are created by state law and under the State's plenary control, *amicus* contends, it is for state courts to define applicable principles of retroactivity. Under this view, the Louisiana Supreme Court's decision does not implicate a federal right; it only determines the scope of relief available in a particular type of state proceeding—a question of state law beyond this Court's power to review.

[8] **[9]** If, however, the Constitution establishes a rule and requires that the rule have retroactive application, then a state court's refusal to give the rule retroactive effect is reviewable by this Court. Cf. *Griffith v. Kentucky,* 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) (holding that on direct review, a new constitutional rule must be applied retroactively "to all cases, state or federal"). States may not disregard a controlling, constitutional command in their own courts. See *Martin v. Hunter's Lessee,* 1 Wheat. 304, 340–341, 344, 4 L.Ed. 97 (1816); see also *Yates v. Aiken,* 484 U.S. 211, 218, 108 S.Ct. 534, 98 L.Ed.2d 546 (1988) (when a State has not "placed any limit on the issues that it will entertain in collateral proceedings ... it has a duty to grant the relief that federal ***728** law requires"). *Amicus*' argument therefore hinges on the premise that this Court's retroactivity precedents are not a constitutional mandate.

[10] **[11]** **[12]** **[13]** Justice O'Connor's plurality opinion in *Teague v. Lane,* 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), set forth a framework for retroactivity in cases on federal collateral review. Under *Teague,* a new constitutional rule of criminal procedure does not apply, as a general matter, to convictions that were final when the new rule was announced. *Teague* recognized, however, two categories of rules that are not subject to its general retroactivity bar. First, courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include "rules forbidding criminal punishment of certain primary conduct," as well as "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Penry v. Lynaugh,* 492 U.S. 302, 330, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989); see also *Teague, supra,* at 307, 109 S.Ct. 1060. Although *Teague* describes new substantive rules as an exception to the bar on retroactive application of procedural rules, this Court has recognized that substantive rules "are more accurately characterized as ... not subject to the bar." *Schriro v. Summerlin,* 542 U.S. 348, 352, n. 4, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004). Second, courts must give retroactive effect to new " ' "watershed rules of criminal procedure" implicating the fundamental fairness and accuracy of the criminal proceeding.' " *Id.,* at 352, 124 S.Ct. 2519; see also *Teague,* 489 U.S., at 312–313, 109 S.Ct. 1060.

[14] It is undisputed, then, that *Teague* requires the retroactive application of new substantive and watershed procedural rules in federal habeas proceedings. *Amicus,* however, contends that *Teague* was an interpretation of the federal habeas statute, not a constitutional command; and so, the argument proceeds, *Teague*'s retroactivity holding simply has no application in a State's own collateral review proceedings.

To support this claim, *amicus* points to language in *Teague* that characterized the Court's task as " 'defin[ing] the scope of the writ.' " *Id.,* at 308, 109 S.Ct. 1060 (quoting *Kuhlmann v. Wilson,* 477 U.S. 436, 447, 106 S.Ct. 2616, 91 L.Ed.2d 364 (1986) (plurality opinion)); see also 489 U.S., at 317, 109 S.Ct. 1060 (White, J., concurring in part and concurring in judgment) ("If we are wrong in construing the reach of the habeas corpus statutes, Congress can of course correct us ..."); *id.,* at 332, 109 S.Ct. 1060 (Brennan, J., dissenting) ("No new facts or arguments have come to light suggesting that our [past] reading of the federal habeas statute ... was plainly mistaken").

[15] In addition, *amicus* directs us to *Danforth v. Minnesota,* 552 U.S. 264, 128 S.Ct. 1029, 169 L.Ed.2d 859 (2008), in which a majority of the Court held that *Teague* does not preclude state courts from giving retroactive effect to a broader set of new constitutional rules than *Teague* itself required. 552 U.S., at 266, 128 S.Ct. 1029. The *Danforth* majority concluded that *Teague*'s general rule of nonretroactivity for new constitutional rules of criminal procedure "was an exercise of this Court's power to interpret the federal habeas statute." 552 U.S., at 278,

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128 S.Ct. 1029. Since *Teague*'s retroactivity bar "limit[s] only the scope of *federal* habeas relief," the *Danforth* majority reasoned, States are free to make new procedural rules retroactive on state collateral review. 552 U.S., at 281–282, 128 S.Ct. 1029.

Amicus, however, reads too much into these statements. Neither *Teague* nor *Danforth* had reason to address whether ***729** States are required as a constitutional matter to give retroactive effect to new substantive or watershed procedural rules. *Teague* originated in a federal, not state, habeas proceeding; so it had no particular reason to discuss whether any part of its holding was required by the Constitution in addition to the federal habeas statute. And *Danforth* held only that *Teague*'s general rule of nonretroactivity was an interpretation of the federal habeas statute and does not prevent States from providing greater relief in their own collateral review courts. The *Danforth* majority limited its analysis to *Teague*'s general retroactivity bar, leaving open the question whether *Teague*'s two exceptions are binding on the States as a matter of constitutional law. 552 U.S., at 278, 128 S.Ct. 1029; see also *id.,* at 277, 128 S.Ct. 1029 ("[T]he case before us now does not involve either of the '*Teague* exceptions' ").

[16] In this case, the Court must address part of the question left open in *Danforth*. The Court now holds that when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. *Teague*'s conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts. This holding is limited to *Teague*'s first exception for substantive rules; the constitutional status of *Teague*'s exception for watershed rules of procedure need not be addressed here.

This Court's precedents addressing the nature of substantive rules, their differences from procedural rules, and their history of retroactive application establish that the Constitution requires substantive rules to have retroactive effect regardless of when a conviction became final.

The category of substantive rules discussed in *Teague* originated in Justice Harlan's approach to retroactivity. *Teague* adopted that reasoning. See 489 U.S., at 292, 312, 109 S.Ct. 1060 (discussing *Mackey v. United States,* 401 U.S. 667, 692, 91 S.Ct. 1160, 28 L.Ed.2d 404 (1971) (opinion concurring in judgments in part and dissenting in part); and *Desist v. United States,* 394 U.S. 244, 261, n. 2, 89 S.Ct. 1030, 22 L.Ed.2d 248 (1969) (Harlan, J., dissenting)). Justice Harlan defined substantive constitutional rules as "those that place, as a matter of constitutional interpretation, certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe." *Mackey, supra,* at 692, 91 S.Ct. 1160. In *Penry v. Lynaugh,* decided four months after *Teague,* the Court recognized that "the first exception set forth in *Teague* should be understood to cover not only rules forbidding criminal punishment of certain primary conduct but also rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." 492 U.S., at 330, 109 S.Ct. 2934. *Penry* explained that Justice Harlan's first exception spoke "in terms of substantive categorical guarantees accorded by the Constitution, regardless of the procedures followed." *Id.,* at 329, 109 S.Ct. 2934. Whether a new rule bars States from proscribing certain conduct or from inflicting a certain punishment, "[i]n both cases, the Constitution itself deprives the State of the power to impose a certain penalty." *Id.,* at 330, 109 S.Ct. 2934.

[17] **[18]** Substantive rules, then, set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting ***730** conviction or sentence is, by definition, unlawful. Procedural rules, in contrast, are designed to enhance the accuracy of a conviction or sentence by regulating "the *manner of determining* the defendant's culpability." *Schriro,* 542 U.S., at 353, 124 S.Ct. 2519; *Teague, supra,* at 313, 109 S.Ct. 1060. Those rules "merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise." *Schriro, supra,* at 352, 124 S.Ct. 2519. Even where procedural error has infected a trial, the resulting conviction or sentence may still be accurate; and, by extension, the defendant's continued confinement may still be lawful. For this reason, a trial conducted under a procedure found to be unconstitutional in a later case does not, as a general matter, have the automatic consequence of invalidating a defendant's conviction or sentence.

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[19] The same possibility of a valid result does not exist where a substantive rule has eliminated a State's power to proscribe the defendant's conduct or impose a given punishment. "[E]ven the use of impeccable factfinding procedures could not legitimate a verdict" where "the conduct being penalized is constitutionally immune from punishment." *United States v. United States Coin & Currency,* 401 U.S. 715, 724, 91 S.Ct. 1041, 28 L.Ed.2d 434 (1971). Nor could the use of flawless sentencing procedures legitimate a punishment where the Constitution immunizes the defendant from the sentence imposed. "No circumstances call more for the invocation of a rule of complete retroactivity." *Ibid.*

By holding that new substantive rules are, indeed, retroactive, *Teague* continued a long tradition of giving retroactive effect to constitutional rights that go beyond procedural guarantees. See *Mackey, supra,* at 692–693, 91 S.Ct. 1160 (opinion of Harlan, J.) ("[T]he writ has historically been available for attacking convictions on [substantive] grounds"). Before *Brown v. Allen,* 344 U.S. 443, 73 S.Ct. 397, 97 L.Ed. 469 (1953), "federal courts would never consider the merits of a constitutional claim if the habeas petitioner had a fair opportunity to raise his arguments in the original proceeding." *Desist,* 394 U.S., at 261, 89 S.Ct. 1030 (Harlan, J., dissenting). Even in the pre–1953 era of restricted federal habeas, however, an exception was made "when the habeas petitioner attacked the constitutionality of the state statute under which he had been convicted. Since, in this situation, the State had no power to proscribe the conduct for which the petitioner was imprisoned, it could not constitutionally insist that he remain in jail." *Id.,* at 261, n. 2, 89 S.Ct. 1030 (Harlan, J., dissenting) (citation omitted).

[20] **[21]** In *Ex parte Siebold,* 100 U.S. 371, 25 L.Ed. 717 (1880), the Court addressed why substantive rules must have retroactive effect regardless of when the defendant's conviction became final. At the time of that decision, "[m]ere error in the judgment or proceedings, under and by virtue of which a party is imprisoned, constitute[d] no ground for the issue of the writ." *Id.*, at 375. Before *Siebold,* the law might have been thought to establish that so long as the conviction and sentence were imposed by a court of competent jurisdiction, no habeas relief could issue. In *Siebold,* however, the petitioners attacked the judgments on the ground that they had been convicted under unconstitutional statutes. The Court explained that if "this position is well taken, it affects the foundation of the whole proceedings." *Id.,* at 376. A conviction under an unconstitutional law

> "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in ***731** the sense that there may be no means of reversing it. But ... if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." *Id.,* at 376–377.

As discussed, the Court has concluded that the same logic governs a challenge to a punishment that the Constitution deprives States of authority to impose. *Penry, supra,* at 330, 109 S.Ct. 2934; see also Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 151 (1970) ("Broadly speaking, the original sphere for collateral attack on a conviction was where the tribunal lacked jurisdiction either in the usual sense or because the statute under which the defendant had been prosecuted was unconstitutional or because the sentence was one the court could not lawfully impose" (footnotes omitted)). A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. See *Siebold,* 100 U.S., at 376. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.

Siebold and the other cases discussed in this opinion, of course, do not directly control the question the Court now answers for the first time. These precedents did not involve a state court's postconviction review of a conviction or sentence and so did not address whether the Constitution requires new substantive rules to have retroactive effect in cases on state collateral review. These decisions, however, have important bearing on the analysis necessary in this case.

[22] **[23]** In support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief, the *Siebold* Court explained that "[a]n unconstitutional law is void, and is as no law." *Ibid.* A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids. To conclude

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otherwise would undercut the Constitution's substantive guarantees. Writing for the Court in *United States Coin & Currency,* Justice Harlan made this point when he declared that "[n]o circumstances call more for the invocation of a rule of complete retroactivity" than when "the conduct being penalized is constitutionally immune from punishment." 401 U.S., at 724, 91 S.Ct. 1041. *United States Coin & Currency* involved a case on direct review; yet, for the reasons explained in this opinion, the same principle should govern the application of substantive rules on collateral review. As Justice Harlan explained, where a State lacked the power to proscribe the habeas petitioner's conduct, "it could not constitutionally insist that he remain in jail." *Desist, supra,* at 261, n. 2, 89 S.Ct. 1030 (dissenting opinion).

[24] **[25]** If a State may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own postconviction proceedings. Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court "has a duty to grant the relief that federal law requires." *Yates,* 484 U.S., at 218, 108 S.Ct. 534. Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to ***732** give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.

[26] As a final point, it must be noted that the retroactive application of substantive rules does not implicate a State's weighty interests in ensuring the finality of convictions and sentences. *Teague* warned against the intrusiveness of "*continually* forc[ing] the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." 489 U.S., at 310, 109 S.Ct. 1060. This concern has no application in the realm of substantive rules, for no resources marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State of power to impose. See *Mackey,* 401 U.S., at 693, 91 S.Ct. 1160 (opinion of Harlan, J.) ("There is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose").

[27] In adjudicating claims under its collateral review procedures a State may not deny a controlling right asserted under the Constitution, assuming the claim is properly presented in the case. Louisiana follows these basic Supremacy Clause principles in its postconviction proceedings for challenging the legality of a sentence. The State's collateral review procedures are open to claims that a decision of this Court has rendered certain sentences illegal, as a substantive matter, under the Eighth Amendment. See, *e.g., State v. Dyer,* 2011–1758, pp. 1–2 (La.11/23/11), 77 So.3d 928, 928–929 (*per curiam*) (considering claim on collateral review that this Court's decision in *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825, rendered petitioner's life-without-parole sentence illegal). Montgomery alleges that *Miller* announced a substantive constitutional rule and that the Louisiana Supreme Court erred by failing to recognize its retroactive effect. This Court has jurisdiction to review that determination.

III

[28] This leads to the question whether *Miller*'s prohibition on mandatory life without parole for juvenile offenders indeed did announce a new substantive rule that, under the Constitution, must be retroactive.

As stated above, a procedural rule "regulate[s] only the *manner of determining* the defendant's culpability." *Schriro,* 542 U.S., at 353, 124 S.Ct. 2519. A substantive rule, in contrast, forbids "criminal punishment of certain primary conduct" or prohibits "a certain category of punishment for a class of defendants because of their status or offense." *Penry,* 492 U.S., at 330, 109 S.Ct. 2934; see also *Schriro, supra,* at 353, 124 S.Ct. 2519 (A substantive rule "alters the range of conduct or the class of persons that the law punishes"). Under this standard, and for the reasons explained below, *Miller* announced a substantive rule that is retroactive in cases on collateral review.

[29] **[30]** **[31]** The "foundation stone" for *Miller*'s analysis was this Court's line of precedent holding certain punishments disproportionate when applied to juveniles. 567 U.S., at ——, n. 4, 132 S.Ct., at 2464, n. 4. Those cases include *Graham v. Florida, supra,* which held that the Eighth Amendment bars life without parole for juvenile nonhomicide offenders, and *Roper v. Simmons,* 543 U.S.

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551, 125 S.Ct. 1183, 161 L.Ed.2d 1, which held that the Eighth Amendment prohibits capital punishment for those under the age of 18 at the time of their crimes. Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of ***733** determining a defendant's sentence. See *Graham, supra,* at 59, 130 S.Ct. 2011 ("The concept of proportionality is central to the Eighth Amendment"); see also *Weems v. United States,* 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910); *Harmelin v. Michigan,* 501 U.S. 957, 997–998, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (KENNEDY, J., concurring in part and concurring in judgment).

[32] *Miller* took as its starting premise the principle established in *Roper* and *Graham* that "children are constitutionally different from adults for purposes of sentencing." 567 U.S., at ——, 132 S.Ct., at 2464 (citing *Roper, supra,* at 569–570, 125 S.Ct. 1183; and *Graham, supra,* at 68, 130 S.Ct. 2011). These differences result from children's "diminished culpability and greater prospects for reform," and are apparent in three primary ways:

> "First, children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking. Second, children 'are more vulnerable to negative influences and outside pressures,' including from their family and peers; they have limited 'control over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievable depravity.' " 567 U.S., at ——, 132 S.Ct., at 2464 (quoting *Roper, supra,* at 569–570, 125 S.Ct. 1183; alterations, citations, and some internal quotation marks omitted).

As a corollary to a child's lesser culpability, *Miller* recognized that "the distinctive attributes of youth diminish the penological justifications" for imposing life without parole on juvenile offenders. 567 U.S., at ——, 132 S.Ct., at 2465. Because retribution "relates to an offender's blameworthiness, the case for retribution is not as strong with a minor as with an adult." *Ibid.* (quoting *Graham, supra,* at 71, 130 S.Ct. 2011; internal quotation marks omitted). The deterrence rationale likewise does not suffice, since "the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." 567 U.S., at —— – ——, 132 S.Ct., at 2465 (internal quotation marks omitted). The need for incapacitation is lessened, too, because ordinary adolescent development diminishes the likelihood that a juvenile offender " 'forever will be a danger to society.' " *Id.,* at ——, 132 S.Ct., at 2465 (quoting *Graham,* 560 U.S., at 72, 130 S.Ct. 2011). Rehabilitation is not a satisfactory rationale, either. Rehabilitation cannot justify the sentence, as life without parole "forswears altogether the rehabilitative ideal." 567 U.S., at ——, 132 S.Ct., at 2465 (quoting *Graham, supra,* at 74, 130 S.Ct. 2011).

[33] These considerations underlay the Court's holding in *Miller* that mandatory life-without-parole sentences for children "pos[e] too great a risk of disproportionate punishment." 567 U.S., at ——, 132 S.Ct., at 2469. *Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Ibid.* The Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of "children's diminished culpability and heightened capacity for change," *Miller* made clear that "appropriate occasions ***734** for sentencing juveniles to this harshest possible penalty will be uncommon." *Ibid.*

Miller, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of "the distinctive attributes of youth." *Id.,* at ——, 132 S.Ct., at 2465. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects " 'unfortunate yet transient immaturity.' " *Id.,* at ——, 132 S.Ct., at 2469 (quoting *Roper,* 543 U.S., at 573, 125 S.Ct. 1183). Because *Miller* determined that sentencing a child to life without parole is excessive for all but " 'the rare juvenile offender whose crime reflects irreparable corruption,' " 567 U.S., at ——, 132 S.Ct., at 2469 (quoting *Roper, supra,* at 573, 125 S.Ct. 1183), it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—that is, juvenile offenders whose crimes reflect the transient immaturity of youth. *Penry,* 492 U.S., at 330, 109 S.Ct. 2934. As a result, *Miller* announced a substantive rule of

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constitutional law. Like other substantive rules, *Miller* is retroactive because it " 'necessarily carr[ies] a significant risk that a defendant' "—here, the vast majority of juvenile offenders—" 'faces a punishment that the law cannot impose upon him.' " *Schriro,* 542 U.S., at 352, 124 S.Ct. 2519 (quoting *Bousley v. United States,* 523 U.S. 614, 620, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998)).

Louisiana nonetheless argues that *Miller* is procedural because it did not place any punishment beyond the State's power to impose; it instead required sentencing courts to take children's age into account before condemning them to die in prison. In support of this argument, Louisiana points to *Miller*'s statement that the decision "does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Miller, supra,* at ––––, 132 S.Ct., at 2471. *Miller*, it is true, did not bar a punishment for all juvenile offenders, as the Court did in *Roper* or *Graham. Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. For that reason, *Miller* is no less substantive than are *Roper* and *Graham.* Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to life without parole. After *Miller*, it will be the rare juvenile offender who can receive that same sentence. The only difference between *Roper* and *Graham,* on the one hand, and *Miller*, on the other hand, is that *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption. The fact that life without parole could be a proportionate sentence for the latter kind of juvenile offender does not mean that all other children imprisoned under a disproportionate sentence have not suffered the deprivation of a substantive right.

To be sure, *Miller*'s holding has a procedural component. *Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence. See 567 U.S., at ––––, 132 S.Ct., at 2471. Louisiana contends that because *Miller* requires this process, it must have set forth a procedural rule. This argument, however, conflates a procedural requirement necessary to implement a substantive guarantee with a ***735** rule that "regulate[s] only the *manner of determining* the defendant's culpability." *Schriro, supra,* at 353, 124 S.Ct. 2519. There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. See *Mackey,* 401 U.S., at 692, n. 7, 91 S.Ct. 1160 (opinion of Harlan, J.) ("Some rules may have both procedural and substantive ramifications, as I have used those terms here"). For example, when an element of a criminal offense is deemed unconstitutional, a prisoner convicted under that offense receives a new trial where the government must prove the prisoner's conduct still fits within the modified definition of the crime. In a similar vein, when the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class. See, *e.g., Atkins v. Virginia,* 536 U.S. 304, 317, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (requiring a procedure to determine whether a particular individual with an intellectual disability "fall[s] within the range of [intellectually disabled] offenders about whom there is a national consensus" that execution is impermissible). Those procedural requirements do not, of course, transform substantive rules into procedural ones.

The procedure *Miller* prescribes is no different. A hearing where "youth and its attendant characteristics" are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. 567 U.S., at ––––, 132 S.Ct., at 2460. The hearing does not replace but rather gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.

[34] Louisiana suggests that *Miller* cannot have made a constitutional distinction between children whose crimes reflect transient immaturity and those whose crimes reflect irreparable corruption because *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility. That this finding is not required, however, speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee. When a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems. See *Ford v. Wainwright,* 477 U.S. 399, 416–417, 106 S.Ct. 2595, 91 L.Ed.2d 335

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(1986) ("[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences"). Fidelity to this important principle of federalism, however, should not be construed to demean the substantive character of the federal right at issue. That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment.

For this reason, the death penalty cases Louisiana cites in support of its position are inapposite. See, *e.g., Beard v. Banks,* 542 U.S. 406, 408, 124 S.Ct. 2504, 159 L.Ed.2d 494 (2004) (holding nonretroactive the rule that forbids instructing a jury to disregard mitigating factors not found by a unanimous vote); *O'Dell v. Netherland,* 521 U.S. 151, 153, 117 S.Ct. 1969, 138 L.Ed.2d 351 (1997) (holding nonretroactive the rule providing that, if the prosecutor ***736** cites future dangerousness, the defendant may inform the jury of his ineligibility for parole); *Sawyer v. Smith,* 497 U.S. 227, 229, 110 S.Ct. 2822, 111 L.Ed.2d 193 (1990) (holding nonretroactive the rule that forbids suggesting to a capital jury that it is not responsible for a death sentence). Those decisions altered the processes in which States must engage before sentencing a person to death. The processes may have had some effect on the likelihood that capital punishment would be imposed, but none of those decisions rendered a certain penalty unconstitutionally excessive for a category of offenders.

The Court now holds that *Miller* announced a substantive rule of constitutional law. The conclusion that *Miller* states a substantive rule comports with the principles that informed *Teague*. *Teague* sought to balance the important goals of finality and comity with the liberty interests of those imprisoned pursuant to rules later deemed unconstitutional. *Miller*'s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.

[35] Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. See, *e.g.,* Wyo. Stat. Ann. § 6–10–301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity —and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.

Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change.

Petitioner has discussed in his submissions to this Court his evolution from a troubled, misguided youth to a model member of the prison community. Petitioner states that he helped establish an inmate boxing team, of which he later became a trainer and coach. He alleges that he has contributed his time and labor to the prison's silkscreen department and that he strives to offer advice and serve as a role model to other inmates. These claims have not been tested or even addressed by the State, so the Court does not confirm their accuracy. The petitioner's submissions are relevant, however, as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation.

* * *

Henry Montgomery has spent each day of the past 46 years knowing he was condemned to die in prison. Perhaps it can be established that, due to exceptional circumstances, this fate was a just and proportionate punishment for the crime he committed as a 17–year–old boy. In light of what this Court has said in *Roper, Graham,* and *Miller* about how children are constitutionally different from adults in their level of culpability, however, prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it ***737** did not, their hope for some years of life outside prison walls must be restored.

The judgment of the Supreme Court of Louisiana is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

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It is so ordered.

Justice SCALIA, with whom Justice THOMAS and Justice ALITO join, dissenting.

The Court has no jurisdiction to decide this case, and the decision it arrives at is wrong. I respectfully dissent.

I. Jurisdiction

Louisiana postconviction courts willingly entertain Eighth Amendment claims but, with limited exceptions, apply the law as it existed when the state prisoner was convicted and sentenced. Shortly after this Court announced *Teague v. Lane,* 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), the Louisiana Supreme Court adopted *Teague*'s framework to govern the provision of postconviction remedies available to *state* prisoners in its *state* courts as a matter of *state* law. *Taylor v. Whitley,* 606 So.2d 1292 (La.1992). In doing so, the court stated that it was "not bound" to adopt that federal framework. *Id.,* at 1296. One would think, then, that it is none of our business that a 69–year–old Louisiana prisoner's state-law motion to be resentenced according to *Miller v. Alabama,* 567 U.S. ——, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), a case announced almost half a century after his sentence was final, was met with a firm rejection on state-law grounds by the Louisiana Supreme Court. But a majority of this Court, eager to reach the merits of this case, resolves the question of our jurisdiction by deciding that the Constitution *requires* state postconviction courts to adopt *Teague*'s exception for so-called "substantive" new rules and to provide state-law remedies for the violations of those rules to prisoners whose sentences long ago became final. This conscription into federal service of state postconviction courts is nothing short of astonishing.

A

Teague announced that federal courts could not grant habeas corpus to overturn state convictions on the basis of a "new rule" of constitutional law—meaning one announced after the convictions became final—*unless* that new rule was a "substantive rule" or a "watershed rul[e] of criminal procedure." 489 U.S., at 311, 109 S.Ct. 1060. The *Teague* prescription followed from Justice Harlan's view of the "retroactivity problem" detailed in his separate opinion in *Desist v. United States,* 394 U.S. 244, 256, 89 S.Ct. 1030, 22 L.Ed.2d 248 (1969) (dissenting opinion), and later in *Mackey v. United States,* 401 U.S. 667, 675, 91 S.Ct. 1160, 28 L.Ed.2d 404 (1971) (opinion concurring in judgment in part and dissenting in part). Placing the rule's first exception in context requires more analysis than the majority has applied.

The Court in the mid–20th century was confounded by what Justice Harlan called the "swift pace of constitutional change," *Pickelsimer v. Wainwright,* 375 U.S. 2, 4, 84 S.Ct. 80, 11 L.Ed.2d 41 (1963) (dissenting opinion), as it vacated and remanded many cases in the wake of *Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Justice Harlan called upon the Court to engage in "informed and deliberate consideration" of "whether the States are constitutionally required to apply [*Gideon*'s] new rule retrospectively, which may well require the reopening of cases long since finally adjudicated in accordance with then applicable decisions of this Court." *Pickelsimer, supra,* at 3, 84 S.Ct. 80. The Court answered that call in ***738** *Linkletter v. Walker,* 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965). *Linkletter* began with the premise "that we are neither required to apply, nor prohibited from applying, a decision retrospectively" and went on to adopt an equitable rule-by-rule approach to retroactivity, considering "the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." *Id.,* at 629, 85 S.Ct. 1731.

The *Linkletter* framework proved unworkable when the Court began applying the rule-by-rule approach not only to cases on collateral review but also to cases on direct review, rejecting any distinction "between convictions now final" and "convictions at various stages of trial and direct review." *Stovall v. Denno,* 388 U.S. 293, 300, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967). It was this rejection that drew Justice Harlan's reproach in *Desist* and later in *Mackey*. He urged that "all 'new' rules of constitutional law must, at a minimum, be applied to all those cases which are still subject to direct review by this Court at the time the 'new' decision is handed down." *Desist, supra,* at 258, 89 S.Ct. 1030 (dissenting opinion). "Simply fishing one case from the stream of appellate review, using it as a vehicle for pronouncing new constitutional

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standards, and then permitting a stream of similar cases subsequently to flow by unaffected by that new rule constitute an indefensible departure from th[e] model of judicial review." *Mackey, supra,* at 679, 91 S.Ct. 1160.

The decision in *Griffith v. Kentucky,* 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987), heeded this constitutional concern. The Court jettisoned the *Linkletter* test for cases pending on direct review and adopted for them Justice Harlan's rule of redressability: "[F]ailure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of *constitutional* adjudication." 479 U.S., at 322, 107 S.Ct. 708 (emphasis added). We established in *Griffith* that this Court must play by our own "old rules"—rules we have settled before the defendant's conviction and sentence become final, even those that are a "clear break from existing precedent"—for cases pending before us on direct appeal. *Id.,* at 323, 107 S.Ct. 708. Since the *Griffith* rule is constitutionally compelled, we instructed the lower state and federal courts to comply with it as well. *Ibid.*

When *Teague* followed on *Griffith*'s heels two years later, the opinion contained no discussion of "basic norms of constitutional adjudication," *Griffith, supra,* at 322, 107 S.Ct. 708, nor any discussion of the obligations of state courts. Doing away with *Linkletter* for good, the Court adopted Justice Harlan's solution to "the retroactivity problem" for cases pending on collateral review—which he described not as a constitutional problem but as "a problem as to the *scope of the habeas writ*." *Mackey, supra,* at 684, 91 S.Ct. 1160 (emphasis added). *Teague* held that federal habeas courts could no longer upset state-court convictions for violations of so-called "new rules," not yet announced when the conviction became final. 489 U.S., at 310, 109 S.Ct. 1060. But it allowed for the previously mentioned exceptions to this rule of nonredressability: substantive rules placing "certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe" and "watershed rules of criminal procedure." *Id.,* at 311, 109 S.Ct. 1060. Then in *Penry v. Lynaugh,* 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989), the Court expanded this first exception for substantive rules to embrace new rules "prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Id.,* at 330, 109 S.Ct. 2934.

***739** Neither *Teague* nor its exceptions are constitutionally compelled. Unlike today's majority, the *Teague*-era Court understood that cases on collateral review are fundamentally different from those pending on direct review because of "considerations of finality in the judicial process." *Shea v. Louisiana,* 470 U.S. 51, 59–60, 105 S.Ct. 1065, 84 L.Ed.2d 38 (1985). That line of finality demarcating the constitutionally required rule in *Griffith* from the habeas rule in *Teague* supplies the answer to the not-so-difficult question whether a state postconviction court must remedy the violation of a new substantive rule: No. A state court need only apply the law as it existed at the time a defendant's conviction and sentence became final. See *Griffith, supra,* at 322, 107 S.Ct. 708. And once final, "a new rule cannot reopen a door already closed." *James B. Beam Distilling Co. v. Georgia,* 501 U.S. 529, 541, 111 S.Ct. 2439, 115 L.Ed.2d 481 (1991) (opinion of Souter, J.). Any relief a prisoner might receive in a state court after finality is a matter of grace, not constitutional prescription.

B

The majority can marshal no case support for its contrary position. It creates a constitutional rule where none had been before: "*Teague*'s conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises" binding in both federal and state courts. *Ante,* at 729. "Best understood." Because of what? Surely not because of its history and derivation.

Because of the Supremacy Clause, says the majority. *Ante,* at 731. But the Supremacy Clause cannot possibly answer the question before us here. It only elicits another question: What federal law is supreme? Old or new? The majority's champion, Justice Harlan, said the old rules apply for federal habeas review of a state-court conviction: "[T]he habeas court need only apply the constitutional standards that prevailed at the time the original proceedings took place," *Desist,* 394 U.S., at 263, 89 S.Ct. 1030 (dissenting opinion), for a state court cannot "toe the constitutional mark" that does not yet exist, *Mackey,* 401 U.S., at 687, 91 S.Ct. 1160 (opinion of Harlan, J.). Following his analysis, we have clarified time and again—recently in *Greene v. Fisher,* 565 U.S. ——, —— – ——, 132 S.Ct. 38, 43–44, 181 L.Ed.2d 336 (2011)—that *federal* habeas courts are to

review state-court decisions against the law and factual record that existed at the time the decisions were made. "Section 2254(d)(1) [of the federal habeas statute] refers, in the past tense, to a state-court adjudication that 'resulted in' a decision that was contrary to, or 'involved' an unreasonable application of, established law. This backward-looking language requires an examination of the state-court decision at the time it was made." *Cullen v. Pinholster,* 563 U.S. 170, 181–182, 131 S.Ct. 1388, 179 L.Ed.2d 557 (2011). How can it possibly be, then, that the Constitution requires a *state* court's review of its own convictions to be governed by "new rules" rather than (what suffices when federal courts review state courts) "old rules"?

The majority relies on the statement in *United States v. United States Coin & Currency,* 401 U.S. 715, 91 S.Ct. 1041, 28 L.Ed.2d 434 (1971), that " '[n]o circumstances call more for the invocation of a rule of complete retroactivity' " than when " 'the conduct being penalized is constitutionally immune from punishment.' " *Ante,* at 729 – 730 (quoting 401 U.S., at 724, 91 S.Ct. 1041). The majority neglects to mention that this statement was addressing the "circumstances" of a conviction that "had *not become final,*" *id.,* at 724, n. 13, 91 S.Ct. 1041 (emphasis added), when ***740** the "rule of complete retroactivity" was invoked. *Coin & Currency,* an opinion written by (guess whom?) Justice Harlan, merely foreshadowed the rule announced in *Griffith,* that all cases pending on direct review receive the benefit of newly announced rules—better termed "old rules" for such rules were announced *before* finality.

The majority also misappropriates *Yates v. Aiken,* 484 U.S. 211, 108 S.Ct. 534, 98 L.Ed.2d 546 (1988), which reviewed a state habeas petitioner's Fourteenth Amendment claim that the jury instructions at his trial lessened the State's burden to prove every element of his offense beyond a reasonable doubt. That case at least did involve a conviction that was final. But the majority is oblivious to the critical fact that Yates's claim depended upon an *old rule,* settled at the time of his trial. *Id.,* at 217, 108 S.Ct. 534. This Court reversed the state habeas court for its refusal to consider that the jury instructions violated that *old rule*. *Ibid.* The majority places great weight upon the dictum in *Yates* that the South Carolina habeas court " 'ha [d] a duty to grant the relief that federal law requires.' " *Ante,* at 731 (quoting *Yates, supra,* at 218, 108 S.Ct. 534). It is simply wrong to divorce that dictum from the facts it addressed. In that context, *Yates* merely reinforces the line drawn by *Griffith* : when state courts provide a forum for postconviction relief, they need to play by the "old rules" announced *before* the date on which a defendant's conviction and sentence became final.

The other sleight of hand performed by the majority is its emphasis on *Ex parte Siebold,* 100 U.S. 371, 25 L.Ed. 717 (1880). That case considered a petition for a federal writ of habeas corpus following a federal conviction, and the initial issue it confronted was its jurisdiction. A federal court has no inherent habeas corpus power, *Ex parte Bollman,* 4 Cranch 75, 94, 2 L.Ed. 554 (1807), but only that which is conferred (and limited) by statute, see, *e.g., Felker v. Turpin,* 518 U.S. 651, 664, 116 S.Ct. 2333, 135 L.Ed.2d 827 (1996). As *Siebold* stated, it was forbidden to use the federal habeas writ "as a mere writ of error." 100 U.S., at 375. "The only ground on which this court, or any court, without some special statute authorizing it, [could] give relief on *habeas corpus* to a prisoner under conviction and sentence of another court is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void." *Ibid.* Turning to the facts before it, the Court decided it was within its power to hear Siebold's claim, which did not merely protest that the conviction and sentence were "erroneous" but contended that the statute he was convicted of violating was unconstitutional and the conviction therefore void: "[I]f the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." *Id.,* at 376–377. *Siebold* is thus a decision that expands the limits of this Court's power to issue a federal habeas writ for a federal prisoner.

The majority, however, divines from *Siebold* "a general principle" that "a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced." *Ante,* at 731. That is utterly impossible. No "general principle" can rationally be derived from *Siebold* about constitutionally required remedies in state courts; indeed, the opinion does not even speak to constitutionally required remedies in *federal* courts. It is a decision about this Court's statutory power to grant the Original Writ, not about its constitutional obligation to do so. Nowhere in *Siebold* did this Court intimate that relief was constitutionally required—or as the ***741** majority puts it, that a court would have had

“no authority” to leave in place Siebold's conviction, *ante,* at 730 – 731.

The majority's sorry acknowledgment that “*Siebold* and the other cases discussed in this opinion, of course, do not directly control the question the Court now answers for the first time,” *ibid.,* is not nearly enough of a disclaimer. It is not just that they “do not directly control,” but that the dicta cherry picked from those cases are irrelevant; they addressed circumstances fundamentally different from those to which the majority now applies them. Indeed, we know for sure that the author of some of those dicta, Justice Harlan, held views that flatly contradict the majority.

The majority's maxim that “state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution,” *ante,* at 731, begs the question rather than contributes to its solution. Until today, no federal court was *constitutionally obliged* to grant relief for the past violation of a newly announced substantive rule. Until today, it was Congress's prerogative to do away with *Teague*'s exceptions altogether. Indeed, we had left unresolved the question whether Congress had already done that when it amended a section of the habeas corpus statute to add backward-looking language governing the review of state-court decisions. See Antiterrorism and Effective Death Penalty Act of 1996, § 104, 110 Stat. 1219, codified at 28 U.S.C. § 2254(d)(1); *Greene,* 565 U.S., at ––––, n., 132 S.Ct., at 44, n. A maxim shown to be more relevant to this case, by the analysis that the majority omitted, is this: The Supremacy Clause does not impose upon state courts a constitutional obligation it fails to impose upon federal courts.

C

All that remains to support the majority's conclusion is that all-purpose Latin canon: *ipse dixit*. The majority opines that because a substantive rule eliminates a State's power to proscribe certain conduct or impose a certain punishment, it has “the automatic consequence of invalidating a defendant's conviction or sentence.” *Ante,* at 730. What provision of the Constitution could conceivably produce such a result? The Due Process Clause? It surely cannot be a denial of due process for a court to pronounce a final judgment which, though fully in accord with federal constitutional law at the time, fails to anticipate a change to be made by this Court half a century into the future. The Equal Protection Clause? Both statutory and (increasingly) constitutional laws change. If it were a denial of equal protection to hold an earlier defendant to a law more stringent than what exists today, it would also be a denial of equal protection to hold a later defendant to a law more stringent than what existed 50 years ago. No principle of equal protection requires the criminal law of all ages to be the same.

The majority grandly asserts that “[t]here is no grandfather clause that permits States to *enforce punishments the Constitution forbids*.” *Ante,* at 731 (emphasis added). Of course the italicized phrase begs the question. There most certainly is a grandfather clause—one we have called *finality*—which says that the Constitution does not require States to revise punishments that were lawful when they were imposed. Once a conviction has become final, whether new rules or old ones will be applied to revisit the conviction is a matter entirely within the State's control; the Constitution has nothing to say about that choice. The majority says that there is no “possibility of a valid result” when a new substantive rule is not ***742** applied retroactively. *Ante,* at 729 – 730. But the whole controversy here arises because many think there *is* a valid result when a defendant has been convicted under the law that existed when his conviction became final. And the States are unquestionably entitled to take that view of things.

The majority's imposition of *Teague*'s first exception upon the States is all the worse because it does not adhere to that exception as initially conceived by Justice Harlan—an exception for rules that “place, as a matter of constitutional interpretation, certain kinds of primary, private individual *conduct* beyond the power of the criminal lawmaking authority to proscribe.” *Mackey,* 401 U.S., at 692, 91 S.Ct. 1160 (emphasis added). Rather, it endorses the exception as expanded by *Penry,* to include “rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.” 492 U.S., at 330, 109 S.Ct. 2934. That expansion empowered and obligated federal (and after today state) habeas courts to invoke this Court's Eighth Amendment “evolving standards of decency” jurisprudence to upset punishments that were constitutional when imposed but are “cruel and unusual,” U.S. Const., Amdt. 8, in our newly enlightened

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society. See *Trop v. Dulles,* 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958). The "evolving standards" test concedes that in 1969 the State had the power to punish Henry Montgomery as it did. Indeed, Montgomery could at that time have been sentenced to death by our yet unevolved society. Even 20 years later, this Court reaffirmed that the Constitution posed no bar to death sentences for juveniles. *Stanford v. Kentucky,* 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989). Not until our People's "standards of decency" evolved a mere 10 years ago—nearly 40 years after Montgomery's sentence was imposed—did this Court declare the death penalty unconstitutional for juveniles. *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). Even then, the Court reassured States that "the punishment of life imprisonment without the possibility of parole is itself a severe sanction," implicitly still available for juveniles. *Id.,* at 572, 125 S.Ct. 1183. And again five years ago this Court left in place this severe sanction for juvenile homicide offenders. *Graham v. Florida,* 560 U.S. 48, 69, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). So for the five decades Montgomery has spent in prison, not one of this Court's precedents called into question the legality of his sentence —until the People's "standards of decency," as perceived by five Justices, "evolved" yet again in *Miller*.

Teague's central purpose was to do away with the old regime's tendency to "*continually* force the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." 489 U.S., at 310, 109 S.Ct. 1060. Today's holding thwarts that purpose with a vengeance. Our ever-evolving Constitution changes the rules of "cruel and unusual punishments" every few years. In the passage from *Mackey* that the majority's opinion quotes, *ante,* at 731 – 732, Justice Harlan noted the diminishing force of finality (and hence the equitable propriety—not the constitutional requirement—of disregarding it) when the law punishes nonpunishable *conduct,* see 401 U.S., at 693, 91 S.Ct. 1160. But one cannot imagine a clearer frustration of the sensible policy of *Teague* when the ever-moving target of impermissible *punishments* is at issue. Today's holding not only forecloses Congress from eliminating this expansion of *Teague* in federal courts, but also foists this distortion upon the States.

II. The Retroactivity of *Miller*

Having created jurisdiction by ripping *Teague*'s first exception from its moorings, ***743** converting an equitable rule governing federal habeas relief to a constitutional command governing state courts as well, the majority proceeds to the merits. And here it confronts a second obstacle to its desired outcome. *Miller*, the opinion it wishes to impose upon state postconviction courts, simply does not decree what the first part of the majority's opinion says *Teague*'s first exception requires to be given retroactive effect: a rule "set[ting] forth *categorical* constitutional guarantees that place certain criminal laws and punishments *altogether* beyond the State's power to impose." *Ante,* at 729 (emphasis added). No problem. Having distorted *Teague,* the majority simply proceeds to rewrite *Miller*.

The majority asserts that *Miller* "rendered life without parole an unconstitutional penalty for 'a class of defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Ante,* at 734. It insists that *Miller* barred life-without-parole sentences "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. For that reason, *Miller* is no less substantive than are *Roper* and *Graham.*" *Ante,* at 734. The problem is that *Miller* stated, quite clearly, precisely the opposite: "Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer *follow a certain process*—considering an offender's youth and attendant characteristics—before imposing a particular penalty." 567 U.S., at ––––, 132 S.Ct., at 2471 (emphasis added).

To contradict that clear statement, the majority opinion quotes passages from *Miller* that assert such things as "mandatory life-without-parole sentences for children 'pos[e] too great a risk of disproportionate punishment' " and " 'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.' " *Ante,* at 733 – 734 (quoting *Miller, supra,* at ––––, 132 S.Ct., at 2469). But to say that a punishment might be inappropriate and disproportionate for certain juvenile offenders is not to say that it is unconstitutionally void. All of the statements relied on by the majority do nothing more than express the *reason* why the new, youth-

protective *procedure* prescribed by *Miller* is desirable: to deter life sentences for certain juvenile offenders. On the issue of whether *Miller* rendered life-without-parole penalties unconstitutional, it is impossible to get past *Miller*'s unambiguous statement that "[o]ur decision does not categorically bar a penalty for a class of offenders" and "mandates only that a sentencer follow a certain process ... before imposing a particular penalty." 567 U.S., at ——, 132 S.Ct., at 2471. It is plain as day that the majority is not applying *Miller*, but rewriting it. [1]

And the rewriting has consequences beyond merely making *Miller*'s procedural guarantee retroactive. If, indeed, a State is categorically prohibited from imposing life without parole on juvenile offenders whose crimes do not "reflect permanent incorrigibility," then even when the procedures that *Miller* demands are provided the constitutional requirement is not necessarily satisfied. It remains available for ***744** the defendant sentenced to life without parole to argue that his crimes did not in fact "reflect permanent incorrigibility." Or as the majority's opinion puts it: "That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child [2] whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Ante,* at 735.

How wonderful. Federal and (like it or not) state judges are henceforth to resolve the knotty "legal" question: whether a 17–year–old who murdered an innocent sheriff's deputy half a century ago was at the time of his trial "incorrigible." Under *Miller*, bear in mind, the inquiry is whether the inmate was seen to be incorrigible when he was sentenced—not whether he has proven corrigible and so can safely be paroled today. What silliness. (And how impossible in practice, see Brief for National District Attorneys Assn. et al. as *Amici Curiae* 9–17.) When in *Lockett v. Ohio,* 438 U.S. 586, 608, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978), the Court imposed the thitherto unheard-of requirement that the sentencer in capital cases must consider and weigh all "relevant mitigating factors," it at least did not impose the substantive (and hence judicially reviewable) requirement that the aggravators must outweigh the mitigators; it would suffice that the sentencer *thought* so. And, fairly read, *Miller* did the same. Not so with the "incorrigibility" requirement that the Court imposes today to make *Miller* retroactive.

But have no fear. The majority does not seriously expect state and federal collateral-review tribunals to engage in this silliness, probing the evidence of "incorrigibility" that existed decades ago when defendants were sentenced. What the majority expects (and intends) to happen is set forth in the following not-so-subtle invitation: "A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Ante,* at 736. Of course. This whole exercise, this whole distortion of *Miller*, is just a devious way of eliminating life without parole for juvenile offenders. The Court might have done that expressly (as we know, the Court can decree *anything*), but that would have been something of an embarrassment. After all, one of the justifications the Court gave for decreeing an end to the death penalty for murders (no matter how many) committed by a juvenile was that life without parole was a severe enough punishment. See *Roper,* 543 U.S., at 572, 125 S.Ct. 1183. How could the majority—in an opinion written by the very author of *Roper*—now say *that* punishment is *also* unconstitutional? The Court expressly refused to say so in *Miller*. 567 U.S., at ——, 132 S.Ct., at 2469. So the Court refuses again today, but merely makes imposition of that severe sanction a practical impossibility. And then, in Godfather fashion, the majority makes state legislatures an offer they can't refuse: Avoid all the utterly impossible nonsense we have prescribed by simply "permitting juvenile homicide offenders to be considered for parole." *Ante,* at 736. Mission accomplished.

Justice THOMAS, dissenting.

I join Justice SCALIA's dissent. I write separately to explain why the Court's resolution of the jurisdictional question, *ante,* at 739 – 744, lacks any foundation in the Constitution's text or our historical traditions. We have jurisdiction under 28 U.S.C. § 1257 only if the Louisiana Supreme ***745** Court's decision implicates a federal right. That condition is satisfied, the Court holds, because the Constitution purportedly requires state and federal postconviction courts to give "retroactive effect" to new substantive constitutional rules by applying them to overturn long-final convictions and sentences. *Ante,* at 729. Because our Constitution and traditions embrace no such right, I respectfully dissent.

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I

"[O]ur jurisprudence concerning the 'retroactivity' of 'new rules' of constitutional law is primarily concerned, not with the question whether a constitutional violation occurred, but with the availability or nonavailability of remedies." *Danforth v. Minnesota,* 552 U.S. 264, 290–291, 128 S.Ct. 1029, 169 L.Ed.2d 859 (2008). Accordingly, the issue in this case is not whether prisoners who received mandatory life-without-parole sentences for crimes they committed decades ago as juveniles had an Eighth Amendment right not to receive such a sentence. Rather, the question is how, when, and in what forum that newfound right can be enforced. See *ibid.*

The Court answers that question one way: It says that state postconviction and federal habeas courts are constitutionally required to supply a remedy because a sentence or conviction predicated upon an unconstitutional law is a legal nullity. See *ante,* at 729 – 733. But nothing in the Constitution's text or in our constitutional tradition provides such a right to a remedy on collateral review.

A

No provision of the Constitution supports the Court's holding. The Court invokes only the Supremacy Clause, asserting that the Clause deprives state and federal postconviction courts alike of power to leave an unconstitutional sentence in place. *Ante,* at 731 – 732. But that leaves the question of what provision of the Constitution supplies that underlying prohibition.

The Supremacy Clause does not do so. That Clause merely supplies a rule of decision: *If* a federal constitutional right exists, that right supersedes any contrary provisions of state law. See Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"). Accordingly, as we reaffirmed just last Term, the Supremacy Clause is no independent font of substantive rights. *Armstrong v. Exceptional Child Center, Inc.,* 575 U.S. ––––, ––––, 135 S.Ct. 1378, 1383, 191 L.Ed.2d 471 (2015).

Nor am I aware of any other provision in the Constitution that would support the Court's new constitutional right to retroactivity. Of the natural places to look—Article III, the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Equal Protection Clause of the Fourteenth Amendment—none establishes a right to void an unconstitutional sentence that has long been final.

To begin, Article III does not contain the requirement that the Court announces today. Article III vests "[t]he judicial Power" in this Court and whatever inferior courts Congress creates, Art. III, § 1, and "extend[s]" that power to various "Cases ... and Controversies," Art. III, § 2. Article III thus defines the scope of *federal* judicial power. It cannot compel *state* postconviction courts to apply new substantive rules retroactively.

***746** Even if the Court's holding were limited to federal courts, Article III would not justify it. The nature of "judicial power" may constrain the retroactivity rules that Article III courts can apply.[*] But even our broad modern precedents treat Article III as requiring courts to apply new rules only on *direct* review. Thus in *Griffith v. Kentucky,* 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987), the Court suggested—based on Justice Harlan's views—that "after we have decided a new rule in the case selected, the integrity of judicial review requires that we apply that rule to all similar cases pending on direct review." *Id.,* at 322–323, 107 S.Ct. 708. But, as Justice Harlan had explained, that view of Article III has no force on collateral review: "While the entire theoretical underpinnings of judicial review and constitutional supremacy dictate that federal courts having jurisdiction on direct review adjudicate every issue of law ... fairly implicated by the trial process below and properly presented on appeal, federal courts have never had a similar obligation on habeas corpus." *Mackey v. United States,* 401 U.S. 667, 682, 91 S.Ct. 1160, 28 L.Ed.2d 404 (1971) (opinion concurring in judgment in part and dissenting in part).

The Court's holding also cannot be grounded in the Due Process Clause's prohibition on "depriv[ations] ... of life, liberty, or property, without due process of law." Amdts. V and XIV, § 1. Quite possibly, " '[d]ue process of law' was originally used as a shorthand expression for governmental proceedings according to the 'law of the land' *as it existed at the time of those proceedings.*" *In re*

Winship, 397 U.S. 358, 378, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) (Black, J., dissenting) (emphasis added); accord, *Johnson v. United States,* 576 U.S. ––––, ––––, 135 S.Ct. 2551, 2572–2573, 192 L.Ed.2d 569 (2015) (THOMAS, J., concurring in judgment). Under that understanding, due process excluded any right to have new substantive rules apply retroactively.

Even if due process required courts to anticipate this Court's new substantive rules, it would not compel courts to revisit settled convictions or sentences on collateral review. We have never understood due process to require further proceedings once a trial ends. The Clause "does not establish any right to an appeal ... and certainly does not establish any right to collaterally attack a final judgment of conviction." *United States v. MacCollom,* 426 U.S. 317, 323, 96 S.Ct. 2086, 48 L.Ed.2d 666 (1976) (plurality opinion); see *Pennsylvania v. Finley,* 481 U.S. 551, 557, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987) ("States have no obligation to provide [postconviction] relief"). Because the Constitution does not require postconviction remedies, it certainly does not require postconviction courts to revisit every potential type of error. Cf. *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.,* 528 U.S. 152, 165–166, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000) (SCALIA, J., concurring in judgment) ("Since a State could ... subject its trial-court determinations to no review whatever, it could *a fortiori* subject them to review which consists of a nonadversarial reexamination of convictions by a panel of government experts").

Nor can the Equal Protection Clause justify requiring courts on collateral review to apply new substantive rules retroactively. That Clause prohibits a State ***747** from "deny[ing] to any person within its jurisdiction the equal protection of the laws." Amdt. XIV, § 1. But under our precedents "a classification neither involving fundamental rights nor proceeding along suspect lines ... cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Armour v. Indianapolis,* 566 U.S. ––––, ––––, 132 S.Ct. 2073, 2080, 182 L.Ed.2d 998 (2012) (internal quotation marks omitted; ellipsis in original).

The disparity the Court eliminates today—between prisoners whose cases were on direct review when this Court announced a new substantive constitutional rule, and those whose convictions had already become final—is one we have long considered rational. "[T]he notion that different standards should apply on direct and collateral review runs throughout our recent habeas jurisprudence." *Wright v. West,* 505 U.S. 277, 292, 112 S.Ct. 2482, 120 L.Ed.2d 225 (1992); see *Brecht v. Abrahamson,* 507 U.S. 619, 633–635, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993). Thus, our precedents recognize a right to counsel on direct review, but not in collateral proceedings. Compare *Douglas v. California,* 372 U.S. 353, 355–358, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963) (courts must provide counsel on an initial direct appeal), with *Finley, supra,* at 555, 107 S.Ct. 1990 (no such right on habeas). The Fourth Amendment also applies differently on direct and collateral review. Compare *Mapp v. Ohio,* 367 U.S. 643, 654–660, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) (courts on direct review must exclude evidence obtained in violation of the Fourth Amendment), with *Stone v. Powell,* 428 U.S. 465, 489–496, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976) (no relitigation of such claims on collateral review).

These distinctions are reasonable. They reflect the "significant costs" of collateral review, including disruption of "the State's significant interest in repose for concluded litigation." *Wright, supra,* at 293, 112 S.Ct. 2482 (internal quotation marks omitted). Our equal protection precedents, therefore, do not compel a uniform rule of retroactivity in direct and collateral proceedings for new substantive constitutional rules.

B

The Court's new constitutional right also finds no basis in the history of state and federal postconviction proceedings. Throughout our history, postconviction relief for alleged constitutional defects in a conviction or sentence was available as a matter of legislative grace, not constitutional command.

The Constitution mentions habeas relief only in the Suspension Clause, which specifies that "[t]he Privilege of the Writ of *Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Art. I, § 9, cl. 2. But that Clause does not specify the scope of the writ. And the First Congress, in prescribing federal habeas jurisdiction in the 1789 Judiciary Act, understood its scope to reflect "the black-letter principle of the common law that the writ was simply not available at all to one convicted of crime

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by a court of competent jurisdiction." Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441, 466 (1963). Early cases echoed that understanding. *E.g., Ex parte Watkins,* 3 Pet. 193, 202, 7 L.Ed. 650 (1830) ("An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity; and it is not a nullity if the court has general jurisdiction of the subject, although it should be erroneous").

For nearly a century thereafter, this Court understood the Judiciary Act and ***748** successor provisions as limiting habeas relief to instances where the court that rendered the judgment lacked jurisdiction over the general category of offense or the person of the prisoner. See *Wright, supra,* at 285, 112 S.Ct. 2482 (recounting history). Federal habeas courts thus afforded no remedy for a claim that a sentence or conviction was predicated on an unconstitutional law. Nor did States. Indeed, until 1836, Vermont made no provision for any state habeas proceedings. See Oaks, Habeas Corpus in the States 1776–1865, 32 U. Chi. L. Rev. 243, 250 (1965). Even when States allowed collateral attacks in state court, review was unavailable if the judgment of conviction was rendered by a court with general jurisdiction over the subject matter and the defendant. *Id.,* at 261–262.

The Court portrays *Ex parte Siebold,* 100 U.S. 371, 25 L.Ed. 717 (1880), as a departure from this history and as the genesis of a constitutional principle that "a conviction obtained under an unconstitutional law warrants habeas relief." *Ante,* at 731. But *Siebold*—a case construing the scope of federal habeas review under the 1789 Judiciary Act—does not support the Court's position. *Ante,* at 740 – 744 (SCALIA, J., dissenting). *Siebold* did not imply that the Constitution requires courts to stop enforcing convictions under an unconstitutional law. Rather, *Siebold* assumed that prisoners would lack a remedy if the federal habeas statute did not allow challenges to such convictions. 100 U.S., at 377 ("It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it").

Moreover, when Congress authorized appeals as a matter of right in federal criminal cases, the Court renounced *Siebold* and stopped entertaining federal habeas challenges to the constitutionality of the statute under which a defendant was sentenced or convicted. See Bator, *supra,* at 473–474, and n. 77. If the Constitution prevented courts from enforcing a void conviction or sentence even after the conviction is final, this Court would have been incapable of withdrawing relief.

The Court's purported constitutional right to retroactivity on collateral review has no grounding even in our modern precedents. In the 1950's, this Court began recognizing many new constitutional rights in criminal proceedings. Even then, however, the Court did not perceive any constitutional right for prisoners to vacate their convictions or sentences on collateral review based on the Court's new interpretations of the Constitution. To the contrary, the Court derived *Miranda* warnings and the exclusionary rule from the Constitution, yet drew the line at creating a constitutional right to retroactivity. *E.g., Linkletter v. Walker,* 381 U.S. 618, 629, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965) ("[T]he Constitution neither prohibits nor requires retrospective effect. As Justice Cardozo said, 'We think the Federal Constitution has no voice upon the subject' ").

Only in 1987, in *Griffith v. Kentucky,* 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649, did this Court change course and hold that the Constitution requires courts to give constitutional rights some retroactive effect. Even then, *Griffith* was a directive only to courts on *direct* review. It held that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final." *Id.,* at 328, 107 S.Ct. 708. It said nothing about what happens once a case becomes final. That was resolved in *Teague v. Lane,* 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)—which announced the narrow exceptions to the rule against retroactivity on collateral review—but which did so by ***749** interpreting the scope of the federal habeas writ, not the Constitution.

II

A

Not only does the Court's novel constitutional right lack any constitutional foundation; the reasoning the Court uses to construct this right lacks any logical stopping point. If, as the Court supposes, the Constitution bars courts from insisting that prisoners remain in prison when their convictions or sentences are later deemed

unconstitutional, why can courts let stand a judgment that wrongly decided any constitutional question?

The Court confronted this question when *Siebold* and other cases began expanding the federal habeas statute to encompass claims that a sentence or conviction was constitutionally void. But the Court could not find a satisfactory answer: "A judgment may be erroneous and not void, and it may be erroneous *because* it is void. The distinctions ... are very nice, and they may fall under the one class or the other as they are regarded for different purposes." *Ex parte Lange,* 18 Wall. 163, 175–176, 21 L.Ed. 872 (1874).

The lack of any limiting principle became apparent as the Court construed the federal habeas statute to supply jurisdiction to address prerequisites to a valid sentence or conviction (like an indictment). See Bator, 76 Harv. L. Rev., at 467–468, and n. 56, 471. As Justice Bradley, *Siebold* 's author, later observed for the Court: "It is difficult to see why a conviction and punishment under an unconstitutional law is more violative of a person's constitutional rights, than an unconstitutional conviction and punishment under a valid law." *In re Nielsen,* 131 U.S. 176, 183, 9 S.Ct. 672, 33 L.Ed. 118 (1889).

I doubt that today's rule will fare any better. By refashioning *Siebold* as the foundation of a purported constitutional right, the Court transforms an unworkable doctrine into an immutable command. Because Justice Bradley's dicta in *Siebold* was a gloss on the 1789 Judiciary Act, Congress could at least supply a fix to it. But the Court's reinvention of *Siebold* as a constitutional imperative eliminates any room for legislative adjustment.

B

There is one silver lining to today's ruling: States still have a way to mitigate its impact on their court systems. As the Court explains, States must enforce a constitutional right to remedies on collateral review only if such proceedings are "open to a claim controlled by federal law." *Ante,* at 731. State courts, on collateral review, thus must provide remedies for claims under *Miller v. Alabama,* 567 U.S. ——, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), only if those courts are open to "claims that a decision of this Court has rendered certain sentences illegal ... under the Eighth Amendment." See *ante,* at 732.

Unlike the rule the Court announces today, this limitation at least reflects a constitutional principle. Only when state courts have chosen to entertain a federal claim can the Supremacy Clause conceivably command a state court to apply federal law. As we explained last Term, private parties have no "constitutional ... right to enforce federal laws against the States." *Armstrong,* 575 U.S., at ——, 135 S.Ct., at 1383. Instead, the Constitution leaves the initial choice to entertain federal claims up to state courts, which are "tribunals over which the government of the Union has no adequate control, and which may be closed to any claim asserted under a law of the United States." *Osborn v. Bank of United* ***750** *States,* 9 Wheat. 738, 821, 6 L.Ed. 204 (1824).

States therefore have a modest path to lessen the burdens that today's decision will inflict on their courts. States can stop entertaining claims alleging that this Court's Eighth Amendment decisions invalidated a sentence, and leave federal habeas courts to shoulder the burden of adjudicating such claims in the first instance. Whatever the desirability of that choice, it is one the Constitution allows States to make.

* * *

Today's decision repudiates established principles of finality. It finds no support in the Constitution's text, and cannot be reconciled with our Nation's tradition of considering the availability of postconviction remedies a matter about which the Constitution has nothing to say. I respectfully dissent.

All Citations

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Footnotes

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

1 It is amusing that the majority's initial description of *Miller* is the same as our own: "[T]he Court held that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing." *Ante,* at 725. Only 15 pages later, after softening the reader with 3 pages of obfuscating analysis, does the majority dare to attribute to *Miller* that which *Miller* explicitly denies.

2 The majority presumably regards any person one day short of voting age as a "child."

* For instance, Article III courts cannot arrive at a holding, refuse to apply it to the case at hand, and limit its application to future cases involving yet-to-occur events. The power to rule prospectively in this way is a quintessentially legislative power. See *Harper v. Virginia Dept. of Taxation,* 509 U.S. 86, 106–110, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993) (SCALIA, J., concurring).

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210 Cal.App.4th 930
Court of Appeal, Second
District, Division 5, California.

In re R.C. et al., Persons Coming
Under the Juvenile Court Law.
Los Angeles County Department of Children
and Family Services, Plaintiff and Respondent,
v.
Rodrigo C., Defendant and Appellant.

No. B240227.
|
Oct. 30, 2012.

Synopsis

Background: County department of children and family services (DCFS) filed dependency petition. The Superior Court, Los Angeles County, No. CK91495, Anthony Trendacosta, Temporary Judge, sustained dependency jurisdiction, ordered that the children were to remain in the mother's custody, and removed the children from the father's custody. Father appealed.

[Holding:] The Court of Appeal, Turner, P.J., held that evidence supported finding that the children were at risk from domestic violence.

Affirmed.

Attorneys and Law Firms

****836** Suzanne Davidson, Glendale, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

TURNER, P.J.

***931** I. INTRODUCTION

Rodrigo C., the father of three children, R.C., Michelle C. and Stephanie C., appeals from the juvenile court's jurisdictional and dispositional orders. The father argues there was insufficient evidence to support the juvenile court's ***932** jurisdiction under Welfare and Institutions Code section 300, subdivision (b).[1] The father argues there was no evidence the children suffered any physical harm during the two domestic violence incidents between the parents. He also contends there is no ongoing domestic violence because he is complying with a three-year restraining order protecting the mother against him. We find sufficient evidence to support the allegation the father engaged in domestic violence such that there was a substantial risk the children would suffer serious physical harm. Accordingly, we affirm the jurisdictional and dispositional orders.

II. PROCEDURAL HISTORY

On January 19, 2012, the Department of Children and Family Services (the department) filed a section 300 petition on behalf of R.C., age 9; Michelle, age 6; and Stephanie, age 3. The ****837** section 300, subdivision (b) allegation which is at issue, states: “On [January 13, 2012], the ... father ... engaged in a violent altercation in that the father repeatedly choked the mother. The father slapped the mother's face with the father's hand. The father pushed the mother, causing the mother to strike the mother's head against a wall. The father repeatedly pulled the mother's hair. The father grabbed and pulled the mother by the arm. The father pushed the mother into a couch. The father threatened to kill the mother. On a prior occasion, the father pushed the mother and grabbed the mother by the chest, inflicting a mark to the mother's chest. Such violent conduct on the part of the father against the mother endangers the children's physical health and safety and places the children at risk of physical harm, damage and danger.” The petition named Gabrielle T., the mother, and the father as parents of the three children. At the January 19, 2012 detention hearing, the juvenile court ordered the children detained at a shelter. The juvenile court also issued a temporary restraining order protecting the mother and children from the father. The father was granted monitored visits.

On January 25, 2012, the department was granted discretion to release the children to the mother once she found stable housing. The juvenile court again issued temporary restraining orders against the father on January 25 and February 6, 2012. At the February

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24, 2012 adjudication hearing, the juvenile court ordered the children released to the mother. The department was ordered to provide them with family maintenance services.

On March 14, 2012, the juvenile court found the children were dependents of the court under section 300, subdivision (b). The juvenile court sustained ***933** the following count in the section 300 petition: "On 01/13/2012, the [children's mother and father] engaged in a violent altercation in that the father repeatedly choked the mother. The father slapped the mother's face with the father's hand. The father pushed the mother, causing the mother to strike the mother's head against a wall. The father repeatedly pulled the mother's hair. The father grabbed and pulled the mother by the arm. The father pushed the mother into a couch. The father threatened to kill the mother. On a prior occasion, the father pushed the mother and grabbed the mother by the chest, inflicting a mark to the mother's chest. Such violent conduct on the part of the father against the mother endangers the children's physical health and safety and places the children at risk of physical harm, damage and danger." The juvenile court sustained the allegations in the January 19, 2012 petition, finding the parents were involved in two domestic violence incidents. The children were ordered to remain in the mother's custody and the department was ordered to provide family maintenance services. But the children were removed from the father's custody pursuant to section 361, subdivision (c). The mother was ordered to attend classes on victims of domestic violence, parenting and individual counseling to address case issues. The father was ordered to attend domestic violence, anger management and parenting programs. In addition, the juvenile court issued a three-year restraining order protecting the mother from the father. The father was granted monitored visits in a neutral setting. That same day, the father filed his notice of appeal.

III. EVIDENCE

A. Detention Report

The January 19, 2012 detention report, which was prepared by a children's social worker, Arleen Vasquez, included a police report from the Hawthorne Police Department. ****838** On January 14, 2012, Ms. Vasquez met the mother and children at the family home in response to a referral from the police department. The mother stated she and the father had been having marital problems for about five months. The problems developed after the mother saw pictures of girls on the father's cell phone and confronted him about them. The mother reported the father became upset, pushed her and grabbed her chest leaving a red mark. The mother did not call the police or report the first incident because she did not want the children to be involved. The mother asked the father to leave the home and he complied.

According to the attached police report, on January 13, 2012, Hawthorne police officers arrived at the home after receiving a family disturbance call. Officer Eric Peraza interviewed the mother in Spanish. The mother told Officer Peraza the father had called her earlier that day and inquired if she was home. The father told the mother he knew she was not home and asked if ***934** she was with someone. She replied that a male friend had accompanied her to inquire about getting a divorce. The mother reported the father threatened to kill her and her male friend. The mother asked a neighbor to pick up the two oldest children from school. The mother knew the father was upset.

Five minutes after the mother returned home, she heard someone knock on her front door. She opened the door and the father immediately grabbed her hair with his hand. The father pulled the mother by the hair toward the couch and forced her onto the couch. He held the mother down on the couch with his body. The father continued to grab the mother's hair with one hand and began choking her with his other hand. The mother pleaded with the father to let her go. As the father kept her down, he stated: "I am going to kill you. Why do you do this to me?" The mother responded she was not doing anything wrong. The father then said, "Wherever I see you or him, [I'm] going to kill him!" The father then slapped the mother on the right side of her face. The mother tried to get up but the father placed his hand over her face and forced her back onto the couch.

The mother later escaped from the couch and ran towards the open front door. The father got in front of the mother and blocked her from leaving the apartment. He grabbed the mother's hair with both hands and forced her towards the north living room wall. The father then pushed the mother causing her to hit her head and back against the wall. The father's cell phone rang and he answered the phone. The father yelled on the phone, "Bring me the gun because I am going to kill her!" The mother heard the

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caller reply, “The police are going to come, don't do that!” The mother believed the caller was the father's brother.

While the father was talking on the cell phone, the mother was able to get away from him. She ran out the apartment door and yelled across the courtyard for her neighbor to call the police. The father stepped outside the apartment and pulled the mother back into the apartment by grabbing her right arm. He told the mother, “This is not going to stay like this; wherever I see you I'm going to kill you!” The mother told him she was going to call the police this time. The father then left the apartment. The mother told Officer Peraza she believed the father was capable of carrying out the threat to kill her.

Besides interviewing the mother, Ms. Vasquez also interviewed the children. Nine-year-old R.C. told Ms. Vasquez he was not home at the time of the January 13, 2012 incident. R.C. said that the mother related that the father choked her and ****839** asked for a gun to shoot her. R.C. was afraid of his father. Six-year-old Michelle only heard what happened. Michelle heard the father choke the mother and ask for a gun from someone downstairs. Michelle stated she ***935** heard her parents argue but she had not seen or heard anything else. In Ms. Vasquez's view, three-year-old Stephanie was too young to make any meaningful statement. During the interview with Ms. Vasquez, the mother received a telephone call from the father. The mother handed the phone to Ms. Vasquez. When Ms. Vasquez identified herself, the father hung up.

Ms. Vasquez made arrangements for the mother and children to be driven to a secure location. About an hour later, the mother called and left a message for Ms. Vasquez. The mother said she was going to go to San Francisco instead of the shelter. The mother did not provide a full address of where she would be staying in San Francisco. The department decided to place the children in protective custody because: the mother failed to comply with the safety plan by not going to a shelter; the father had threatened to kill the mother and take the children to Mexico; and the father's whereabouts were unknown at the time.

B. Jurisdiction/Disposition Report

The February 10, 2012 jurisdiction report was prepared by another children's social worker, Pearl Rodriguez. Ms. Rodriguez interviewed the children privately at their foster home on January 26, 2012. R.C. stated: “My dad was not living with us anymore. My mom got mad at my dad because she found a picture of a girl on his cell phone. First she came to ask me if I had put the picture of the girl in the phone because sometimes I use it to call my friends, but I told her it wasn't me. She asked my dad about it and they started fighting, but with words. My dad threw the phone from my mom's hands and it hit the floor. My mom told me and my sisters to go to the room and we did. My mom started crying and told him to leave the house. My dad told her that he didn't want to end things that way, but she told him that if he didn't leave then we would leave. I didn't see my dad hit my mom that day and my mom didn't hit him. [¶] My dad went to live with my uncle, but he would come and pick us up on Sundays and take us to eat and to his house. It was fun. We would go eat or play soccer.”

Concerning the January 13, 2012 incident, R.C. stated: “You are talking about the day that my dad told my mom that he was going to kill her. I didn't see what happened because I was playing by the manager's house. Me and Michelle were playing at the manager's house, but Stephanie was with my mom when it happened. I didn't hear anything, but I know what happened because my mom told me. She was afraid of my dad because he pushed her against the wall and told her that he was going to kill her with a gun. The night that it happened, we stayed at my mom's friend's house because my mom was scared of my dad.” R.C. stated he never saw a gun. But R.C. ***936** believed the uncle owned a firearm. R.C. was frightened when the mother described the father's effort to kill her. R.C. did not want anything to happen to the mother.

Michelle stated: “My dad was living with my cousin Lupe because my mom was mad at him. She was mad because one time she found a picture of a girl on his phone. She asked me and my brother if we had put the picture on the phone, but we didn't. When my dad got home, she asked him who the girl was. He told her that it was no one and he told her sorry. They were kind of screaming, but not really. My mom told him that he better leave ****840** or else we were going to leave. He was mad and he threw the phone on the floor. [¶] ... My dad had two other girls plus my mom so that makes three girls. My mom would get mad because he had three girls. [¶] My dad would come and visit us. He would take us to eat or to the park.[¶] ... [¶] My dad was nice to us, but he was mean to my mom. He was mean because that time that my mom found the

picture, he picked her up and he wanted to hit her, but he didn't. He just acted like he was going to hit her." As for the January 13, 2012 incident, Michelle stated the mother had related what happened. She and her brother did not see the altercation. This was because they were playing at the apartment manager's home. Michelle was "scared" because R.C. said the father was going to kill the mother with a gun.

Stephanie was shy and smiled or giggled when Ms. Rodriguez tried to speak with the youngster. During the interview, Michelle came into the room and told Stephanie to tell Ms. Rodriguez about a domestic violence incident. On that occasion, Stephanie observed their father hit their mother. Stephanie stated, "Mi papi le pego a mi mami (my father hit my mom)." Stephanie insisted on playing with Michelle and did not provide any more detail about the January 13, 2012 incident.

Ms. Rodriguez also interviewed the mother. Concerning the January 13, 2012 incident, the mother stated: "On that day, I had an appointment with an attorney because I was looking to divorce [the father]. We had been having lots of problems and I knew that I didn't want to be married to him anymore. I did not have a ride so I asked a friend to take me. I don't know how [the father] found out that it was a male friend, but he did. As we were driving home I received a call from [the father]. He told me that he knew I was with a man and then he threatened to kill me and my friend. I asked my friend to drop me off at home. Michelle and [R.C.] were at the manager's house, Rosario, because she had picked them up from school and Stephanie was with me. First I stopped by to check on the kids and I asked Rosario if she could keep an eye on them for a little longer. I had a feeling that [the father] would come and I just did not want them to see us argue. Stephanie didn't want to stay with Rosario so I agreed to take her upstairs. She wanted to go ***937** to the bathroom so I thought I would take her and my plan was to bring her back to Rosario's, but as Stephanie was in the restroom I heard a knock on the door. I thought it was probably [R.C.] so I opened the door and [the father] rushed into the house."

The mother further reported: "[The father] started arguing with me and asking me who I was with. He slapped me on the face and pulled my hair and pushed me to the couch. At this point, I remember that Stephanie ran out of the restroom and out the front door. I pleaded for him to stop, but he pushed me against the wall like three times and that was how I hit my head against the wall. I am not sure if I had any bumps on my head, but it did hurt me. I somehow managed to run out of the door, but as I was running out he pulled me by the hair. Then, his phone rang and he picked it up. I don't know who called him, but he told the person to bring a gun because he was going to kill me. I was able to free myself as he was on the phone and I ran out again and yelled for someone to call 911 and that was when he pulled me back in and told me that I should not have done that. He told me he was leaving, but that wherever I was, he was going to find me and kill me."

The mother also described the prior domestic abuse incident: "There was only one other time that he put his hands on ****841** me. It was not as bad. The children were inside and did not see it. It happened about two months ago. He was not living in the home at this point. He came to drop off some money for groceries and we were talking outside by his car. My therapist, Araceli, had talked to me about asking [the father] to take the children on the weekend so that I can have some time for myself. When I mentioned it to [the father], he became upset. He grabbed me by the chest and pushed me against the car and told me that he would not take the kids on the weekend because he knew that I probably just wanted to go out. He also grabbed and tore the visitation plan that my therapist helped me write. I told him that I would call 911 and he said that he would call immigration. I could not believe that things could have escalated to that point. I never kept him from his kids. If there is one thing that he did right, it was taking care of his kids. The kids loved him."

In addition, Ms. Rodriguez interviewed the maternal great aunt, Josephina Ceja. Ms. Ceja offered to provide housing for the mother and children. Ms. Ceja stated: "I welcome [the mother] and her children into my home. I have always maintained a good relationship with [the mother]. Even prior to this incident, she knew that she and the children were always welcomed. I was not aware of the degree of conflict between [the father] and [the mother], but I am confident that she can get on her feet with our help. There is a school nearby where the children can attend and we have a room where she and the children can sleep."

***938** The father was interviewed by Ms. Rodriguez on February 6, 2012. He denied abusing the mother: "I have no idea what is going on. Everything that is being said about me is a lie." The father declined to talk about the January 13, 2012 incident: "I cannot discuss the details

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of that day. My attorney asked me not to talk to anyone about it. But it's all a lie and I cannot understand why [the mother] is saying all those things."

When asked about prior domestic violence incidents, the father stated: "Things were good between us, but someone started sending [the mother] anonymous emails. The emails reported that I had been married in the past and that I have never properly ended the marriage. I don't know who was sending that stuff, but none of it was true. [The mother] started acting differently and being more suspicious. [¶] Sometime in November 2011, [the mother] found a picture of a woman in my phone. The picture was actually of her. It was a blurry photo because the camera must have moved when the picture was taken. The kids play with the phone sometimes and they probably took the picture. She thought it was another woman, but it was her. She continued to question me. I became upset and threw the phone on the floor. The kids were there when it happened, but it was not a violent argument. She asked me to leave and I agreed.... [¶] I continued helping her with the rent and groceries because she didn't work. I would pick up the kids and take them to eat. Sometimes she would come along. We rarely argued in front of the kids."

In response to Ms. Rodriguez's inquiry about the mother's chest injury, the father stated: "I know what you are referring to, but I did not intend on hurting her and I still don't understand how she had redness on her chest. [¶] I had come over to drop off some money for groceries and we started arguing about the kids and she wanted to leave. I put my hands out near her chest to tell her to wait, but I did not grab her, scratch her, or hurt her. Later on she sent me a picture of her chest and it ****842** was red. She told me that I had caused the redness, but I could not believe it because I only rested my hand on her chest. The kids were not present during the incident because they were inside the house and this happened in the car outside." The father denied he threatened the mother. He stated he did not "have a major problem in controlling [his] anger" but admitted sometimes he got "easily agitated."

Ms. Rodriguez also interviewed an investigator identified only as Detective Espinoza from the Hawthorne Police Department about the criminal investigation. Detective Espinoza stated the father was arrested on January 31, 2012 for: making criminal threats to kill the mother; false imprisonment for not allowing the mother to leave the residence during the altercation; and engaging in domestic abuse. The father went to the police station with an attorney and was released on bail the same day.

***939** Attached to the Jurisdiction/Disposition report was a Multidisciplinary Assessment Team analysis. According to the assessment: "[The mother] seemed centrally focused on getting out of her relationship with her husband and protecting her children from further exposure to violence. [The mother] reported that for over a year the couple was having marital difficulties because the father was receiving text messages from other women and had some heated arguments. [R.C.] had become aware that the father was becoming verbally abusive and had once gripped the mother's clothing with force and broke a cell phone in rage. The mother dismissed the incidents and tried to avoid having the children exposed to the arguments, but [R.C.] was aware of the conflicts between the parents." As to Michelle, the report states, "She was observed struggling to cope with the familial conflicts that placed her in foster care and was in need of further mental health services to avoid further deterioration of symptoms."

As for Stephanie, the report noted Stephanie showed the least reservation toward the father and embraced him fully during a visit. But the report stated: "[The mother] reported that [Stephanie] did witness the incident that led to the detention and called on the father to stop hurting [the mother] and tried to comfort [the mother] afterwards. Stephanie apparently internalized the incident such that she later told [R.C.] that [the father] had hit [the mother]. Ironically, in the interactions with her siblings, she was the one that spoke the least about the incident. Exposure to a traumatic event as the one described in the records and the mother require further exploration. Stephanie was showing a lack of coping skills in dealing with familial conflicts that placed her in foster care and was in need of further mental health services to avoid further deterioration of symptoms."

The department recommended the juvenile court declare the children dependents of the court. Ms. Rodriguez wrote: "The mother and father denied a history of domestic abuse violence and it appears as though their marital conflict began and quickly escalated during the past year. Although the mother and father were able to agree that it was best for the father to leave the home, the incident that occurred on [January 13, 2012] is indicative of the continued breakdown in healthy communication and escalating violence. If the parents do plan to continue

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the divorce, it is important for them to learn healthy conflict resolution skills in order to promote a peaceful and loving environment for their children. The father and mother have both expressed their desire to comply with the Court and [department] recommendations."

****843** C. Jurisdiction/Disposition Hearing

At the March 14, 2012 jurisdiction/disposition hearing, the juvenile court admitted into evidence: the January 19, 2012 detention report and attachments; the February 10, 2012 pre-resolution conference report; and the ***940** January 25, February 10 and 24 and March 14, 2012 last minute information to the court documents and their related attachments. The juvenile court then heard testimony from the parents. The father denied hitting the mother. He testified he choked the mother to defend himself but could not explain why he was afraid of her. The father admitted Stephanie saw him choke the mother. He denied ever asking for a gun or threatening to kill the mother.

The mother testified the father attacked her on January 13, 2012. She denied attacking the father. The mother also testified in October 2011, she asked the father if he could stay with the children for at least a weekend. This was because she was tired. The father did not agree and grabbed her near the neck leaving a mark.

After testimony, counsel for the mother and children joined the department in arguing for juvenile court jurisdiction over the youngsters. The father argued dependency court jurisdiction was unnecessary. After argument, the juvenile court sustained the section 300 petition.

The juvenile court explained: "... This is the first that I've heard that there was any type of self-defense. It's sort of hard to figure out how there could be self-defense when the father came to the mother's home as opposed to vice versa. [¶] Secondly, the incident as set forth in the police report, the reports from the department, and the child Stephanie as best we can understand, indicate that domestic violence did occur. There's no question about it, whether it was—even if it was instigated by the mother, which I don't find that it was. There was at least one incident in the past of hands being laid on. [¶] This is a family that's disintegrating. Emotions are running high, and all of our training and experience and the evidence tells us that, from the standpoint of this family, [father's counsel] is right. This is not an ongoing situation in which the family's remaining together. However, they still have three children together. They're still going to be interacting with each other. And without either a restraining order or court intervention, there really isn't anything at this particular point, to ensure that the children are protected, which is what we're about. And I think we can do that by providing services to the parents so that they can get along. And then we won't have any more of these incidents. Because there are child support issues. There are issues of visitation. And the parents are going to have to work that out so that we don't have another incident like this. There appears to be jealousy on both sides."

IV. DISCUSSION

A. Standard Of Review

We review the juvenile court's jurisdictional findings and orders for substantial evidence. (***941** *In re E.B.* (2010) 184 Cal.App.4th 568, 574–575, 109 Cal.Rptr.3d 1; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1433, 95 Cal.Rptr.3d 235.) Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value. (*In re E.B., supra,* 184 Cal.App.4th at p. 575, 109 Cal.Rptr.3d 1; *In re J.K., supra,* 174 Cal.App.4th at p. 1433, 95 Cal.Rptr.3d 235.) We draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court. We adhere to the principle that issues of fact, weight and credibility ****844** are the provinces of the juvenile court. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393, 32 Cal.Rptr.3d 526; *In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564, 135 Cal.Rptr.2d 72.)

B. Jurisdictional Finding Under Section 300

[1] Section 300, subdivision (b) states: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] ... (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to

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adequately ... protect the child." Section 355, subdivision (a) provides: "At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300...." To establish jurisdiction under section 300, subdivision (b), the department must prove by a preponderance of the evidence that: there was neglectful conduct by the parent in one of the specified forms; causation; and serious physical harm or illness to the child or substantial risk of such harm or illness. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185, 68 Cal.Rptr.3d 465; *In re Ricardo L., supra,* 109 Cal.App.4th at p. 567, 135 Cal.Rptr.2d 72; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820, 2 Cal.Rptr.2d 429.)

[2] Exposure to domestic violence may serve as the basis of a jurisdictional finding under section 300, subdivision (b). Our colleagues in Division One of this appellate district have thoroughly explained the relationship between section 300, subdivision (b) and domestic violence: " '[D]omestic violence in the same household where children are living ... is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.' (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [60 Cal.Rptr.2d 315].) Children can be 'put in a position of physical danger from [spousal] violence' because, 'for example, they could wander into the room where it was occurring and be ***942** accidentally hit by a thrown object, by a fist, arm, foot or leg....' (*Ibid.*)" (*In re E.B., supra,* 184 Cal.App.4th at p. 576, 109 Cal.Rptr.3d 1.) Further, our Division One colleagues noted: " 'Both common sense and expert opinion indicate spousal abuse is detrimental to children.' (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5 [278 Cal.Rptr. 468]; see *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562 [64 Cal.Rptr.2d 93]; Fields, *The Impact of Spouse Abuse on Children and Its Relevance in Custody and Visitation Decisions in New York State* (1994) 3 Cornell J.L. & Pub. Pol'y 221, 228 ['Studies show that violence by one parent against another harms children even if they do not witness it.']; Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions* (1991) 44 Vand.L.Rev. 1041, 1055–1056 ['First, children of these relationships appear more likely to experience physical harm from both parents than children of relationships without woman abuse. Second, even if they are not physically harmed, children suffer enormously from simply witnessing the violence between their parents.... [¶] Third, children of abusive fathers are likely to be physically abused themselves.' (Fns.omitted.)].) [¶] Father's past violent behavior toward ****845** Mother is an ongoing concern. '[P]ast violent behavior in a relationship is "the best predictor of future violence." Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of those relationships.... Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner.' (Comment, *Beating Again and Again and Again: Why Washington Needs a New Rule of Evidence Admitting Prior Acts of Domestic Violence* (2000) 75 Wash.L.Rev. 973, 978, fns. omitted.)" (*In re E.B., supra,* 184 Cal.App.4th at p. 576, 109 Cal.Rptr.3d 1.)

The father argues the department failed to prove the two incidents of domestic violence between the parents placed the children at substantial risk of physical harm or illness. The father admits Stephanie was present during the January 13, 2012 incident but asserts R.C. and Michelle were not exposed to the parents' conflicts. During the adjudication hearing the father conceded Stephanie saw portions of the January 13, 2012 incident. Despite Stephanie's presence at the January 13, 2012 incident, the father argues she "showed the least reservation toward him and embraced him fully," referencing the Multidisciplinary Assessment Team summary of findings.

[3] The father's arguments are unpersuasive. There is substantial evidence to support the juvenile court's jurisdictional findings. On another occasion, the father grabbed the mother and broke her cell phone. The father first ***943** injured the mother, leaving a red mark on her chest, during a domestic violence incident that occurred in October 2011. Three months later, the father again injured the mother on January 13, 2012. On that day, the father went to the mother's home. The father had learned she had been in a car with a male friend. The father grabbed the mother's hair, forced her onto a couch and choked her. The father also slapped the mother on the right side of her face and pushed her, causing the mother to hit her head and back against a wall. The father ignored the mother's pleas to let her go and threatened to kill her. The father

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also threatened to kill the mother's male friend. The father spoke to the paternal uncle on a cell phone. The father told the paternal uncle, "Bring me the gun because I am going to kill her!"

The January 13, 2012 domestic violence incident occurred in the presence of three-year old Stephanie. According to the Multidisciplinary Assessment Team report, "Stephanie apparently internalized the incident such that she later told [R.C.] that [the father] had hit [the mother]." Stephanie related the same incident to Ms. Rodriguez who wrote the Jurisdiction/Disposition Report. The father refers to the Multidisciplinary Assessment Team report of Stephanie's interaction with him during a visit to argue Stephanie was unaffected by the domestic violence. But that same report states, "Stephanie [showed] a lack of coping skills in dealing with familial conflicts that placed her in foster care and was in need of further mental health services to avoid further deterioration of symptoms. The mother reported Stephanie, who had been in the restroom before the father came to the home, ran out of the bathroom and out the open front door during the violent altercation. While Stephanie was not physically hurt, she was unsupervised during the violent altercation and ran out the front door unattended. The foregoing constitutes substantial evidence which supports the section 300, subdivision (b) finding.

The father argues this case is similar to *In re J.N.* (2010) 181 Cal.App.4th 1010, 1014, 104 Cal.Rptr.3d 478 and *In re Daisy* ****846** *H.* (2011) 192 Cal.App.4th 713, 716–717, 120 Cal.Rptr.3d 709, where the appellate courts reversed jurisdictional orders under section 300, subdivision (b). The father's reliance on both cases is misplaced. In *J.N.,* the parents were incarcerated after the father while intoxicated drove the mother and three children home from a restaurant. (*In re J.N., supra,* 181 Cal.App.4th at pp. 1015–1016, 104 Cal.Rptr.3d 478.) The mother was also drunk. (*Id.* at p. 1017, 104 Cal.Rptr.3d 478.) The father crashed his car into another automobile and then into a city light pole. (*Ibid.*) Two of the children suffered injuries as a result of the crash. (*Ibid.*) The parents expressed remorse and indicated they had learned from their mistakes. (*Id.* at pp. 1017–1018, 104 Cal.Rptr.3d 478.) The parents and the oldest child, an eight-year-old, reported the parents did not drink much. (*Ibid.*) According to the eight-year-old child, the mother drank a beer once in a while and the father drank one or two beers a couple times per month. (*Id.* at 1017, 104 Cal.Rptr.3d 478.) The appellate court reversed the jurisdictional order ***944** under section 300, subdivision (b). The Court of Appeal reasoned neither parent had an ongoing substance abuse problem that put the children at risk of serious physical harm. (*Id.* at p. 1026, 104 Cal.Rptr.3d 478.) And the father reasons: the threat to the children's safety in *J.N.* was greater than here; here, he never struck any of the three children; and in *J.N.,* the father argues, the three children easily could have been killed. No review petition was filed in *J.N.*

In the case of *In re Daisy H., supra,* 192 Cal.App.4th at page 717, 120 Cal.Rptr.3d 709, the father choked and pulled the mother's hair two or seven years before the dependency petition was filed. The children denied ever seeing domestic abuse and there was no evidence the alleged hair-pulling and choking incidents occurred in the children's presence. Further, none of the children in *Daisy H.* expressed any fear of the father. (*Ibid.*) The Court of Appeal found the evidence was insufficient to support the finding the prior act of domestic violence placed the children at a current substantial risk of physical harm. (*Ibid.*) The appellate court stated, "Physical violence between a child's parents may support the exercise of jurisdiction under [section 300,] subdivision (b) but only if there is evidence that the violence is ongoing and likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm." (*Ibid.*) No new petition was filed in *Daisy H.*

The present case involves materially more aggravated facts than in *J.N.* and *Daisy H.* This case does not involve a single act which endangers a child. Rather this case involves: two separate acts of domestic violence; repeated threats to kill the mother; a threat to take the children to Mexico; domestic violence in the presence of one of the children; and one of the children, R.C., being afraid of the father. By contrast, *J.N.* involved one act of driving under the influence of alcohol and a single ensuing accident. There was, in the opinion of the Court of Appeal, no evidence of an ongoing substance abuse problem. *Daisy H.* involved either a two- or seven-year old single act of domestic violence. None of the children in *Daisy H.* had witnessed the single act of domestic violence. According to the Court of Appeal in *Daisy H.,* the fact the parents were separated indicated there was no risk to the children. In this case, the parents were separated prior to the January 13, 2012 attack and threats to kill. Here, there is substantial evidence the parents' separation did not

diminish the risk to the three children (as well as to the mother). The juvenile court had jurisdiction over **847 the children under section 300, subdivision (b) because of the domestic violence perpetrated by the father. (*In re E.B., supra,* 184 Cal.App.4th at p. 576, 109 Cal.Rptr.3d 1; *In re Heather A., supra,* 52 Cal.App.4th at p. 194, 60 Cal.Rptr.2d 315.)

***945** V. DISPOSITION

The jurisdictional and dispositional orders are affirmed.

We concur: ARMSTRONG and KRIEGLER, JJ.

All Citations

210 Cal.App.4th 930, 148 Cal.Rptr.3d 835, 12 Cal. Daily Op. Serv. 12,334, 2012 Daily Journal D.A.R. 15,047

Footnotes

1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

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