MILLER V. ALABAMA: THE SUPREME COURT'S LENIENT APPROACH TO OUR NATION'S JUVENILE MURDERERS

I. INTRODUCTION

In *Miller v. Alabama*,[1] the Supreme Court of the United States was faced with a difficult choice: Whether to put its faith in the rehabilitative power of detention facilities and allow juvenile[2] murderers the opportunity to one day walk free, or to sentence these juvenile murderers to serve the rest of their lives in jail as punishment for their crimes. In a controversial, 5–4 decision, the Court chose to categorically ban mandatory sentences of life imprisonment without parole for juvenile offenders, providing juveniles convicted of murder with the possibility of eventual freedom.

This holding overturned the "Get Tough Laws," enacted by a number of jurisdictions.[3] These laws had aimed to cut down on juvenile crime by allowing juvenile offenders to be tried as adults, and subjected these offenders to the mandatory minimum sentences applied to adult offenders.[4] *Miller* is the most recent decision in a line of Supreme Court cases granting leniency for certain types of criminal defendants facing mandatory minimum sentences.[5]

In reaching its decision, the Court relied on prior rulings that provided greater leniency to juvenile offenders.[6] However, in

1. Miller v. Alabama, 132 S. Ct. 2455 (2012).

2. In the criminal justice system, the term juvenile has been defined as "a person who has not yet reached the age of eighteen." BLACK'S LAW DICTIONARY (9th ed. 2009).

3. *See infra* Part III.A.

4. Julianne P. Sheffer, *Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation within the Juvenile Justice System*, 48 VAND. L. REV. 479, 491 (1995).

5. *Miller*, 132 S. Ct. 2455; Graham v. Florida, 130 S. Ct. 2011 (2010); Roper v. Simmons, 543 U.S. 551 (2005).

6. *Miller*, 132 S. Ct. at 2465-68 (citing *Graham*, 130 S. Ct. 2011; *Roper*, 543 U.S. 551).

expanding those precedents to *Miller*, the Court misinterpreted these explicitly narrow holdings.[7] Additionally, in ruling that mandatory sentences of life without parole for juveniles violated the Eighth Amendment, the Court disregarded the legislation of more than half of the states, as well as that of the federal government.[8] By continuing the trend of leniency that the Supreme Court has displayed towards juvenile offenders, the *Miller* Court ignored a number of compelling arguments supporting mandatory sentences of life without parole for juveniles and reached an unsupported conclusion that will have devastating effects on our nation's criminal justice system.

Part II of this Note describes the facts leading up to the *Miller* decision, as well as the rulings of the lower courts that set the stage for the Supreme Court's decision. Part III discusses relevant state legislation and recent Supreme Court decisions that have established a trend of leniency towards juvenile murderers. Part IV summarizes the *Miller* majority opinion and the dissenting opinions, and Part V analyzes the Supreme Court's decision, including the detrimental impact it will have on the criminal justice system.

II. FACTS AND HOLDING

In *Miller*, the Supreme Court addressed two different cases, both involving juvenile offenders who committed murders at the age of fourteen and were sentenced to life imprisonment without the possibility of parole.[9]

The first case, *Jackson v. Hobbs*, occurred in Arkansas in 1999.[10] Kuntrell Jackson was a fourteen year old boy who came from a family in which both his mother and grandmother had shot victims in the past.[11] Jackson conspired to rob a video store with two other adolescent boys.[12] Jackson stayed outside while the other boys entered the store and demanded that the store clerk turn over all of the store's money.[13] When the clerk refused,

7. Miller v. Alabama, 132 S. Ct. 2455, 2481-82 (2012) (Roberts, J., dissenting).

8. *Id.* at 2471; U.S. Const. amend XIII ("[E]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

9. *Miller*, 132 S. Ct. at 2461-62.

10. Jackson v. State, 194 S.W.3d 757, 758 (Ark. 2004).

11. *Miller,* 132 S. Ct. at 2468.

12. *Jackson*, 194 S.W.3d at 758-59.

13. *Id.*

one of Jackson's co-conspirators shot the clerk in the face, killing her instantly.[14]

Because Arkansas law allows juveniles who have committed serious offenses to be charged as adults,[15] Jackson was charged as an adult with capital felony murder and aggravated robbery, and a jury convicted him on both charges.[16] Jackson was sentenced to life imprisonment without parole, the mandatory minimum sentence for capital murder under Arkansas law.[17] The Supreme Court of Arkansas later affirmed his conviction.[18]

Jackson filed a state petition for habeas corpus arguing that a mandatory sentence of life without parole for a fourteen-year-old offender violated the Eighth Amendment's prohibition on cruel and unusual punishment.[19] The Arkansas courts dismissed the petition, finding that mandatory minimum sentences of life without parole for juveniles are "within statutory bounds," and are, therefore, constitutional.[20] Jackson argued before the Supreme Court that the Court should expand upon its prior decisions limiting the severity of sentences that may be constitutionally imposed on juvenile offenders.[21]

The second case, *Miller v. Alabama,* originated in an Alabama Circuit Court.[22] The defendant, Evan Miller, had an alcoholic and drug addicted mother and a physically abusive stepfather.[23] Miller had been in and out of the foster system and regularly used alcohol and drugs.[24] By the time of his crime, Miller had attempted suicide on four occasions, the first time at the age of six.[25] When Evan Miller was fourteen-years-old, he went to his neighbor's trailer with a friend to smoke marijuana and play drinking games.[26] When his neighbor fell asleep, Miller

14. Jackson v. State, 194 S.W.3d 757, 759 (Ark. 2004).

15. ARK. CODE ANN. § 9-27-318(c)(2) (West 1989).

16. *Jackson*, 194 S.W.3d at 759.

17. *Id.* (citing ARK. CODE ANN. § 5-10-101(C) (2011)).

18. *Id.* at 762.

19. Jackson v. Norris, 378 S.W.3d 103, 103 (Ark. 2011).

20. *Id.*

21. Miller v. Alabama, 132 S. Ct. 2455, 2461 (2012) (arguing "that a mandatory life-without-parole term for a fourteen-year-old violates the Eighth Amendment.").

22. In re E.J.M. v. State, 928 So.2d 1081, 1082 (Ala. 2005).

23. *Miller*, 132 S. Ct. at 2462.

24. *Id.*

25. *Id.* at 2462 (citing *E.J.M.*, 928 So.2d at 1081).

26. Miller v. State, 63 So.3d 676, 682 (Ala. Crim. App. 2010).

stole three hundred dollars from his wallet.[27] While Miller attempted to return the wallet to the neighbor's pocket, the neighbor awoke and grabbed Miller by the throat.[28] Miller then repeatedly beat the neighbor, both with his fists and a baseball bat, while declaring, "I am God. I've come to take your life."[29] Miller and his friend left the trailer, but later returned to cover up evidence of the crime and set the neighbor's trailer on fire.[30] The neighbor died from smoke inhalation and injuries sustained from the beating.[31]

Miller was originally charged as a juvenile, but, in accordance with Alabama law,[32] the District Attorney removed the case to adult court.[33] Miller was then charged as an adult with murder in the course of arson,[34] which carried a mandatory minimum sentence of life without parole.[35] The jury found Miller guilty of this charge,[36] and the Alabama Court of Criminal Appeals affirmed his conviction.[37] The Alabama Supreme Court denied review of the case.[38] When the Supreme Court of the United States granted certiorari, Miller, like Jackson, argued that sentencing a juvenile offender to life imprisonment without parole constituted cruel and unusual punishment in violation of the Eighth Amendment.[39]

The States of Alabama and Arkansas responded by arguing that, because a majority of jurisdictions permitted mandatory life without parole sentences for juvenile murderers, the punishment could not be considered unusual.[40] Furthermore, the States argued that the discretion available to the juvenile courts to determine whether a juvenile should be transferred to adult court

27. Miller v. State, 63 So.3d 676, 683 (Ala. Crim. App. 2010).
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.* at 685.
32. *See* ALA. CODE §12-15-34 (LexisNexis 1975).
33. In re E.J.M. v. State, 928 So.2d 1081, 1084 (Ala. 2005).
34. ALA. CODE § 13A-6-2(a)(3) (LexisNexis 1975).
35. *Id.* § 13-A-6-2(c); *Miller v. State*, 63 So.3d at 682; *see also* ALA. CODE § 13A-5-40(a)(9) (LexisNexis 1975).
36. State v. Miller, 2006 WL 6627054 (Ala. Cir. Ct. 2006).
37. *Miller v. State*, 63 So.3d at 682.
38. Miller v. Alabama, 132 S. Ct. 2455, 2463 (2012).
39. *Id.*
40. *Id.* at 2470-71.

was sufficient to satisfy the mandated individualized sentencing requirement for the most serious sentences.[41] The Supreme Court consolidated the cases.[42]

The Court held 5–4 that mandatory sentences of life imprisonment without parole for crimes committed by offenders under the age of eighteen violate the Eighth Amendment's prohibition on cruel and unusual punishment and remanded both cases for resentencing.[43]

III. BACKGROUND

Miller v. Alabama came before the Supreme Court at a time of conflict in the juvenile justice system.[44] Several decades had passed since the Get Tough Laws were enacted in the 1980s,[45] and the Supreme Court had recently decided several cases providing that only certain sentences were available for juvenile offenders.[46] The *Miller* Court strongly considered reasoning used in these previous decisions to invalidate the death penalty for juvenile offenders[47] and mandatory minimum life without parole sentences for non-homicide juvenile offenders.[48] The Court chose to expand on these prior decisions, applying arguments used in both *Graham v. Florida* and *Roper v. Simmons* to support its holding that life without parole sentences for juvenile offenders are unconstitutional.[49]

Section A discusses the Get Tough Laws aimed at cracking down on juvenile crime that were enacted by a majority of states in the late twentieth century and enforced until the Court's

41. Miller v. Alabama, 132 S. Ct. 2455, 2474-75 (2012).

42. Jackson v. Hobbs, 132 S. Ct. 548 (2011).

43. *Miller*, 132 S. Ct. at 2460.

44. *Id.* at 2461.

45. In the late twentieth century, a number of states enacted Get Tough Laws in an effort to cut down on the juvenile crime waves sweeping the nation. Sheffer, *supra* note 4, at 481. These laws permitted juveniles to be tried in adult courts, increased prison sentences for juvenile offenders and enacted minimum mandatory sentences for certain juvenile crimes. *Id.* at 486.

46. *See* Roper v. Simmons, 543 U.S. 551 (2005) (categorically banning capital punishment for juvenile offenders); Graham v. Florida, 130 S. Ct. 2011 (2010) (holding that juvenile offenders may not be sentenced to life imprisonment without parole for non-homicide offenses).

47. *Roper*, 543 U.S. at 575.

48. *Graham*, 130 S. Ct. at 2034.

49. *Miller*, 132 S. Ct. at 2464-69 (citing *Graham*, 130 S. Ct. at 2026-27; *Roper*, 543 U.S. at 567-69).

decision in *Miller*. Section B presents the Court's emerging trends of leniency in sentencing juvenile offenders. Section C discusses the Court's mandate of individualized sentencing for the most severe sentences that set the stage for the *Miller* decision to categorically ban mandatory sentences of life imprisonment without parole for juvenile offenders.

A. GET TOUGH LAWS: THE STATES' RESPONSE TO JUVENILE CRIME

Amidst a heavily increasing trend of juvenile violence and crime in the 1980s and 1990s, a number of states enacted statutes allowing juveniles to be tried in the same court system and receive the same sentences as adults.[50] These statutes brought significant reforms to the juvenile sentencing system, imposing mandatory minimum sentences for certain crimes, and allowing the imposition of statutory maximum sentences for particular juvenile offenders.[51]

Both Alabama and Arkansas, for instance, enacted these Get Tough Laws, which subjected juvenile offenders to the same punishments as adults for committing the same offenses.[52] The Arkansas statute allowed state prosecutors to charge a juvenile offender as an adult or to transfer the offender's case from juvenile court to adult court when the juvenile was charged with murder or other similarly serious crimes.[53] Under Arkansas law, any juvenile offender who was convicted of murder or whose co-conspirator was convicted of murder, "[i]n the course of and in furtherance of [a] felony or in immediate flight from [a] felony,"[54] would be sentenced to a mandatory minimum sentence of life imprisonment without parole.[55]

Alabama enacted a similar statute, permitting state prosecutors to transfer offenders over the age of fourteen to adult court and subject them to the same sentences as adults.[56] In

50. Sheffer, *supra* note 4, at 485-86.

51. *Id.* at 491.

52. *See generally* ARK. CODE ANN. § 9-27-318 (West 1989); ALA. CODE § 12-15-203 (LexisNexis 1975).

53. ARK. CODE ANN. § 9-27-318 (West 1989) ("The state may file a motion in the juvenile division of circuit court to transfer a case to the criminal division of circuit court . . . when a case involves a juvenile.").

54. ARK. CODE ANN. § 5-10-101(a)(1)(B) (West 2011).

55. *Id.* § 5-4-104(b).

56. ALA. CODE § 12-15-203 (LexisNexis 1975) (stating that

Alabama, the most serious offenses, including murder, are punishable by death, and murder convictions mandate minimum sentences of life without parole.[57]

Although such Get Tough Laws were controversial, the majority of states adopted them,[58] permitting prosecutors to charge juveniles as adults and authorizing courts to impose adult sentences.[59] However, in recent years, the Supreme Court has begun mandating that these laws impose less severe penalties on juveniles, allowing juvenile offenders to escape the most serious state law punishments.[60]

B. THE SUPREME COURT SHOWS LENIENCY FOR CERTAIN OFFENDERS

Within the past decade, the Supreme Court has become more hostile towards Get Tough Laws and has adopted a more rehabilitative outlook towards juvenile offenders.[61] As a result, the Court has begun to apply strict limitations on the type of sentences available for juveniles, both in *Roper v. Simmons* and in *Graham v. Florida*.[62]

> [a] prosecutor . . . may file a motion requesting the juvenile court judge to transfer a child for criminal prosecution to the circuit or district court, if the child was 14 or more years of age at the time of the conduct charged and is alleged to have committed an act which would constitute a criminal offense as defined by this code if committed by an adult).

57. ALA. CODE § 13A-5-40(a), § 13A-6-2(c) (LexisNexis 1975).

58. *See, e.g.*, CONN. GEN. STAT. ANN. §46b-141(b) (West Supp. 2001) (allowing the extension of sentences for juveniles convicted as delinquents); IOWA CODE ANN. § 232.22(1)(d) (West 2009) (permitting courts to place juveniles in detention if there is probable cause that the juvenile has committed a delinquent act); N.Y. PENAL LAW § 70.05(3)(a)-(c) (McKinney 2003) (establishing mandatory minimum sentences for juvenile offenders who have been convicted of the most serious crimes).

59. *See generally* HOWARD N. SYNDER & MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAM, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 110-114 (2006).

60. *See, e.g.,* Roper v. Simmons, 543 U.S. 551 (2005); Graham v. Florida, 130 S. Ct. 2011 (2010).

61. *Graham*, 130 S. Ct. at 2029-30 (rejecting life sentences without parole for non-homicide juvenile offenders based on the rationale that "[a] sentence of life imprisonment without parole cannot be justified by the [penological] goal of rehabilitation"); *Roper*, 543 U.S. at 553 (2005) (categorically banning the death penalty for juvenile offenders, partially due to juveniles' diminished capacity, vulnerability, and "struggle to define their identity" that adult offenders do not possess.)

62. *Graham*, 130 S. Ct. at 2034; *Roper*, 543 U.S. at 551.

In 2005, the *Roper* Court radically changed the sentencing available for juveniles when it ruled that juvenile offenders may not be sentenced to death even for the most atrocious and morally repugnant of crimes.[63] The Court issued this decision despite the fact that the crime presented in *Roper* was clear evidence of the type of heinous murders that may be committed by juveniles.

The defendant, Simmons, was a seventeen year old male at the time he committed murder.[64] He planned his crime in advance, explicitly telling his fifteen-year-old friend that he "wanted to murder someone," and that the duo would "get away with it because they were minors."[65] With this in mind, on the night of the murder, Simmons and his friend met around 2 a.m. and broke into the home of the female victim, a woman who had previously been in a car accident with Simmons.[66] Finding that the woman's husband was out of town, the duo covered the victim's eyes and mouth with duct tape and bound her hands, before driving her to a state park.[67] Upon arriving at the park, the defendant and his friend tied her hands and feet with electrical wire, wrapped her entire face in duct tape, and threw her from a bridge into the river below, where she drowned.[68] After the murder, Simmons publically bragged about his brutal crime, leading to his arrest.[69] Because Simmons was seventeen at the time of the murder, he was tried as an adult in Missouri trial court.[70] Simmons was convicted of murder in the first degree and sentenced to death.[71]

The Supreme Court construed this case as issuing a blanket rule forbidding the death penalty for any crime committed by a juvenile.[72] The Court relied heavily on the argument that juveniles are fundamentally and morally different from adults, and are, therefore, not as culpable for their crimes.[73] The Court held that sentencing a person to death for a crime committed

63. Roper v. Simmons, 543 U.S. 551 (2005).
64. *Id*. at 556.
65. *Id.* (internal quotations omitted).
66. *Id.*
67. *Id.* at 556-57.
68. *Id.*
69. *Roper*, 543 U.S. at 557.
70. *Id.*
71. *Id.* at 557-59.
72. *Id.* at 578.
73. *Id.* at 567-69.

before the age of eighteen was cruel and unusual and prohibited by the Eighth Amendment.[74]

In 2010, the Court expanded on *Roper* with its decision in *Graham* to categorically ban life sentences without parole for non-homicide juvenile offenders.[75] In *Graham*, the Court relied on its findings in *Roper* that offenders convicted of non-homicide crimes are morally less culpable than those convicted of homicides,[76] and that juveniles are fundamentally different from adults.[77] Using this reasoning, the Court held that sentences of life without parole for juveniles who commit *non-homicide* crimes violated the Eighth Amendment's prohibition on cruel and unusual punishment.[78] The Court found that, despite the fact that thirty-nine states enacted laws that permitted sentences of life without parole for juvenile offenders of serious non-homicide crimes, a national consensus existed against these laws, rendering them unconstitutional.[79]

C. THE INDIVIDUALIZED SENTENCING REQUIREMENT FOR THE DEATH PENALTY

The recent trend of leniency in sentencing has not been limited to juvenile offenders.[80] In *Woodson v. North Carolina*, the Court made one of its more radical decisions regarding the death penalty when it held that mandatory sentences of capital punishment are unconstitutional.[81] This decision instituted the requirement of individualized sentencing for the death penalty, in accordance with which courts must evaluate mitigating factors, such as a defendant's characteristics and background and the details surrounding an offense.[82] In *Miller v. Alabama*, the majority held that the individualized sentencing requirement

74. Roper v. Simmons, 543 U.S. 551, 568 (2005).

75. Graham v. Florida, 130 S. Ct. 2011, 2034 (2010).

76. *Id.* at 2016.

77. *Id.* at 2026-27 (citing *Roper*, 543 U.S. at 553-54).

78. *Id.* at 2034.

79. *Id.* at 2023-26.

80. *See, e.g.*, Woodson v. North Carolina, 428 U.S. 280 (1976) (invalidating mandatory sentences of death); Kennedy v. Louisiana, 554 U.S. 407 (2008) (barring capital punishment for the rape of a child where the child did not die and death was not the intended result of the crime); Atkins v. Virginia, 122 S. Ct. 2242 (2002) (holding that the death penalty for mentally retarded criminals violated the Eighth Amendment).

81. *Woodson*, 428 U.S. at 280.

82. *Id.* at 303-05.

ensured that the death penalty is reserved only for "the most culpable defendants committing the most serious offenses."[83]

IV. THE COURT'S DECISION

In a 5–4 decision, the Court, in a majority opinion authored by Justice Kagan, held that life without parole sentences for juvenile offenders violate the Eighth Amendment.[84] Justices Roberts, Thomas, and Alito dissented.[85]

Section A discusses the reasoning of the majority opinion, and the two lines of precedent relied on by the Court in reaching its holding. Section B discusses the three dissenting opinions.

A. THE MAJORITY OPINION

The *Miller* majority relied on two sets of precedent to reach its holding.[86] First, the majority opinion expanded the reasoning from *Roper* and *Graham* that children are fundamentally different from adults.[87] Based on this reasoning, the Court concluded that it is cruel and unusual for children to receive the same mandatory minimum sentences as adults.[88] Second, the majority relied strongly on a line of precedent requiring individualized sentences for imposition of the death penalty.[89] The Court reasoned that the death penalty for adults is analogous to a sentence of life without parole for juveniles.[90] Applying the reasoning that sentences of death must be individualized in order to satisfy the Eighth Amendment,[91] the Court held that mandated sentences of life without parole for juvenile offenders are cruel and unusual.[92]

The majority also rejected the government's arguments that,

83. Miller v. Alabama, 132 S. Ct. 2455, 2467 (2012) (quoting Sumner v. Shuman, 483 U.S. 66, 74-76 (1987); Eddings v. Oklahoma, 455 U.S. 104, 110-12 (1982); Lockett v. Ohio, 438 U.S. 586 (1978) (plurality opinion)).

84. *Miller*, 132 S. Ct. at 2460.

85. *Id.* at 2477-90.

86. *Id.* at 2463.

87. *Id.* at 2464-66; *see infra* Subsection IV.A.1.

88. *Miller*, 132 S. Ct. at 2464-66 (citing Graham v. Florida, 130 S. Ct. 2011, 2026 (2010); Roper v. Simmons, 125 S. Ct. 1183, 1194-95 (2005)).

89. *Id.* at 2467 (citing Woodson v. North Carolina, 428 U.S. 280, 303-04 (1976)); *see infra* Subsection IV.A.2.

90. *Id.* at 2466-68.

91. *See Woodson*, 428 U.S. at 305.

92. *Miller*, 132 S. Ct. at 2466-68 (citing *Woodson*, 428 U.S. at 305).

because the majority of states allow mandatory life sentences for juveniles, such a sentence should not be considered "unusual" under the Eighth Amendment.[93] The Court relied on reasoning in *Graham* to find that, despite the laws of twenty-nine states mandating life without parole sentences for juvenile murderers, a national consensus existed against this mandated sentence.[94] Finally, the opinion briefly rejected the States' argument that the discretion used by juvenile courts in deciding whether to transfer juveniles to adult court was sufficient to constitute individualized sentencing.[95]

1. CHILDREN ARE FUNDAMENTALLY DIFFERENT FROM ADULTS AND MUST BE SENTENCED AS SUCH

The Court adopted the findings set forth in *Roper* and *Graham*, determining that children should be treated differently for purposes of sentencing because children are fundamentally and constitutionally different from adults.[96] The Court cited a finding in *Roper* that children have a "lack of maturity and an underdeveloped sense of responsibility" that makes them more vulnerable to negative influences than adults.[97] The Court also cited to *Graham* finding that the lack of maturity and increased recklessness of children "lessen[s their] moral culpability."[98]

The *Miller* Court found that the reason that children are fundamentally different from adults is not "crime specific," but is universal in all cases where juveniles commit crimes.[99] Based on this rationale, the Court held that, due to the significant differences in child and adult culpability, it would be "cruel and unusual" for both types of offenders to receive the same punishment for committing similar illegal acts.[100]

93. Miller v. Alabama, 132 S. Ct. 2455, 2470-73 (2012); *see infra* Subsection IV.A.3.

94. In *Graham*, the Court found that a national consensus existed against imposing life without parole sentences on non-homicide juvenile offenders despite the fact that a total of thirty-seven jurisdictions within the nation permitted this sentence. *Miller*, 132 S. Ct. at 2470-73 (citing Graham v. Florida, 130 S. Ct. 2011, 2023 (2010)).

95. *Miller*, 132 S. Ct at 2474; *see infra* Subsection IV.A.4.

96. *Miller*, 132 S. Ct at 2464-66 (quoting *Graham*, 130 S. Ct. at 2026; Roper v. Simmons, 543 U.S. 551, 568-69 (2005)).

97. *Id.* at 2464 (quoting *Roper*, 543 U.S. at 569).

98. *Id.* at 2465 (quoting *Graham*, 130 S. Ct. at 2026).

99. *Id.*

100. *Id.* at 2460.

2. INDIVIDUALIZED SENTENCING IS REQUIRED FOR JUVENILE LIFE WITHOUT PAROLE SENTENCES

The second line of precedent on which the majority relied began with *Woodson*'s requirement of individualized sentencing in death penalty cases.[101] In applying this precedent to *Miller*, the Court recognized that sentences of life without parole for juveniles are analogous to the death penalty for adults, and sentences of life without parole "share some characteristics with death sentences that are shared by no other sentences."[102] The Court supported this by finding that the "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."[103] The Court defined life without parole as the "ultimate penalty for juveniles as akin to the death penalty," and therefore concluded that life without parole must be "treated similarly to that most severe punishment."[104] To ensure that only the most culpable juvenile offenders receive the "ultimate penalty" of life without parole, the Court required that lower courts consider the mitigating circumstances of defendants and their crimes when sentencing defendants to life without parole.[105] According to the Court, lower courts must consider various mitigating factors, including the circumstances surrounding the crime, the offender's participation level in the crime, and the defendant's "background and mental and emotional development."[106] Courts must also weigh a juvenile offender's age in determining whether a sentence of life without parole is appropriate.[107] The *Miller* Court found that, "at the least, a sentencer should look at such facts before depriving a 14-year-old of any prospect of release from prison."[108]

The Court further deduced that the *Woodson* line of cases is applicable to both defendant Miller and defendant Jackson.[109]

101. Woodson v. North Carolina, 428 U.S. 280, 305 (1976).

102. Miller v. Alabama, 132 S. Ct. 2455, 2466 (2012) (citing *Graham*, 130 S. Ct. at 2027).

103. *Id.* (citing *Graham*, 130 S. Ct. at 2028) (internal citations omitted).

104. *Id.*

105. *Id.* at 2467.

106. *Id.*

107. *Id.*

108. *Miller*, 132 S. Ct. at 2469.

109. *Id.* at 2468-69.

First, the Court found that, in *Jackson*, the lower courts should have considered the minimal role the defendant played in the crime.[110] Although Jackson was found guilty of felony murder, he did not shoot the store clerk himself, and he never even entered the video store where the shooting occurred.[111] As a result of the Arkansas mandatory minimum sentence of life without parole for felony murder, the judge and jury were never given an opportunity to consider mitigating factors such as the defendant's minimal role in the shooting, the fact that both his grandmother and mother had shot victims in the past, or the fact that Jackson was merely fourteen years old.[112] The Court concluded that the lower courts should have considered or at least "look[ed] at" these factors when determining Jackson's sentence.[113]

The Court likewise determined that the lower courts should have considered mitigating factors when sentencing defendant Miller.[114] Despite the brutal and heinous nature of the murder that Miller committed, the Court found that "if ever a pathological background might have contributed to a 14-year old's commission of a crime, it [was] here."[115] Miller was physically abused by his stepfather, neglected by his alcoholic and drug-addicted mother, placed in and out of foster care multiple times, and attempted suicide on four occasions.[116] The Court decided that, although Miller deserved a severe punishment, he should not have been deprived of an individualized sentence in which the court took the opportunity to evaluate his unfortunate background.[117]

After finding that a sentence of life imprisonment without possibility of parole for juvenile offenders is akin to the death penalty for adults, the Court iterated that juveniles deserve individualized consideration for this sentence.[118] The Court required that in cases where life without parole is available for juvenile defendants, the judge or jury must be given an

110. Miller v. Alabama, 132 S. Ct. 2455, 2468 (2012).

111. *Id.*

112. *Id.* (citing Jackson v. State, 194 S.W.3d 757, 759-60 (Ark. 2004)).

113. *Id.*

114. *Id.* at 2469.

115. *Id.*

116. *Miller*, 132 S. Ct. at 2469 (citing In re E.J.M. v. State, 928 So.2d 1081 (Ala. 2005)).

117. *Id.*

118. *Id.* at 2466-69.

opportunity to consider mitigating factors that may work in favor of the defendant.[119] The majority determined that when courts are given the opportunity to consider surrounding circumstances, the "appropriate occasions for sentencing juveniles to [the] harshest possible penalty will be uncommon."[120]

3. THE COURT'S DISAGREEMENT WITH THE MAJORITY OF STATE LEGISLATURES

The Court pointed to the fact that, in *Graham*, it previously ruled to prohibit life without parole sentences for juvenile non-homicide offenders, despite the fact that thirty-nine jurisdictions permitted this sentence.[121] Therefore, the Court reasoned that its decision to reject a majority of legislatures was not unprecedented.[122]

As such, the Court rejected the states' argument that mandatory sentences of life without parole for juveniles should not be deemed "unusual" under the Eighth Amendment because twenty-nine states mandated the sentence for juveniles convicted of murder in adult court.[123] The Court acknowledged that, for a punishment to be cruel and unusual, there must be "an objective indicia of society's standards, as expressed in legislative enactments and state practice, [that] show a national consensus against a sentence for a particular class of offenders."[124]

The Court deduced that under the law of twenty-nine states, mandatory sentences of life imprisonment without parole for juveniles were only permissible through the combination of two independent statutes: one permitting juveniles to be tried as adults for serious crimes, and the other imposing mandatory sentences of life without parole for defendants convicted of the most serious crimes.[125] The Court then reasoned that there was no legislative intent to mandate sentences of life without parole for juveniles because none of these states had a single, clear statute expressly mandating this sentence, but rather only had

119. Miller v. Alabama, 132 S. Ct. 2455, 2468 (2012).

120. *Id.* at 2469.

121. *Id.* at 2471 (citing *Graham*, 130 S. Ct. 2011, 2023 (2010)).

122. *Id.* (citing *Graham*, 130 S. Ct. at 2011).

123. *Id.*

124. *Id.* at 2470-71 (quoting *Graham*, 130 S. Ct, at 2022; Roper v. Simmons, 543 U.S. 551, 563 (2005)) (internal citations omitted).

125. *Miller*, 132 S. Ct. at 2471-73.

these two separate types of statutes.[126] The Court concluded that this showed a "national consensus" against mandated life sentences without parole for juveniles.[127]

4. A JUVENILE COURT JUDGE'S DISCRETION TO TRANSFER JUVENILE DEFENDERS TO ADULT COURT DOES NOT SATSISFY THE INDIVIDUALIZED SENTENCING REQUIREMENT

The majority also rejected the states' argument that the discretion that the juvenile courts used in determining whether a juvenile could be transferred to adult court was sufficient to fulfill the requirement of individualized sentencing.[128] The majority found that approximately half of the twenty-nine jurisdictions that allowed such transfers actually transferred juveniles to adult court automatically, without any exercise of judicial discretion in the pre-trial phase or the sentencing phase considering the defendants' circumstances or the surrounding facts of the cases.[129] The Court concluded that, even in jurisdictions where such transfers were not automatic, the judges did not exercise discretion sufficient to constitute individualized sentencing because they made transfer decisions in the pre-trial stage, when the available evidence was much less substantial than in the sentencing stage.[130]

B. THE THREE DISSENTING OPINIONS

Four of the justices dissented from the majority's opinion, resulting in three separate dissenting opinions written by Chief Justice Roberts, Justice Alito, and Justice Thomas, with all dissenting opinions joined by Justice Scalia.[131] All of the dissenting justices agreed that mandatory sentences of life without parole for juveniles are constitutional.[132] The three most notable arguments presented by the dissenters against the majority's holding were: (1) There was no national consensus against sentences of life without parole for juveniles;[133] (2) The

126. Miller v. Alabama, 132 S. Ct. 2455, 2473 (2012).

127. *Id.* at 2470-73.

128. *Id.* at 2474-75.

129. *Id.* at 2474.

130. *Id.*

131. *Id.*

132. *Miller*, 132 S. Ct. at 2477 (Roberts, J. dissenting); *id.* at 2482 (Thomas, J. dissenting); *id.* at 2487 (Alito, J. dissenting).

133. *Id.* at 2477-80 (Roberts, J. dissenting); *id.* at 2488-89 (Alito, J. dissenting).

majority misinterpreted Supreme Court precedent;[134] and (3) The majority's categorical ban on mandatory sentences of life without parole for juvenile murderers was overly broad.[135]

1. NO NATIONAL CONSENSUS EXISTS PROHIBITING SENTENCES OF LIFE WITHOUT PAROLE FOR JUVENILE MURDERERS

All three dissenting opinions found that the majority was incorrect in determining that life without parole for juvenile offenders was unusual because the majority refused to accept the fact that most states in the nation allow this punishment.[136] Chief Justice Roberts acknowledged that, although *Graham* held that sentences of life without parole for juvenile non-homicide offenders were unconstitutional when a majority of states permitted this, these states rarely imposed these sentences; only 123 convicted juvenile non-homicide offenders in the entire nation were serving a life without parole sentence at the time *Graham* reached the Court.[137] In contrast, Chief Justice Roberts noted that approximately two thousand juveniles convicted of homicide were currently serving mandatory life sentences without parole at the time of the *Miller* decision.[138] Based on these numbers, the Chief Justice recognized that, unlike in *Graham*, sentences of life without parole were allowed by a majority of jurisdictions *and* heavily practiced.[139] Based on the twenty-nine jurisdictions permitting mandatory sentences of life without parole for juvenile murderers, and the two thousand prisoners serving those sentences, Chief Justice Roberts found that the majority erred in refusing to acknowledge the "objective indicia of society's standards,"[140] which showed that no national consensus existed against sentences of life without parole for juvenile murderers.[141]

The dissenters further contended that the majority did not

134. Miller v. Alabama, 132 S. Ct. 2455, 2480-81 (2012) (Roberts, J. dissenting).

135. *Id*. at 2481-82; *id.* at 2486-87 (Thomas, J. dissenting).

136. *Id.* at 2478-79 (Roberts, J. dissenting); *id.* at 2486 (Thomas, J. dissenting); *id.* at 2488-90 (Alito, J. dissenting).

137. *Miller,* 132 S. Ct. at 2478 (Roberts, J., dissenting).

138. *Id*. at 2477 (Roberts, J., dissenting) (citing Brief for Petitioner at 62, Jackson v. Hobbs, 132 S. Ct. 548 (2011) (No. 10-9647); Brief for Respondent at 30, Miller v. Alabama, 132 S. Ct. 2455 (2012) (No. 10-9646)).

139. *Id.*

140. *Id.* at 2478 (Roberts, J., dissenting) (quoting Graham v. Florida*,* 130 S. Ct. 2011, 2022 (2010)).

141. *Id.* (quoting *Graham,* 130 S. Ct. at 2022).

fully consider the "evolving standards of decency" in current society.[142] According to Chief Justice Roberts, "decency is not the same as leniency," and "a decent society protects the innocent from violence."[143] For those reasons, the Chief Justice concluded that the majority ignored the legislation in the majority of states, as well as the standards of decency of our current society.[144]

2. THE MAJORITY'S MISINTERPRETATION OF PRECEDENT

Chief Justice Roberts further alleged that the majority incorrectly interpreted the line of precedent used in their opinion, including the decisions of *Roper* and *Graham*.[145] The majority concluded that *Roper* and *Graham* dictated a finding that the fundamental differences between children and adults is not "crime specific," but is universal in all cases where juveniles commit crimes.[146] Chief Justice Roberts challenged this idea, finding that it is not supported by either the *Roper* or *Graham* opinions.[147] In fact, the Chief Justice cited to the majority opinion in *Graham*, which explicitly stated that "serious non-homicide crimes . . . cannot be compared to murder," suggesting that the distinction is, in fact, crime specific.[148] In addition, Chief Justice Roberts discussed that the *Roper* Court, in reaching its decision that the death penalty should be banned for juveniles, relied on the fact that sentences of life imprisonment without parole were still available for juvenile murderers.[149] Chief Justice Roberts found that by refusing to allow mandatory impositions of such sentences, the majority substantially misinterpreted the *Roper* and *Graham* decisions.[150]

Justice Thomas argued that the majority also misinterpreted the Woodson line of precedent.[151] According to Justice Thomas, because the death sentence is incomparable to any other

142. Miller v. Alabama, 132 S. Ct. 2455, 2478 (2012) (Roberts, J., dissenting) (internal citations omitted).

143. *Id.*

144. *Id.*

145. *Id.* at 2480.

146. *Id.* at 2465 (majority opinion).

147. *Id.* at 2480 (Roberts, J., dissenting).

148. *Miller*, 132 S. Ct. at 2481 (quoting Graham v. Florida, 130 S. Ct. 2011, 2027 (2010)).

149. *Id.* (quoting Roper v. Simmons, 543 U.S. 551, 572 (2010)).

150. *Id.*

151. *Id.* at 2485 (Thomas, J., dissenting).

sentence, the *Miller* majority erred by applying decisions regarding the death penalty to other, lesser sentences, such as life without parole.[152] For this reason, Justice Thomas concluded that the majority should not have required individualized sentencing for sentences of life without parole, a requirement that has thus far only been reserved for the death penalty.[153]

3. THE MAJORITY'S OVERLY BROAD CATEGORICAL BAN

The final criticism addressed by Chief Justice Roberts and Justice Thomas referenced the broadness of the majority's ruling.[154] Under these justices' view, the majority unnecessarily ruled beyond the scope of the issues presented when it found that individualized life sentences without parole for juveniles convicted of murder should be "uncommon" from this point forward.[155] Chief Justice Roberts specifically feared that the majority not only categorically banned mandatory life without parole sentences, but also welcomed "an invitation to overturn life without parole sentences," in an effort to make such sentences uncommon.[156] The Chief Justice also expressed concerns that the unnecessary broadness of the majority's holding will have detrimental effects on the criminal justice system, eventually resulting in a decision to "never permit juvenile offenders to be tried as adults."[157] According to Justice Thomas, by making individualized life without parole sentences uncommon for juveniles, the majority went "from merely divining the societal consensus of today to shaping the societal consensus of tomorrow."[158]

V. ANALYSIS

In reaching its holding to categorically ban mandatory sentences of life without parole for juvenile offenders, the *Miller* majority ignored valid counterarguments. Blindly disregarding the legislation of a majority of states and misinterpreting precedent, the majority reached an unsupported conclusion that

152. Miller v. Alabama, 132 S. Ct. 2455, 2485 (2012) (Thomas, J., dissenting) (quoting Harmelin v. Michigan, 501 U.S. 957, 995 (1991)).

153. *Id.*

154. *Id.* at 2482 (Roberts, J., dissenting).

155. *Id.*

156. *Id.* at 2481.

157. *Id.*

158. *Miller*, 132 S. Ct. at 2486 (Thomas, J., dissenting).

will have devastating effects on our nation's criminal justice system.

The majority ruled incorrectly for four main reasons. First, the majority's argument that teenagers lack the culpability possessed by adults due to fundamental differences in behavior and morals[159] is unsupported. Second, the majority misapplied precedent. Third, the majority undermined state legislative intent and erroneously found that a national consensus existed against mandatory sentences for juveniles convicted of murder.[160] Finally, the Court unnecessarily broadened its ruling to touch upon individualized sentences of life without parole for juvenile offenders, an issue that was never before the Court.[161] The sections that follow address each of these four issues in turn.

A. CHILDREN ARE FUNDAMENTALLY *SIMILAR* TO ADULTS

In reaching its decision, the Court greatly relied on the argument that children are fundamentally different from adults in the sense that they are reckless, impulsive, immature, and more vulnerable to negative influences.[162] Despite this argument, there is significant evidence to show that adolescents that commit savage murders possess the same culpability as their adult criminal counterparts.[163] In fact, "by mid-adolescence, most teens are close to adults in their ability to reason and to process information."[164] As stated in an amicus brief by the National Organization of Victims of Juvenile Lifers, "it is quite clear that, despite their age, certain teen-aged murderers are more than capable of distinguishing right from wrong and fully appreciating the consequences of their actions."[165]

159. Miller v. Alabama, 132 S. Ct. 2455, 2464-65 (2012).

160. *Id.* at 2471.

161. *Id.* at 2469.

162. *Id.* at 2463-64 (quoting Roper v. Simmons, 543 U.S. 551, 569 (2005)).

163. *Roper*, 543 U.S. at 618 (Scalia, J., dissenting) (finding that murder cannot be defined as normal adolescent "risky and or antisocial behavior," and that juveniles "[w]ho commit premeditated murder are—at least sometimes—just as culpable as adults.").

164. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 JUVENILE JUST. 15 (2008), *available at* http://futureofchildren.org/futureofchildren/publications/docs/18_02_02.pdf.

165. Brief for National Organization of Victims of Juvenile Lifers as Amicus Curiae Supporting Respondents at 5, Miller v. Alabama, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647).

By choosing to ban sentences of life without parole for even the most morally repugnant juvenile murderers, the majority has denied justice to victims and their families. Although, as Chief Justice Roberts noted, "it is a great tragedy when a juvenile commits murder," because "his life has gone so wrong so early,"[166] the brutality that teenagers engage in cannot always be excused by their age. In cases where teenage offenders take the innocent lives of others in unimaginably heinous and violent ways, the only sufficient punishment is a life sentence of imprisonment without parole. Courts throughout the country have unfortunately been forced to hear numerous such cases.

In *State v. Ninham*, the Supreme Court of Washington sentenced a fourteen-year-old defendant to life imprisonment without parole.[167] The defendant, Ninham, along with four friends, stopped the thirteen-year-old victim riding home on his bike, and for no apparent reason began to viciously beat him.[168] When the victim attempted to escape, the defendant and his friends chased him to the fifth floor of a parking garage.[169] Ninham grabbed the victim by his hands, while Ninham's friends grabbed the victim by the feet, and the boys began swinging the victim over the parking ramp's concrete wall.[170] The defendant and his friend then released the victim's hands and feet, sending him flying over the wall to his death forty-five feet below.[171]

Similarly, in *Larson v. Darnell*, the fifteen-year-old defendant was sentenced to life without parole for the rape and murder of a twelve-year-old girl.[172] The defendant had a criminal history of molestation, attempted rape, and assault with a deadly weapon, and was released from prison only a month before the murder of his last victim.[173] After his rape and murder conviction, the defendant sent a letter to the state prosecuting

166. Miller v. Alabama, 132 S. Ct. 2455, 2482 (2012) (Roberts, J., dissenting).

167. Brief for National Organization of Victims of Juvenile Lifers as Amicus Curiae Supporting Respondents at 16-18, Miller v. Alabama, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647) (citing State v. Ninham, 797 N.W.2d 451, 456 (Wis. 2011)).

168. *Ninham*, 797 N.W.2d at 457.

169. *Id.*

170. *Id.*

171. *Id.* at 457-58.

172. Brief for National Organization of Victims of Juvenile Lifers as Amicus Curiae Supporting Respondents at 19, Miller v. Alabama, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647).

173. *Id.* at 18-19.

attorney threatening to kill the attorney's wife and children.[174]

Both cases involve murderers several years below the age of eighteen who engaged in reprehensible, senseless actions. The sickening nature of both murders exhibits culpability far beyond the offenders' years. In *Darnell*, the defendant's culpability is even more readily apparent in his refusal to show remorse and the continuance of his slew of heinous crimes almost immediately after being released from prison. *Darnell* should serve as a warning to the Court of what senseless criminal acts may occur without the availability of mandatory life without parole sentences for juvenile murderers.

Darnell is not the only juvenile to return to criminal behavior after being released from incarceration. Several studies have revealed tendencies for juvenile offenders to re-offend. Missouri, one of the few states to conduct a study of recidivism of juvenile offenders, concluded that 20% of the state's juvenile offenders recidivate by committing either a Class A Misdemeanor or a felony.[175] The New York State Office of Children and Family Services calculated that in 2008, 44% of New York's juvenile offenders and delinquents were rearrested within 24 months of their release.[176] While unfortunate, these statistics show that courts must be stricter in sentencing juveniles in order to prevent future crimes. Darnell's heinous murder is only one example of the many crimes that may be prevented by enacting stricter sentences, such as mandatory life without parole for the most reprehensible juvenile offenders.

Similarly to Darnell and Ninham, Miller's unbelievably brutal and senseless murder of his neighbor places him in a league with the most culpable of adult murderers. Miller, who, like Darnell, had a criminal history prior to the murder, refused to respond to the punishment he had previously received and chose to beat an innocent man to death, while saying, "I am God.

174. Brief for National Organization of Victims of Juvenile Lifers as Amicus Curiae Supporting Respondents at 20, Miller v. Alabama, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647).

175. SUPREME COURT OF MO., OFFICE OF STATE COURTS ADMINISTRATOR, MO JUVENILE OFFENDER RECIDIVISM, 2009 STATEWIDE JUVENILE COURT REPORT (2009), *available at* http://www.courts.mo.gov/file.jsp?id=34387.

176. *OCFS Fact Sheet: Recidivism Among Juvenile Delinquents and Offenders Released from Residential Care in 2008*, NY OFFICE OF CHILDREN AND FAMILY SERVICES (Oct., 2011), http://www.ocfs.state.ny.us/main/detention_reform/Recidivism%20fact%20sheet.pdf.

I've come to take your life."[177] Although it may appear an incredibly harsh sentence, life without parole is not disproportionate to the heinous actions and lack of moral decency exemplified by defendant Miller and numerous other juvenile murderers.

B. THE MAJORITY'S MISAPPLICATION OF PRECEDENT

In choosing to expand *Graham* and *Roper* to support its conclusion, the majority not only misinterpreted these prior decisions, but willfully ignored explicit language within these opinions stating that their holdings only applied to very narrow issues and should not be expanded to different types of crimes or punishments.

In *Graham*, the Court categorically banned sentences of life without parole for juvenile offenders convicted of *non-homicide* crimes.[178] The *Graham* Court never implied that this holding should apply to juvenile offenders convicted of murder, and the Court explicitly stated that "serious non-homicide crimes . . . cannot be compared to murder."[179] The opinion further dictated that, "defendants who do not kill, intend to kill or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers."[180] The *Graham* Court found that because non-homicide crimes are incomparable with homicides, it is illogical that the same punishment should be imposed for those crimes.[181]

The *Miller* majority argues that, after its decision, sentences of life imprisonment without parole should be limited to a small group of juvenile offenders convicted of murder.[182] If this prediction holds true, then in most situations, "the maximum punishment the Constitution would tolerate for a 17-year-old who commits aggravated murder—namely, life *with* the possibility of parole—would be no different from the maximum punishment the Constitution would tolerate for a 17-year-old who is guilty only of

177. Miller v. State, 63 So.3d 676, 682 (Ala. Crim. App. 2010).

178. Graham v. Florida, 130 S. Ct. 2011, 2027 (2010).

179. Miller v. Alabama, 132 S. Ct. 2455, 2481 (2012) (Roberts, J., dissenting) (citing *Graham*, 130 S. Ct. at 2027).

180. *Graham,* 130 S. Ct. at 2027 (citing Kennedy v. Louisiana, 458 U.S. 782 (2008); Tison v. Arizona, 481 U.S. 137 (1987); Coker v. Georgia, 433 U.S. 584 (1977)).

181. *Id.* at 2027.

182. *Miller*, 132 S. Ct. at 2469.

a non-homicide offense."[183] This result would violate the Court's reasoning in *Graham* that criminals that commit non-homicide crimes are categorically less culpable than those criminals that take another's life, and must be treated as such.[184]

In *Roper*, the Court held that the death penalty was unconstitutional for juvenile offenders.[185] In reaching this conclusion, "*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."[186] By implying their willingness to deny courts the ability to impose life without parole sentences on the most brutal juvenile offenders, the Court dismissed the reasoning relied on in *Roper*. In this "classic bait and switch,"[187] the majority adopted only certain reasoning from case law while refusing to acknowledge arguments within the same case that explicitly rebut its conclusion.

C. THE MAJORITY'S UNDERMINING OF LEGISLATIVE INTENT

The *Miller* holding that mandatory sentences of life without parole for juvenile offenders are unusual under the Eighth Amendment is implausible and unsupported. An overwhelming number of jurisdictions, including the federal government, allowed these sentences at the time *Miller* was decided.[188] Therefore, the majority's "decision invalidates the laws of dozens of legislatures and Congress."[189] As further argued by Chief Justice Roberts in his dissent, the majority never directly concluded that mandatory sentences of life without parole for juveniles are "unusual."[190] Instead, the majority relied on *Graham* to show that the invalidation of a sentence when it is so widely supported is not unprecedented.[191] However, the facts of *Graham* and *Miller* are not the same. In *Graham*, while the

183. Brief for Respondent at 38-39, Miller v. Alabama, 132 S. Ct. 2455 (2012) (No. 10-9646).

184. Graham v. Florida, 130 S. Ct. 2011, 2027 (2010).

185. Roper v. Simmons, 543 U.S. 551, 551 (2005).

186. Miller v. Alabama, 132 S. Ct. 2455, 2481 (2012) (Roberts, J., dissenting) (quoting *Roper*, 543 U.S. 551 (2005)) (internal quotations omitted).

187. *Id.*

188. *Id.* at 2471.

189. *Id.*

190. *Id.* (Roberts, J., dissenting).

191. *Id.*

sentence of life without parole for juvenile *non-homicide* offenders was permitted by a vast number of jurisdictions, it was rarely practiced.[192] In contrast, in *Miller*, a majority of jurisdictions both permitted and regularly imposed mandatory life without parole sentences for juveniles convicted of murder.[193] Therefore, the majority's declaration that mandatory sentences of life without parole for juveniles were unusual, despite the fact that these sentences are both regularly permitted and practiced, is unprecedented.

The majority further claimed that there was no clear legislative intent that jurisdictions mandate life without parole sentences for juveniles because such mandated sentences required the combination of two distinct statutes.[194] However, as argued by Chief Justice Roberts in his dissent, "the widespread and recent imposition of the sentence makes it implausible to characterize this sentencing practice as a collateral consequence of legislative ignorance."[195] Mandated sentences of life without parole resulting from the combination of two statutes are permitted by twenty-nine distinct jurisdictions.[196] Two thousand prisoners are currently serving these mandated sentences.[197] The majority's contention that every one of these overwhelming number of sentences was imposed as a mistake by a majority of the nation's jurisdictions is entirely unsupported.

The backlash that followed the *Miller* decision clearly shows the legislative intent of the states.[198] In Iowa, the Governor unwillingly commuted the life without parole sentences of thirty-eight inmates convicted of murder as juveniles to sixty years without parole.[199] The Governor displayed his support for mandatory sentences of life without parole, announcing that such sentences "ensure that justice is balanced with punishment for

192. Miller v. Alabama, 132 S. Ct. at 2478 (Roberts, J., dissenting) (citing Graham v. Florida, 130 S. Ct. 2011, 2026 (2008)).

193. *Id.*

194. *Id.* at 2472 (majority opinion).

195. *Id.* at 2480 (Roberts, J., dissenting).

196. *Id.* at 2483.

197. *Id.* at 2478.

198. Steve Eder, *Iowa Governor Reduces Juvenile Killers' Terms*, WALL STREET J., July 17, 2012, http://online.wsj.com/article/SB10001424052702303612804577531242880353760.html.

199. *Id.* at 55.

those vicious crimes and tak[e] into account public safety . . . [T]hose who are found guilty are dangerous and should be kept off the streets and out of our communities."[200] This sentiment reflects the understanding that mandated life sentences without parole for juvenile offenders are necessary to protect society from dangerous criminals.

By fabricating a "national consensus"[201] against mandated sentences of life without parole for juvenile offenders, the majority rejected the clear legislative intent of a majority of the nation's jurisdictions.

D. THE UNNECESSARY BREADTH OF THE MAJORITY'S OPINION

While the *Miller* majority's decision to invalidate mandatory sentences of life imprisonment without parole for juveniles is highly detrimental to the criminal justice system, it is the majority's insinuation that individualized sentences of life without parole should also be categorically banned that is the most devastating.[202] The majority unnecessarily predicted the fate of individualized sentences of life without parole for juvenile offenders, which was never at issue.[203] According to the majority, "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon."[204] Such a prediction welcomes constitutional challenges to individualized sentences of life without parole for juveniles. The majority's decision, therefore, may lead to devastating effects on (1) the effectiveness of the criminal justice system and (2) the safety of society.

1. FUTURE IMPLICATIONS OF *MILLER* ON THE JUSTICE SYSTEM

As argued by the dissenting Justices, the majority's willingness to invalidate sentences for juvenile offenders "has no discernible end point - or at least none consistent with our Nation's legal traditions."[205] If the majority furthers its efforts to ban certain punishments for juvenile offenders, "the only

200. Eder, *supra* note 198, at 55.

201. Miller v. Alabama, 132 S. Ct. at 2470 (quoting Graham v. Florida, 130 S. Ct. 2011, 2022 (2010); Roper v. Simmons, 543 U.S. 551, 553 (2005)).

202. *Id.* at 2469 (in addition to categorically invalidating *mandatory* life without parole sentences for juvenile offenders, the majority also provides that courts' use of this sentence for juvenile offenders should be "uncommon.").

203. *Id.*

204. *Id.*

205. *Id.* at 2482 (Roberts, J., dissenting).

stopping point for the Court's analysis would be never permitting juvenile offenders to be tried as adults."[206] As of 2006, forty-five states allowed juvenile court judges to transfer juvenile offenders to criminal courts to be tried for certain crimes.[207] A refusal to charge juvenile offenders as adults would be tantamount to a rejection of legislative intent of nearly every state.

Additionally, imposing only light sentences on juveniles who commit crimes that are equally or more heinous than those committed by adults would be a gross miscarriage of justice—especially considering that in many cases the juvenile is only a few years younger than an adult. Requiring juveniles to be tried solely within the juvenile courts would permit some of our nation's most dangerous criminals to be released after serving only a few years in a juvenile detention facility, the consequences of which will be devastating. The danger of releasing these offenders can be seen in the high rates of recidivism among juvenile offenders, with many offenders committing crimes within one to two years of their release.[208]

If the Court continues with the trend of leniency exemplified in *Miller*, there will be increasingly fewer types of sentences available for juveniles convicted of murder. Granting offenders the possibility of parole denies the families of their victims the justice guaranteed to them by our nation's judicial system. Until the Court realizes the error of this trend, justice will continue to be denied to those who most deserve it.

2. IMPLICATIONS OF *MILLER* ON SOCIAL SAFETY

A categorical ban on mandatory life without parole sentences for juvenile offenders serves as a punishment both for the

206. Miller v. Alabama, 132 S. Ct. 2455, 2482 (2012).

207. HOWARD N. SYNDER & MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAM, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 112 (2006).

208. SUPREME COURT OF MO., OFFICE OF STATE COURTS ADMINISTRATOR, MO JUVENILE OFFENDER RECIDIVISM, 2009 STATEWIDE JUVENILE COURT REPORT (2009), *available at* http://www.courts.mo.gov/file.jsp?id=34387; *OCFS Fact Sheet: Recidivism Among Juvenile Delinquents and Offenders Released from Residential Care in 2008*, NY OFFICE OF CHILDREN AND FAMILY SERVICES (Oct., 2011), http://www.ocfs.state.ny.us/main/detention_reform/Recidivism%20fact%20sheet.pdf (providing that, within one year of release, 49% of juvenile offenders in New York are re-arrested for any crime, and 27% of these offenders are re-arrested for a felony).

families of victims of juvenile murderers and the law-abiding citizens of our society.

The majority's categorical ban on mandatory sentences of life without parole for juvenile offenders combined with its prediction of the rarity of individualized sentences of life without parole will allow for some of the nation's most brutally violent criminals to walk free. Studies show that there exists a select group of homicidal criminals disposed to re-offend upon release from incarceration,[209] and, if these criminals are released, the risk placed on millions of law-abiding citizens is immense. As Justice Alito noted in dissent, "the majority is saying that members of society must be exposed to the risk that convicted murderers, if released from custody, will murder again."[210] In addition to being the only sufficient punishment for the most vicious murderers, a sentence of life without parole is the only punishment that will sufficiently protect our society.

Additionally, life without parole is the only way that many families of juvenile murder victims may be able to attain peace of mind. This particular sentence is the only one that "allows victims to obtain legal finality," avoiding even the arduous process of death penalty appeals.[211] Prison sentences providing defendants with the possibility of parole cause their victims to live in constant fear of the defendants' pending release.[212] Life imprisonment with the possibility of parole not only serves as a heavy sentence for defendants, it "has been likened to sentencing the victim and the victim's family, as well."[213] The agonizing parole process forces victims' families to relive the heinous crimes that have destroyed their lives, and "paralyzes them with fear that the murderers who so callously took the lives of their family members might be released."[214] For those reasons, the *Miller* decision will lead to devastating effects throughout society.

209. *Recidivism*, BUREAU OF JUSTICE STATISTICS (last updated Mar. 10, 2013), http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=17 (indicating that within 3 years of release, 1.2% of individuals imprisoned for homicide were re-arrested for homicide).

210. Miller v. Alabama, 132 S. Ct. 2455, 2490 (2012) (Alito, J., dissenting).

211. Brief for National Organization of Victims of Juvenile Lifers as Amicus Curiae Supporting Respondents at 21, Miller v. Alabama, 132 S. Ct. 2455 (2012) (No. 10-9646).

212. *Id.*

213. *Id.* at 22 (internal citations omitted).

214. *Id.* at 21.

VI. CONCLUSION

In categorically banning mandatory sentences of life imprisonment without parole for juvenile murderers, the *Miller* majority provided some of our nation's most violent offenders the possibility of release, creating a dangerous precedent for the future administration of the criminal justice system. In reaching its decision, the majority expanded on selective precedent, regardless of the fact that these cases provided explicitly narrow rulings.[215] Additionally, the majority incorrectly applied the Court's own precedent in determining that the sentence at issue is unusual under the Eighth Amendment.[216] By ignoring the legislative intent of twenty-nine jurisdictions, the majority found that there was a national consensus against the sentence.[217] Finally, the majority made the prediction that individualized sentences of life without parole will be uncommon for juveniles,[218] which will have a significant, deleterious impact on future legislation and judicial decisions regarding constitutional challenges to individualized sentences of life without parole.

If the Court continues to invalidate necessary sentences for juvenile offenders, not only will justice continue to be denied to those whose lives have been ruined by the horrific actions of juvenile criminals, but the nation's justice system will be devastatingly affected.

Sara L. Ochs

215. Miller v. Alabama, 132 S. Ct. 2455, 2464-66 (2012).

216. *Id.* at 2478-79 (Roberts, J., dissenting).

217. *Id.* at 2470-73 (majority opinion).

218. *Id.* at 2469.