



2015

Criminal Law—Sentencing Juveniles—Where Do We Go From Here? Mandatory Sentencing and Retroactive Application Post-Miller. *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

Nikki Morris

Follow this and additional works at: <https://lawrepository.ualr.edu/lawreview>



Part of the [Criminal Law Commons](#)

Recommended Citation

Nikki Morris, *Criminal Law—Sentencing Juveniles—Where Do We Go From Here? Mandatory Sentencing and Retroactive Application Post-Miller. *Miller v. Alabama*, 132 S. Ct. 2455 (2012).*, 37 U. ARK. LITTLE ROCK L. REV. 311 (2015).

Available at: <https://lawrepository.ualr.edu/lawreview/vol37/iss2/8>

This Note is brought to you for free and open access by Bowen Law Repository: Scholarship & Archives. It has been accepted for inclusion in University of Arkansas at Little Rock Law Review by an authorized editor of Bowen Law Repository: Scholarship & Archives. For more information, please contact mmserfass@ualr.edu.

CRIMINAL LAW—SENTENCING JUVENILES—WHERE DO WE GO FROM
HERE? MANDATORY SENTENCING AND RETROACTIVE APPLICATION POST-
MILLER. *MILLER V. ALABAMA*, 132 S. CT. 2455 (2012).

I. INTRODUCTION

“There can be no keener revelation of a society’s soul than the way in which it treats its children.”¹ It is even more telling when looking at the way society punishes its children. The stories of Kuntrell and Evan described below demonstrate the importance of allowing a court to consider mitigating circumstances when sentencing the nation’s youth.

Kuntrell,² age fourteen, and his older friends were out one night when they decided to rob a video store. On their way, Kuntrell learned that one of his friends, Derek, was carrying a sawed-off shotgun. Kuntrell initially stayed outside of the store, but later, after seeing Derek point the gun at the store clerk, went inside and said, “I thought you all was playin’.” After the clerk threatened to call the police, Derek shot the clerk, killing her.

Evan, age fourteen, and a friend went to the home of his mother’s drug dealer, Cole, to smoke marijuana and play drinking games. After Cole passed out, Evan attempted to steal his money. Cole awoke and grabbed Evan. Evan, who had reached for a bat, started to strike Cole repeatedly. After several blows, Evan put a sheet over Cole’s head and said “I am God; I’ve come to take your life,” and struck him again. Evan and his friend left but later returned to set Cole’s home on fire to cover up the crime.

In both cases, the lower courts were unable to consider any mitigating factor, such as age, which resulted in both of these boys receiving the exact same sentence as anyone else who committed these offenses: mandatory life without parole.³ The Supreme Court of the United States struck down the mandatory portion of both boys’ sentences in *Miller v. Alabama*⁴ and required that mitigating factors be taken into account in these cases. The Court found that the lack of discretion in sentencing violated the Eighth Amend-

1. Nelson Mandela, President of South Africa, Speech at the launch of the Nelson Mandela Children’s Fund (May 8, 1995) (transcript available at http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS250&txtstr=Mahlamba).

2. The following factual scenarios are taken from the real crimes committed by Kuntrell Jackson and Evan Miller, defendants in the consolidated Supreme Court case, *Miller v. Alabama*, 132 S. Ct. 2455 (2012). For more detail about their initial prosecutions, see *Jackson v. Norris*, 2011 Ark. 49, 378 S.W.3d 103 (2011); *Miller v. State*, 63 So. 3d 676 (Ala. 2010).

3. See generally *Jackson v. Norris*, 2011 Ark. 49, 378 S.W.3d 103; *Miller v. State*, 63 So. 3d 676 (Ala. 2010).

4. 132 S. Ct. 2455 (2012).

ment prohibition on cruel and unusual punishment.⁵ The Court explained that judges must have the opportunity to consider mitigating circumstances when sentencing juvenile offenders facing life without parole.⁶

This is not the first time the Supreme Court has distinguished between juveniles and adults in terms of appropriate sentencing practices.⁷ Although many people may believe that a juvenile offender who committed a serious crime deserves an equally harsh punishment as an adult,⁸ the Supreme Court has repeatedly based its juvenile jurisprudence on the notion that children by their very nature are inherently less culpable than adults, even when they commit heinous crimes.⁹

In light of the “children are different” analysis relied upon by the Supreme Court in cases involving juvenile offenders,¹⁰ this note proposes that the *Miller v. Alabama* Supreme Court decision did not go far enough for two reasons. First, mandatory sentencing of juvenile offenders, as a whole, is unsupported by the Eighth Amendment.¹¹ Second, the rule in *Miller* warrants retroactive application in order to prevent previous juvenile offenders from serving what are now unconstitutional sentences.¹²

The next section, Part II, briefly explains the cases leading up to *Miller* and highlights the important factors that the Supreme Court of the United States considers when determining whether an adult sentence is appropriate for a child. Part III.A explains the negative impacts of mandatory sentences and argues that the analysis in *Miller* supports a complete ban on all mandatory sentences for juvenile offenders. Part III.B considers the jurisdictional split on whether *Miller* warrants retroactive application and argues for the importance of giving a retroactive effect to the ruling. Finally, the note concludes in Part IV.

5. *Id.* at 2469.

6. *Id.*

7. For cases where the Supreme Court has made this distinction, see generally *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

8. The author recognizes that any leniency on a criminal defendant can be controversial; however, the Supreme Court of the United States has based its standard on scientific fact and common sense, which supports the conclusion that children who commit crimes are “less deserving of the most severe punishments.” *Miller*, 132 S. Ct. at 2464 (quoting *Graham*, 506 U.S. at 68).

9. See *Graham*, 560 U.S. at 82 (banning life without parole for juveniles convicted of non-homicide crimes); *Roper*, 543 U.S. at 568 (extending the ban on capital punishment for juveniles to the age of eighteen); *Thompson*, 487 U.S. at 823 (banning capital punishment for juveniles under the age of sixteen).

10. *Miller*, 132 S. Ct. at 2464.

11. See *id.* at 2482 (Roberts, C. J., dissenting) (explaining that the majority opinion’s distinction between sentencing children and adults supports the proposition that mandatory sentences for juveniles could be barred altogether).

12. *Hill v. Synder*, 2013 U.S. Dist. LEXIS 12160, at *6 (E.D. Mich. Jan. 30, 2013).

II. BACKGROUND

Juvenile offenders are capable of committing truly heinous crimes;¹³ however, the Supreme Court has consistently held that the inherent nature of youth makes juveniles less culpable and more deserving of special consideration.¹⁴ *Miller v. Alabama* is the most recent case in a series of cases restricting sentences that can be applied to juvenile offenders.¹⁵ In each case, the Court considered various factors to justify a different punishment for the same offense based on the age of the offender. This section focuses on the cases that came before *Miller* and the analysis the Supreme Court relies upon to explain why kids are inherently different.

A. The Cases

In 1988, the landscape of juvenile jurisprudence changed when the Supreme Court of the United States decided *Thompson v. Oklahoma*.¹⁶ In that decision, the Court eliminated capital punishment as a possible sentence for an individual who was under the age of sixteen at the time of the offense.¹⁷ The defendant, William Wayne Thompson, who was fifteen at the time, brutally murdered Thompson's brother-in-law with the help of three other individuals.¹⁸ Thompson was tried as an adult, convicted of first-degree murder, and sentenced to death.¹⁹ The Supreme Court overturned Thompson's sentence and held that executing a person who was under sixteen at the time of the offense was cruel and unusual punishment in violation of the Eighth Amendment.²⁰

Following *Thompson*, the Supreme Court again limited the possible sentences for juvenile criminal offenders in *Roper v. Simmons*²¹ by banning the death penalty for anyone under the age of eighteen.²² Simmons was seventeen at the time he broke into his victim's home and brutally murdered

13. For example, the defendant in *Roper v. Simmons*, who was seventeen at the time of his crime, kidnapped his victim out of her home, wrapped her face in duct tape and her hands in electrical wire before throwing her over a bridge to drown. 543 U.S. at 556–57.

14. *Miller*, 132 S. Ct at 2464 (quoting *Graham v. Florida*, 560 U.S. 48, 69 (2010)).

15. See *Graham*, 560 U.S. at 82 (banning life without parole for juveniles convicted of non-homicide crimes); *Roper*, 543 U.S. at 568 (extending the ban on capital punishment for juveniles to the age of eighteen); *Thompson v. Oklahoma*, 487 U.S. 815, 823 (1988) (banning capital punishment for juveniles under the age of sixteen).

16. 487 U.S. 815 (1988).

17. *Id.* at 823.

18. *Id.* at 819. The victim, who suffered from multiple gunshot wounds, cuts on his torso, bruises, and a broken leg, was also abandoned in a river chained to concrete. *Id.*

19. *Id.* at 819–20.

20. *Id.* at 838.

21. 543 U.S. 551 (2005).

22. *Id.* at 568.

her.²³ The jury found him guilty of murder in the first degree and recommended the death penalty.²⁴ Simmons's initial appeals were denied, but after *Atkins v. Virginia*,²⁵ the Supreme Court of Missouri replaced Simmons's death sentence with life without parole.²⁶ The Supreme Court of the United States affirmed this decision and limited eligibility for the death penalty to those who were over the age of eighteen at the time of their offense.²⁷

The next major development came in 2010 with *Graham v. Florida*.²⁸ In *Graham*, the defendant violated his probation by participating in a home invasion with two older accomplices.²⁹ As a result, the trial court sentenced Graham to life without parole for his earlier crime of armed burglary.³⁰ Focusing on proportionality, however, the Supreme Court of the United States decided that the Eighth Amendment also prohibits sentencing a juvenile convicted of a non-homicide crime to life without parole.³¹

Finally, in 2012, the Court decided *Miller v. Alabama*.³² This case reached the Supreme Court after it granted *certiorari* in two state supreme court decisions.³³ In the cases below, defendants, Kuntrell Jackson and Evan Miller, each challenged his own mandatory sentence of life without parole.³⁴

Kuntrell Jackson was fourteen years old when he was involved in an attempted robbery that resulted in the death of a video store clerk.³⁵ Kuntrell was convicted of capital murder and aggravated robbery.³⁶ Under Arkansas law at that time, the charge of felony murder was subject to a mandatory sentence of life without parole,³⁷ meaning that, in the event of a conviction, the judge had no choice but to sentence the offender to life without parole.

23. *Id.* at 556–57. For a more detailed description of Simmons's crime, see *supra* text accompanying note 13.

24. *Roper*, 543 U.S. at 558.

25. 536 U.S. 304 (2002) (holding that execution of the mentally retarded was prohibited by the Eighth and Fourteenth Amendments).

26. *Roper*, 543 U.S. at 559–60.

27. *Id.* at 560, 568.

28. 560 U.S. 48 (2010).

29. *Graham v. Florida*, 560 U.S. 48, 53–55 (2010).

30. *Id.* at 57.

31. *Id.* at 74.

32. 132 S. Ct. 2455 (2012).

33. *Miller v. Alabama*, 132 S. Ct. 2455, 2461–63 (2012).

34. *Id.*

35. *Id.* at 2461.

36. *Id.* The Supreme Court of Arkansas affirmed his convictions in *Jackson v. State*, 359 Ark. 87, 194 S.W.3d 757.

37. ARK. CODE ANN. § 5-10-101(c) (Repl. 1997). But now, post-*Miller*, subsection (c) has been severed as applied to juveniles, and capital murder is now considered a Class Y felony subject to a discretionary sentence of between ten and forty years or life. *Jackson v. Norris*, 2013 Ark. 175, at 7–8, 426 S.W.3d 906, 910; ARK. CODE ANN. § 5-10-101(c)(1)(B) (Supp. 2013).

Evan Miller was also fourteen years old at the time of his crime.³⁸ Evan was convicted of murder in the course of arson after he attempted to rob a man, beat him nearly to death, and then set his home on fire to destroy the evidence.³⁹ Evan's conviction was also subject to a mandatory sentence of life without parole.⁴⁰

Considering both of these cases, the Court decided that the "mandatory" portion of the sentence was unconstitutional because the trial judge must grant juvenile offenders the opportunity to present evidence of mitigating circumstances before they are sentenced.⁴¹ In making this decision, the Court continued to rely on the "kids are different" analysis from the cases listed above and eliminated *mandatory* life without parole as an option for sentencing a juvenile offender.⁴²

The Court focused on the fact that the mandatory requirement prohibits the judge from considering the mitigating factors of youth such as age, background, and mental and emotional development.⁴³

Under these [mandatory] schemes, every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile (including these two 14-year-olds) will receive the same sentence as the vast majority of adults committing similar homicide offenses—but really, as *Graham* noted, a *greater* sentence than those adults will serve.⁴⁴

Without discretionary authority, the offender who, like Kuntrell Jackson, is merely an accomplice to a felony murder will be subject to the same mandatory penalty as the offender who pulled the trigger.⁴⁵ Equally telling, a child like Evan Miller, who was physically abused, suicidal, and neglected by his drug-addicted mother,⁴⁶ will suffer the same punishment as an adult, who was instilled with a better sense of right and wrong simply due to age. In each of the above cases, the defendant committed a serious offense, yet

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

39. *Id.* at 2462–63.

40. *Id.* at 2463 (citing ALA. CODE ANN. §§ 13A-5-40(9), 13A-6-2(c) (1982)).

41. *Id.* at 2469.

42. *Id.* Note that a juvenile may still receive life without parole for a non-homicide crime, but the distinction that the Court makes here is that the sentence cannot be *mandatory*. *Id.* Instead, a sentencer must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*

43. *Id.* at 2467.

44. *Miller*, 132 S. Ct. at 2467–68 (emphasis in original).

45. *See id.* at 2468.

46. *Id.* at 2469.

the Supreme Court overturned each sentence on Eighth Amendment grounds based on important fundamental differences between children and adults.⁴⁷

B. General Differences Between Children and Adults

As Justice Powell explained, “the experience of mankind, as well as the long history of our law, recogniz[es] that there *are* differences[,] which must be accommodated in determining the rights and duties of children as compared with those of adults.”⁴⁸ Distinctions based on age are prevalent in our current legal system. For example, in all fifty states individuals under the age of eighteen are not allowed to marry without parental consent, vote, or sit on a jury.⁴⁹ Compared to adults, children lack experience, education, and generally some level of intelligence, which makes them more susceptible to peer pressure and less likely to consider the possible consequences of their actions.⁵⁰

In *Roper v. Simmons* and subsequent cases, the Supreme Court recognized three fundamental differences between adults and children.⁵¹ First, it addressed how juveniles are generally less mature and responsible than their adult counterparts.⁵² Second, the Court acknowledged that juveniles are more susceptible to peer pressure.⁵³ Third, the Court pointed out that a child’s character is not fully formed, and thus, can be reshaped over time.⁵⁴ These fundamental differences were the basis for the Court’s conclusion that “children are constitutionally different from adults for purposes of sentencing.”⁵⁵

These same rules also justify a complete ban on mandatory sentencing as a whole and support an argument for applying *Miller* retroactively. The mitigating qualities of youth that distinguish children from adults, and upon which the court relies in making their decisions, are not newly developed.⁵⁶

47. *Id.* at 2464.

48. *Thompson v. Oklahoma*, 487 U.S. 815, 823 (1988) (quoting *Goss v. Lopez*, 419 U.S. 565, 590–91 (1975) (Powell, J., dissenting)).

49. *See id.* (discussing, specifically, the legal distinctions between children and adults in Oklahoma).

50. *Id.* at 835. “Particularly ‘during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment’ expected of adults.” *Eddings v. Oklahoma*, 455 U.S. 104, 115–16 (1982) (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)).

51. *See Roper v. Simmons*, 543 U.S. 551, 569–70 (2005).

52. *Id.* at 569.

53. *Id.*

54. *Id.* at 570.

55. *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012).

56. *See Roper*, 543 U.S. at 569 (relying on science and sociological studies, and the experience of parents, to support the notion that juveniles lack the maturity and sense of responsibility of adults).

Children will often have some mitigating circumstance that courts may need to take into account when assigning a punishment, particularly in the context of accomplishing the penological goals discussed in the next section.

C. Penological Goals

In addition to examining why children are fundamentally different from adults, the Court also considered whether a particular punishment of a juvenile will accomplish any of the four penological goals.⁵⁷ The four goals are deterrence, rehabilitation, incapacitation, and retribution.⁵⁸ The first three goals have utilitarian purposes, which reflect society's hope to achieve a benefit from the punishment.⁵⁹ In contrast, the fourth goal—retributivism—is more concerned with payback.⁶⁰

Deterrence is intended to prevent crime by creating a fear of the punishment.⁶¹ Juveniles, however, are generally less likely than adults to consider the future consequences of their actions.⁶² When compared with adults, juveniles are less likely to be deterred from a particular crime based on the punishment, and therefore, deterrence typically provides a less adequate justification for a particular punishment.⁶³ As the Supreme Court explained, “[c]rimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults.”⁶⁴

57. See *Graham v. Florida*, 560 U.S. 48, 71–74 (2010) (considering life without parole for juvenile non-homicide crimes against the goals of retribution, incapacitation, deterrence, and rehabilitation).

58. Michele Cotton, *Back with a Vengeance: The Resilience of Retribution as an Articulated Purpose of Criminal Punishment*, 37 AM. CRIM. L. REV. 1313, 1313 (2000).

59. *Id.* at 1316.

60. *Id.* at 1315–16.

61. Deterrence, BLACK'S LAW DICTIONARY, 544 (Bryan A. Garner ed., 10th ed., 2014). There are two forms of deterrence: general and specific. Meghan J. Ryan, *Judging Cruelty*, 44 U.C. DAVIS L. REV. 81, 108 (2010). General deterrence aims to reduce overall crime by targeting future offenders; specific deterrence aims to deter a particular offender from repeating the offense. *Id.*

62. *Miller v. Alabama*, 132 S. Ct. 2455, 2465 (2012) (explaining that juveniles, who are immature, reckless, and impetuous, are generally less likely to consider potential punishments); accord *Graham*, 560 U.S. at 72 (explaining that juveniles are less likely to be deterred from a crime for the same reasons that make them less culpable than adults).

63. *Graham*, 560 U.S. at 72 (finding that deterrence did not justify the punishment at issue in the case); see also *Roper v. Simmons*, 543 U.S. 551, 571–72 (2005) (finding also that deterrence did not justify the punishment at issue in the case).

64. *Thompson v. Oklahoma*, 487 U.S. 815, 834 (1988) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 n.11 (1982)).

Like deterrence, incapacitation is a means of preventing offenders from returning to criminal activity.⁶⁵ The Supreme Court recognized in *Graham* and *Roper* that “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.”⁶⁶

On the other hand, rehabilitation, the third goal of punishment, is intended to help the criminal become a productive member of society.⁶⁷ “[I]t would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”⁶⁸ Because juveniles have the capacity to change,⁶⁹ juvenile offenders have more potential to be rehabilitated,⁷⁰ a factor courts consider in juvenile punishment.

Retribution differs from the previous goals of punishment because instead of simply trying to prevent crime, the purpose of retribution is to elicit repayment or enact revenge upon the offender.⁷¹ Retribution also focuses on the offender’s culpable state of mind.⁷² As recognized by society and the Supreme Court, however, juveniles generally have a less culpable state of mind, which means that the justification for retribution is not as strong when dealing with children.⁷³

D. Objective Indicia of the National Consensus

When distinguishing between appropriate sentences for children and adults, in some cases, the Court considers whether there is a national consensus for or against a certain punishment.⁷⁴ In *Thompson*, the Court recognized that all states had enacted legislation differentiating between criminal defendants sixteen and older and those younger than sixteen,⁷⁵ which justified the Court’s decision to ban the death penalty for individuals under the

65. Cotton, *supra* note 58, at 1316. Statistics show that sixty-seven percent of adult offenders released from state prison will become repeat offenders within three years. *Graham*, 560 U.S. at 72 (citing *Ewing v. California*, 538 U.S. 11, 26 (2003)).

66. *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 573).

67. Cotton, *supra* note 58, at 1316–17.

68. *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 570).

69. *Roper*, 543 U.S. at 570.

70. *Graham*, 560 U.S. at 74 (discussing the briefs of the *amici curiae*, which explain that juvenile offenders are more receptive to rehabilitation).

71. Retribution, BLACK’S LAW DICTIONARY, 1511 (Bryan A. Garner ed., 10th ed., 2014).

72. Ryan, *supra* note 61, at 102–03.

73. See *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988).

74. Ryan, *supra* note 61, at 87.

75. *Thompson*, 487 U.S. at 823–24. At that time, eighteen states had completely abolished the death penalty for individuals under sixteen. *Id.* at 829.

age of sixteen.⁷⁶ In *Roper*, the Supreme Court followed similar reasoning in determining that eighteen was the more appropriate dividing line for capital punishment.⁷⁷

As part of this analysis, a court may also take into account outside sources, such as how frequently the judgment is imposed as well as public or professional opinion.⁷⁸ In *Graham*, the Court looked at actual sentencing practices, not just statutory schemes.⁷⁹ Just under 125 juvenile offenders nationwide were actually serving sentences of life without parole for non-homicide crimes in 2010.⁸⁰ Because the sentence had actually been applied relatively few times, the Court concluded that the nation was generally against it.⁸¹

The Supreme Court also acknowledged that medical research indicates children's brains are fundamentally different from adults' brains.⁸² Science shows that only a small portion of children who participate in illegal activities will continue that pattern into their adult lives.⁸³ Based on society's views and the views of the scientific community, the Court established that scientific and professional opinion support the Court's conclusion that children are different from adults and those differences need to be taken into account during sentencing.⁸⁴

E. Applying the Precedents in *Miller*

“An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed.”⁸⁵ In deciding *Miller*, the majority opinion of the Supreme Court relied heavily on the analysis of its previous decisions in *Graham* and *Roper*.⁸⁶ The Court recapped the fundamental differences between children and adults, and the scientific evidence that supports this distinction.⁸⁷ The

76. *Id.* at 838.

77. *Roper v. Simmons*, 543 U.S. 551, 574 (2005).

78. Ryan, *supra* note 61, at 87.

79. *Graham v. Florida*, 560 U.S. 48, 62 (2010).

80. *Id.* at 64.

81. *See id.* at 67 (explaining that the practice of sentencing juveniles to life without parole for a non-homicide crime was “exceedingly rare”).

82. *Id.* at 68.

83. *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012) (quoting *Roper v. Simmons*, 543 U.S. 551, 570 (2005)).

84. *Id.* at 2469.

85. *Graham*, 540 U.S. at 76.

86. *Miller*, 132 S. Ct. at 2464–69.

87. *Id.* at 2464–65.

Court also discussed the penological justifications in relation to a mandatory sentence of life without parole.⁸⁸

In each of these cases, the Court consistently pointed out that juvenile offenders are inherently less culpable than their adult counterparts, and therefore, are entitled to more particularized attention when it comes to sentencing.⁸⁹ It follows that the same mitigating qualities in which the Court relies on to invalidate the mandatory aspect of sentencing a juvenile to life without parole are applicable to any mandatory sentence imposed upon a juvenile offender. Further, mitigating qualities are also relevant to cases in which juveniles were sentenced with mandatory life without parole prior to this decision.

III. ARGUMENT

The Supreme Court of the United States limited its holding in *Miller v. Alabama* to mandatory sentences of life without parole.⁹⁰ This limitation fails to acknowledge that the analysis supporting the holding may equally apply to juveniles subjected to any mandatory sentence.⁹¹ The opinion also leaves open the question of retroactive application of the holding.⁹² The following sections discuss these two issues and argue that the next steps are (A) prohibition of all mandatory sentences for juvenile offenders, and (B) retroactive application of *Miller*.

A. Mandatory Minimum Sentencing of Juvenile Offenders is Inconsistent with the Supreme Court's Approach in *Miller*

Mandatory minimum sentencing schemes are an unnecessary evil in our criminal system,⁹³ particularly when applied to juvenile offenders. This form of sentencing reemerged in our jurisprudence at a time when the American public was under the impression that crime rates were rising and

88. *Id.* at 2465.

89. *See generally Miller*, 132 S. Ct. at 2464–69.

90. *Id.* at 2469.

91. *Id.* at 2482 (Roberts, C. J., dissenting).

92. *See People v. Morfin*, 981 N.E.2d 1010, 1024 (Ill. App. Ct. 1st Dist. 2012) (Sterba J., concurring) (recognizing that the Court did not announce whether the rule applied retroactively as required by *Teague v. Lane*, 489 U.S. 288, 300 (1989)).

93. *See Michael Tonry, The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, 38 CRIME & JUST. 65, 103 (2009) (arguing that a presumptive penalty, as opposed to a mandatory penalty, would actually achieve the goals of mandatory sentences without the negative side effects).

lawmakers wanted to appear “tough on crime.”⁹⁴ Mandatory sentences have been established for various crimes, ranging from drug offenses to economic crimes to more serious offenses, such as homicide.⁹⁵

Because many jurisdictions transfer juvenile offenders to the adult court system, juveniles are also subject to the same adult sentences.⁹⁶ The nature of mandatory minimums, however, completely undermines the Supreme Court’s “children are different” approach to sentencing.⁹⁷ This section argues that the Supreme Court’s holding in *Miller* and the other Eighth Amendment cases, although currently limited to the harshest punishments in our society,⁹⁸ should be extended to outlaw mandatory minimum sentences for juveniles across the board.

The following section briefly explains the history of mandatory minimums before turning to an analysis of why this form of sentencing simply does not work, even in the context of adults. The final section explains why the Supreme Court’s approach to sentencing juveniles leads to the conclusion that these sentences impose an unconstitutionally “cruel and unusual punishment”⁹⁹ on juvenile offenders.

1. *A Brief History of Mandatory Minimum Sentences*

Mandatory sentences have been a part of the American criminal justice system since the late 1700s, when capital punishment was mandated for serious offenses such as murder or treason.¹⁰⁰ In the second half of the twentieth century, Congress began to change its perception of mandatory minimum penalties by enacting them more frequently, applying them to more crimes, and lengthening the mandatory sentences.¹⁰¹ Public support for man-

94. Karen Lutjen, Note, *Culpability and Sentencing Under Mandatory Minimums and the Federal Sentencing Guidelines: The Punishment No Longer Fits the Criminal*, 10 NOTRE DAME J. L. ETHICS & PUB. POL’Y 389, 394 (1996).

95. For a full list see Charles Doyle, *Federal Mandatory Minimum Sentencing Statutes*, CONG. RES. SERV. 101–16 (Sept. 9, 2013), available at <http://www.fas.org/sgp/crs/misc/RL32040.pdf>.

96. FRANKLIN E. ZIMRING, *AMERICAN JUVENILE JUSTICE* 139 (2005) (explaining that although every American jurisdiction has a separate court in which to try juvenile offenders, every jurisdiction has also created exceptions allowing for transfer to adult court under specified circumstances).

97. *Miller*, 132 S. Ct. at 2467.

98. *Id.* at 2475 (“[A] judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.”).

99. U.S. CONST. amend. VIII.

100. U.S. SENT’G COMM’N, *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* 7 (Oct. 2011), available at http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/201111031_RtC_PDF/Chapter_02.pdf.

101. *Id.* at 22.

datory sentences saw another resurgence in the 1980s, particularly for drug related offenses.¹⁰²

These ebbs and flows resulted from a misguided public belief that overall crime rates were increasing, including crimes committed by juveniles.¹⁰³ This perception was largely due to media influence.¹⁰⁴ In-depth coverage and media attention given to violent crimes, such as the Columbine shooting, left the public believing that heinous acts like these were a symbol of continuing youth violence.¹⁰⁵

In addition, there was also a “widespread perception that young people [would] not behave unless the punishment for wrongdoing [was] severe.”¹⁰⁶ Therefore, juveniles were transferred to adult court where they were subject to the same mandatory minimums applied to adult offenders,¹⁰⁷ without any consideration of their age, background, or other mitigating factors. Instead of giving the child a reason not to commit a crime, the child was treated the same as an, arguably, more culpable adult offender.¹⁰⁸

2. *Mandatory Minimums Do Not Satisfy Their Intended Goals*

When mandatory minimums were enacted, proponents thought that they would assure evenhandedness, transparency, and crime prevention.¹⁰⁹ This did not turn out to be the case; in fact, in most instances, the opposite occurred.¹¹⁰ Overall, “[m]andatory penalties are a bad idea.”¹¹¹ They do not aid society in accomplishing its penological goal of deterrence¹¹² and have actually increased the prison population.¹¹³

A convicted criminal may face a harsh mandatory penalty based on one aggravating circumstance.¹¹⁴ Because of the statutory nature of mandatory

102. *Id.* at 23.

103. JULIAN V. ROBERTS ET AL., PENAL POPULISM AND PUBLIC OPINION: LESSONS FROM FIVE COUNTRIES 107 (2003).

104. *Id.* at 111.

105. *Id.*

106. *Id.* at 109.

107. ZIMRING, *supra* note 96, at 139.

108. See ROBERTS ET AL., *supra* note 103, at 109 (explaining that giving a child a reason not to commit a crime is more effective than giving the child a more severe punishment).

109. Tonry, *supra* note 93, at 67.

110. See *id.* at 67–68 (explaining that in practice judges and prosecutors sometimes circumvent mandatory penalties, which ultimately leads to unjust results).

111. *Id.* at 100.

112. *Id.* at 68.

113. LOIS G. FORER, A RAGE TO PUNISH: THE UNINTENDED CONSEQUENCES OF MANDATORY SENTENCING 151 (1994).

114. See Gary T. Lowenthal, *Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform*, 81 CALIF. L. REV. 61, 66 (1993) (arguing that both deter-

minimums, sometimes only one or two factors will be taken into account during sentencing.¹¹⁵ For example, some crimes can have a “tariff-like” effect in which anyone who commits a particular crime will receive a particular sentence without any consideration of that person’s level of culpability or any other mitigating factor.¹¹⁶ One former Philadelphia judge felt that “trial judges are far better situated than any other professionals to see the often tragic consequences of the decisions the law impels.”¹¹⁷

Nevertheless, proponents urged that this type of punishment would deter both future and repeat offenders.¹¹⁸ Mandatory sentences, however, have not been proven to have a deterrent effect, except in minor crimes like speeding.¹¹⁹ Further, it is unlikely an immature juvenile offender, with generally less culpability, will be deterred by a mandatory sentence any more than a discretionary sentence for any particular crime.¹²⁰

Not only has mandatory sentencing failed to deter criminals, but it has also actually led to an increase in the prison population.¹²¹ The United States prison population is increasing at one of the highest rates in the world.¹²² From 1970 to present, the prison population in the United States increased from only about 200,000 prisoners to about 1.4 million prisoners.¹²³ The most common mandatory minimum sentence is five years for a non-violent crime.¹²⁴ The financial costs to society are significant,¹²⁵ but the social costs are even greater, because the inmate is released and still unable to function in society, absent some form of rehabilitation.¹²⁶

minate and mandatory sentencing schemes lead to just as much disparity in sentencing as indeterminate schemes).

115. Lutjen, *supra* note 94, at 402.

116. *Id.* at 401.

117. FORER, *supra* note 113, at 14. Judge Forer left the bench after being forced to implement a mandatory five-year sentence on an offender who had repaid the \$50.00 he had stolen while holding up a taxi with a toy pistol and had rehabilitated himself in the five years following his conviction. *Id.* at 2–4.

118. *See* Lutjen, *supra* note 94, at 395 (explaining that both special and general deterrence were purposes promoted for mandatory minimums).

119. Tonry, *supra* note 93, at 68.

120. *See* Graham v. Florida, 560 U.S. 48, 72 (2010) (finding that juveniles are generally less susceptible to deterrence).

121. *See* FORER, *supra* note 113, at 151 (describing how mandatory sentencing causes prison overcrowding).

122. *Id.* at 1.

123. The Editorial Board, *Why Prisons Are Shrinking*, N.Y. TIMES (Oct. 27, 2013), <http://www.nytimes.com/2013/10/28/opinion/why-prisons-are-shrinking.html?r=0>.

124. FORER, *supra* note 113, at 153.

125. *Id.* (explaining that about twenty years ago it would have costed society about \$175,000 to incarcerate one inmate for five years).

126. *Id.*

3. *Mandatory Minimums and Miller*

The analysis used to reverse the mandatory sentence in *Miller*, and the other cases described above, is applicable to all mandatory sentences for juveniles.¹²⁷ In *Miller v. Alabama*, the Supreme Court recognized that the analysis used to strike down sentences of life without parole for non-homicide offenders was not limited to just those crimes, or even “crime-specific.”¹²⁸ The Court then applied that same analysis, from *Roper* and *Graham*, to strike down mandatory life without parole in *Miller*.¹²⁹

Justice Roberts noted in his dissent that “[t]here is no clear reason that principle [behind today’s decision] would not bar all mandatory sentences for juveniles, or any juvenile sentence as harsh as what a similarly situated adult would receive.”¹³⁰ The majority in *Miller* also recognized that an appropriate sentence for an adult might not be appropriate for a child.¹³¹

Although the opinions provided by the Court in *Roper*, *Graham*, and *Miller* have considered harsh punishments such as the death penalty and life without parole, the underlying principle of these decisions points to the fact that children need individualized sentencing.¹³² “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.”¹³³ Holding a juvenile to the same standard of an adult directly contradicts the analysis supporting these decisions, because it ignores the entire premise upon which the holding is based—kids are inherently different from adults.¹³⁴

127. See Craig S. Lerner, *Sentenced to Confusion: Miller v. Alabama and the Coming Wave of Eighth Amendment Cases*, 20 GEO. MASON L. REV. 25, 31 (2012) (“And if the majority dares to follow its reasoning in *Miller*—that is, the need to take into account a juvenile’s peculiar characteristics before imposing punishment—to its logical culmination, all mandatory sentences for juveniles will be prohibited.”).

128. *Miller v. Alabama*, 132 S. Ct. 2455, 2465 (2012) (relying on *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011 (2010)) (“But none of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific.”).

129. *Id.*

130. *Id.* at 2482 (Roberts, C. J., dissenting).

131. *Id.* at 2470 (majority opinion).

132. See *id.* at 2468.

133. *Id.* at 2467.

134. AARON KUPCHIK, *JUDGING JUVENILES: PROSECUTING ADOLESCENTS IN ADULT AND JUVENILE COURTS* 19 (2006).

B. Not Applying *Miller* Retroactively Perpetuates the Cruelty *Miller* Was Meant to Prohibit

The second major issue with the decision in *Miller v. Alabama* is that it fails to specifically state that the decision applies retroactively, leading to a split of authority among courts. Some jurisdictions have held that under *Teague v. Lane*,¹³⁵ *Miller* presents a new rule and, thus, applies retroactively.¹³⁶ But in other jurisdictions,¹³⁷ the approximately 2,000 prisoners currently serving mandatory sentences of life without parole for crimes committed as a juvenile¹³⁸ are not entitled to collateral review of their sentences. The following section explains the *Teague* standard and then examines both sides of the jurisdictional split. Finally, it concludes with an argument as to why retroactive application of the *Miller* decision is the more favorable approach.

1. *The Teague Standard*

Every Supreme Court decision has lasting consequences not only for the parties involved, but also for Americans who may face the same or similar issues in the future. In the early 1900s, all new Supreme Court decisions were retroactively applied to civil cases that were still directly appealable and any criminal case under a writ of habeas corpus.¹³⁹ In 1965, the Supreme Court restricted the broad retroactive application of its decisions.¹⁴⁰ This change ultimately led to the rule described in *Teague v. Lane*, which is still applied today.¹⁴¹

135. 489 U.S. 288 (1989).

136. See, e.g., *People v. Morfin*, 981 N.E.2d 1010, 1022 (Ill. App. Ct. 2012).

137. See, e.g., *In re Morgan*, 713 F.3d 1365, 1367 (11th Cir. 2013); *Johnson v. Ponton*, 2013 U.S. Dist. LEXIS 149021, at *20 (E.D. Va. Oct. 16, 2013); *Martin v. Symmes*, 2013 U.S. Dist. LEXIS 147965, at *51 (D. Minn. Oct. 15, 2013); *Falcon v. State*, 111 So.3d 973, 973 (Fla. Ct. App. 2013).

138. See Susan Haigh, *States Revisit Mandatory Sentences for Juveniles*, ASSOCIATED PRESS (Aug. 18, 2013, 1:13PM), <http://bigstory.ap.org/article/states-revisit-mandatory-sentences-juveniles> (describing the story of Nicholas Aponte who was sentenced to thirty eight years without parole in 1995 after being convicted of a felony murder committed at the age of seventeen).

139. 1 LAFAVE, ET AL., *CRIMINAL PROCEDURE* § 2.11(a) (3d ed. 2013) (discussing the evolution of retroactive application).

140. *Id.* (explaining that *Linkletter v. Walker*, 381 U.S. 618 (1965), changed the way courts viewed retroactive application in future cases). Because the Court was able to hold that some rules did not have to be applied retroactively, it was able to make significant changes to criminal procedure without concern for the costs or other administrative problems that resulted from the original rule. *Id.*

141. *Id.*

Generally, if a Supreme Court decision implements a new constitutional rule, it is only applicable to the present case and cases that are still being considered on direct review.¹⁴² Under *Teague*, however, there are two exceptions.¹⁴³ The first exception applies to new rules that change the status of previously illegal conduct by making it legal or prevent a category of punishments for a certain group of defendants based on status or the offense committed.¹⁴⁴ The second exception applies to “watershed rules of criminal procedure.”¹⁴⁵ This exception has been very narrowly construed, with only one case ever meeting its high standard.¹⁴⁶

The first exception, however, has been frequently applied in the Supreme Court’s Eighth Amendment jurisprudence.¹⁴⁷ Decisions that have been applied retroactively, such as *Graham v. Florida* and *Roper v. Simmons*, typically involve substantive rather than procedural rules.¹⁴⁸ The rule in *Miller*, although predicated on the Eighth Amendment like *Graham* and *Roper*, is arguably a procedural rule, because it prevents states from sentencing a juvenile to life without parole without consideration of mitigating circumstances, but it does not bar the sentence as a whole.¹⁴⁹ It does, however,

142. *Teague*, 489 U.S. 288, 310 (1989) (“adopt[ing] Justice Harlan’s view of retroactivity for cases on collateral review.”).

143. *Id.* at 311–14 (discussing the two exceptions to the general rule of retroactivity suggested by Justice Harlan).

144. *See* *Beard v. Banks*, 542 U.S. 406, 416 (2004) (describing the two exceptions set out in *Teague* and recognizing the limited application of the second exception).

145. *Teague*, 489 U.S. at 311.

Typically, it should be the case that any conviction free from federal constitutional error at the time it became final, will be found, upon reflection, to have been fundamentally fair and conducted under those procedures essential to the substance of a full hearing. However, in some situations it might be that time and growth in social capacity, as well as judicial perceptions of what we can rightly demand of the adjudicatory process, will properly alter our understanding of the *bedrock procedural elements* that must be found to vitiate the fairness of a particular conviction.

Id. (quoting Justice Harlan in *Mackey v. United States*, 401 U.S. 667, 693–694 (1971) (Harlan, J., concurring)).

146. *See* *State v. Tate*, 130 So.3d 829, 839–40 (La. 2013) (describing the only case to which the second *Teague* exception was ever applied, *Gideon v. Wainwright*, 372 U.S. 335 (1963), in which the Supreme Court held that indigent offenders charged with felonies must have the opportunity to be represented by counsel).

147. *See* 7 LAFAYE, ET AL., CRIMINAL PROCEDURE § 28.6(e) (3d ed. 2012) (explaining that the rules in *Graham v. Florida* and *Roper v. Simmons* were applied retroactively under the first exception).

148. *Id.* *Graham v. Florida*, 560 U.S. 48 (2010), banned life without parole for juveniles convicted of non-homicide crimes, and *Roper v. Simmons*, 543 U.S. 551 (2005), outlawed capital punishment for offenders under the age of eighteen.

149. *Miller v. Alabama*, 132 S. Ct. 2455, 2471 (2012); *see* 7 LAFAYE, ET AL., CRIMINAL PROCEDURE § 28.6(e) (describing the difference between *Miller* and the other cases which are retroactively applied).

prevent a certain group of defendants—juveniles—from receiving a category of sentences, which is also arguably substantive.¹⁵⁰ Nevertheless, the decision has received varying treatment by the lower courts as explained below.

2. *Jurisdictions in Favor of Retroactive Application*

Only a few jurisdictions have held that *Miller v. Alabama* applies retroactively despite significant public support for retroactive application.¹⁵¹ As one commentator asserts, “[t]he Constitution was meant to provide justice for all—not justice according to the date of application.”¹⁵² In at least four states, courts have held that *Miller* applies retroactively.¹⁵³

The Appellate Court of Illinois used the *Teague* analysis to conclude that *Miller* applies retroactively because it fits within the first exception where “a defendant faces a punishment that the law cannot impose upon him.”¹⁵⁴ According to that court, *Miller* created a new substantive rule because it required a broader sentencing range.¹⁵⁵ In addition, what may be one of the strongest arguments for retroactive application, the appellate court pointed out that one of the *Miller* defendants, Kuntrell Jackson, was before the court on collateral review and was able to take advantage of the rule.¹⁵⁶

Several other jurisdictions have also concluded that *Miller* should apply retroactively. The United States District Court for the Eastern District of Michigan applied *Miller* retroactively as a new substantive rule.¹⁵⁷ The Supreme Court of Iowa also used the *Teague* analysis to justify applying *Mil-*

150. See *People v. Morfin*, 981 N.E.2d 1010, 1022 (Ill. App. Ct. 2012) (applying *Miller* retroactively on similar grounds).

151. See, e.g., *id.*; *Hill v. Snyder*, 2013 U.S. Dist LEXIS 12160, *5-6 (E.D. Mich. Jan. 30, 2013).

152. *Redefining Justice One Year After Miller v. Alabama*, JUVENILE LAW CENTER (June 27, 2013) <http://www.jlc.org/blog/redefining-justice-one-year-after-miller-v-alabama>.

153. Maggie Clark, *After Supreme Court Ruling, States Act on Juvenile Sentences*, THE PEW CHARITABLE TRUSTS (Aug. 26, 2013), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/08/26/after-supreme-court-ruling-states-act-on-juvenile-sentences>. Iowa, Illinois, Mississippi, and the federal district court in Michigan have applied the ruling retroactively. *Id.*

154. *People v. Morfin*, 981 N.E.2d 1010, 1020 (Ill. App. Ct. 2012) (quoting *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004)); see also *People v. Johnson*, 998 N.E.2d 185 (Ill. App. Ct. 2013).

155. *Morfin*, 981 N.E.2d at 1022.

156. *Id.* at 1022–23.

157. *Hill v. Snyder*, 2013 U.S. Dist LEXIS 12160, *5-6 (E.D. Mich. Jan. 30, 2013). Although the court was considering a case on direct review, and thus, did not need to reach the issue of collateral review, it noted that it would apply *Miller* retroactively as a new substantive law. *Id.* at *5–6 n.2.

ler retroactively.¹⁵⁸ The Iowa court explained that although the ruling in *Miller* does create a new procedure by requiring a hearing, it “is the result of a substantive change in the law.”¹⁵⁹ The Supreme Court of Mississippi also found the ruling was retroactive on collateral review in *Jones v. State*,¹⁶⁰ because the decision modified its substantive law.¹⁶¹

In *In re Pendleton*,¹⁶² the Court of Appeals for the Third Circuit also found that the petitioners seeking to file habeas corpus petitions were eligible to do so under the new *Miller* rule.¹⁶³ The court accepted the petitioner’s prima facie case that the rule could apply retroactively on three possible grounds.¹⁶⁴ First, the Supreme Court had already applied the rule retroactively to Kuntrell Jackson, who was before the Supreme Court on collateral review.¹⁶⁵ Second, the rule falls under the first *Teague* exception as a new substantive rule. Third, the rule is a watershed procedural rule under the second *Teague* exception.¹⁶⁶

Most of the jurisdictions applying *Miller* retroactively recognize that although the decision has a procedural effect, it mandates a substantive change in the law for a particular group of defendants, which satisfies the first of the *Teague* exceptions.¹⁶⁷ In addition, the authorities relied upon in *Miller* were applied retroactively, which indicates that *Miller* would logically apply retroactively as well.¹⁶⁸ Finally, many of the courts supporting retroactive application point out that the Supreme Court has already applied the ruling retroactively in the case of Kuntrell Jackson.¹⁶⁹ Each of these jurisdictions provides substantial support for applying *Miller* retroactively, yet several jurisdictions have declined to do so, creating a split.

3. *Jurisdictions Opposed to Retroactive Application*

In Louisiana, 225 offenders, who were sentenced to life without parole as juveniles, will not have the same opportunity afforded to Kuntrell Jack-

158. *State v. Ragland*, 836 N.W.2d 107, 115–16 (Ia. 2013).

159. *Id.* (finding that the rule prevents a state from imposing a certain punishment on certain people under the first *Teague* exception).

160. 122 So.3d 698 (Miss. 2013).

161. *Jones v. State*, 122 So.3d 698, 702 (Miss. 2013).

162. 732 F.3d 280 (3d Cir. 2013).

163. *In re Pendleton*, 732 F.3d 280, 282 (3d Cir. 2013).

164. *Id.*

165. *Id.*

166. *Id.*

167. *See, e.g., State v. Ragland*, 836 N.W.2d 107, 115 (Ia. 2013).

168. *See id.* at 116 (“If a substantial portion of the authority used in *Miller* has been applied retroactively, *Miller* should logically receive the same treatment.”).

169. *See, e.g., id.*; *People v. Morfin*, 981 N.E.2d 1010, 1023 (Ill. App. Ct. 2012).

son to present evidence of their mitigating circumstances.¹⁷⁰ The Supreme Court of Louisiana held that *Miller* is not subject to retroactive application on collateral review.¹⁷¹ Following the *Teague* analysis, the Supreme Court of Louisiana concluded that *Miller*, as a procedural rule, did not fit under either exception.¹⁷² Because *Miller* only affects the “permissible methods” through which a state may punish a juvenile offender, it did not satisfy the first exception.¹⁷³ *Miller* also failed to meet the high threshold of the second exception, according to the Supreme Court of Louisiana.¹⁷⁴

Several other jurisdictions have followed this line of reasoning.¹⁷⁵ Multiple opinions from Florida state courts indicate that the rule will not apply retroactively in that jurisdiction.¹⁷⁶ The Eleventh Circuit also found that *Miller* was only a procedural rule and, therefore, not retroactive on collateral review.¹⁷⁷ Both the Supreme Court of Minnesota and United States District Court for the District of Minnesota declined to apply *Miller* retroactively, following the *Teague* analysis for the same reasons cited above.¹⁷⁸ The United States District Court for the Eastern District of Virginia also determined the rule was procedural.¹⁷⁹ The Virginia court noted that the Supreme Court of the United States specifically distinguished *Miller* from *Graham* because *Graham* instituted a categorical bar whereas *Miller* affected the sentencing process.¹⁸⁰

170. Paula Purpura, *Louisiana Supreme Court Hears Argument on Parole for Juvenile Killers*, NOLA.com, (Sept. 4, 2013, 6:20 PM) http://www.nola.com/crime/index.ssf/2013/09/louisiana_supreme_court_hears.html.

171. *State v. Tate*, 130 So.3d 829, 844 (La. 2013).

172. *Id.*

173. *Id.* at 838.

174. *Id.* at 839–41.

175. *See, e.g., In re Morgan*, 713 F.3d 1365, 1367 (11th Cir. 2013); *Martin v. Symmes*, 2013 U.S. Dist. LEXIS 147965, at *51 (D. Minn. Oct. 15, 2013); *Johnson v. Ponton*, 2013 U.S. Dist. LEXIS 149021, at *16 (E.D. Va. Oct. 16, 2013); *Falcon v. State*, 111 So. 3d 973, 973 (Fla. 1st Dist. Ct. App. 2013).

176. *See generally Falcon*, 111 So. 3d at 973; *Johnson v. State*, 2013 Fla. App. LEXIS 6821, at *2 (Fla. 1st Dist. Ct. App. Apr. 30, 2013); *Geter v. State*, 115 So. 3d 375, 385 (Fla. 3d Dist. Ct. App. 2012).

177. *Morgan*, 713 F.3d at 1368. The Eleventh Circuit relies on authority that indicates that a rule becomes retroactive only when the Supreme Court so holds, but the court fails to address the fact that Kuntrell Jackson’s case was brought on collateral review. *Id.* at 1367–68.

178. *Martin*, 2013 U.S. Dist. LEXIS 147965 at *50-51; *Chambers v. Minnesota*, 831 N.W.2d 311, 331 (Minn. 2013).

179. *Ponton*, 2013 U.S. Dist. LEXIS 149021 at *16.

180. *Id.* at *17. Notably, the court recognizes that just because the Supreme Court applied the rule to Jackson’s case that it will not be applied retroactively in all cases. *Id.* at *13–14 (citing *Padilla v. Kentucky*, 559 U.S. 356, 374–75 (2010), in which the Court created a new rule, which was brought on collateral review, but later announced in a separate opinion that it would not be applied retroactively).

These cases generally rely on the same proposition: *Miller* is limited to a procedural rule of law and does not fit into either of the *Teague* exceptions.¹⁸¹ Based on the analysis behind *Miller*, *Graham*, and *Roper*—that kids are different from adults when it comes to sentencing¹⁸²—it seems unjust to deny those defendants whose sentences became final before *Miller* the opportunity afforded to Kuntrell Jackson.¹⁸³ In the interest of justice, the decision made by those jurisdictions in which *Miller* has been retroactively applied should become the prevailing view.¹⁸⁴

4. *Miller Merits Retroactive Application*

Indeed, if ever there was a legal rule that should—as a matter of law and morality—be given retroactive effect, it is the rule announced in *Miller*. To hold otherwise would allow the state to impose *unconstitutional* punishment on some persons but not others, an intolerable miscarriage of justice.¹⁸⁵

If the premise behind differentiated sentencing standards between juvenile offenders and adults is predicated on the notion that “children are constitutionally different,”¹⁸⁶ then, in the interest of justice, *Miller v. Alabama* warrants retroactive application.

Sentenced to mandatory life without parole, a juvenile offender never has a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”¹⁸⁷ Consider the case of Sharon Wiggins.¹⁸⁸ Sharon was seventeen when she was convicted of first-degree murder and sentenced to mandatory life without parole in Pennsylvania.¹⁸⁹ Although Sharon’s crime was terrible, as a child she was a victim of poverty, neglect, and abuse,¹⁹⁰ factors the court was not permitted to consider because her sen-

181. See, e.g., *id.* at *20 (refusing to apply *Miller* retroactively).

182. See *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012) (explaining that as established in *Graham* and *Roper* “children are constitutionally different from adults for purposes of sentencing”).

183. *People v. Morfin*, 981 N.E.2d 1010, 1025 (Ill. App. Ct. 1st Dist. 2012) (Sterba J., concurring). The *Teague* Court specifically noted that justice required retroactive application of a rule once applied to the defendant in the case. *Id.* at 1024 (citing *Teague v. Lane*, 489 U.S. 288, 300 (1989)). Therefore, because the rule was applied to Jackson on collateral review, it follows that it is applicable to all similarly situated defendants. *Id.* at 1025.

184. See *supra* text accompanying note 183.

185. *Hill v. Synder*, 2013 U.S. Dist. LEXIS 12160, at *6 (E.D. Mich. Jan. 30, 2013).

186. See *Miller*, 132 S. Ct. at 2464.

187. *Graham v. Florida*, 560 U.S. 48, 75 (2010).

188. *In Memory of Sharon Wiggins, a Child 45 Years Ago Sentenced to Die in Prison*, JUVENILE LAW CENTER (Mar. 25, 2013) <http://www.jlc.org/blog/memory-sharon-wiggins-child-45-years-ago-sentenced-die-prison>.

189. *Id.*

190. *Id.*

tence was mandatory.¹⁹¹ Although Sharon committed a horrible crime as a minor, Sharon was generally reformed during her time behind bars; she obtained a bachelor's degree, over 10,000 educational certificates, and tutored other inmates so that they were able to obtain their GEDs.¹⁹² Unfortunately, Sharon was never given the chance to prove that she had become a better person because she passed away in prison at the age of sixty-two.¹⁹³

In jurisdictions where *Miller* is not retroactively applied, people like Sharon, who have actually been reformed, will never be given the chance to prove that they, too, have changed.¹⁹⁴ If the mitigating circumstances of youth that support the Supreme Court's decision in *Miller* are so important for juvenile offenders today,¹⁹⁵ then they should not be any less important for juveniles that committed crimes before the decision was made.

The Supreme Court's analysis in *Miller*, *Graham*, *Roper*, and *Thompson* hinges on the fundamental differences between children and adults. The Supreme Court explained in *Miller* that its decision was based in part "on common sense—on 'what any parent knows'" about a child's lack of maturity and development.¹⁹⁶ Common sense indicates that if it is "cruel and unusual"¹⁹⁷ to sentence a juvenile to mandatory life without parole now, it was cruel and unusual even before these cases came up for review.

Although the Supreme Court arguably made only a procedural change to criminal sentencing through its decision, *Miller* also banned a particular sentence for a group of individuals, which satisfies the first *Teague* exception and merits retroactive application.¹⁹⁸ Without retroactive application across the board, juveniles in states like Louisiana will continue to serve an unconstitutional sentence.¹⁹⁹ In addition to the reasons cited by the courts above,²⁰⁰ the approach the Supreme Court has taken of distinguishing children from adults in terms of sentencing supports giving these offenders an opportunity for collateral review.

191. See *Miller*, 132 S. Ct. at 2467 (explaining that mandatory sentences inherently prevent mitigating factors from being taken into account).

192. See *Wiggins*, *supra* note 188.

193. *Id.*

194. See *Miller*, 132 S. Ct. at 2468 (explaining that mandatory sentences preclude the possibility of rehabilitation).

195. *Id.* at 2464 n.5 (explaining that the research relied upon in *Graham* and *Roper*, to show that children are developmentally different from adults, has gotten even stronger with time).

196. *Id.* at 2464.

197. U.S. CONST. amend. VIII.

198. See *People v. Morfin*, 981 N.E.2d 1010, 1022 (Ill. App. Ct. 1st Dist. 2012).

199. See generally *State v. Tate*, 130 So. 3d 829, 844 (La. 2013) (holding that *Miller* does not apply retroactively).

200. See *infra* Part III.B.2.

IV. CONCLUSION

The Supreme Court's approach to individualized sentencing of juvenile offenders has been based on the notion that children are fundamentally different from adults when it comes to the level of culpability for a crime.²⁰¹ Although the Court has limited its decisions to those cases where a juvenile is sentenced with society's most severe punishments,²⁰² its analysis supports the conclusion that when sentencing juveniles, mitigating factors, which make children constitutionally different from adults, should always be considered.

If the Supreme Court is going to continue with its "children are different" approach to juvenile justice, it needs to expand the holding of *Miller v. Alabama* to recognize that children are different across the board. The next steps are to prohibit all mandatory sentences of juvenile offenders and apply the rule in *Miller* retroactively, so that the thousands of juvenile offenders now serving an unconstitutional sentence will be able to make their case. Those steps will ensure that justice is served and a child's mitigating circumstances are taken into account, leading to a stronger society as a whole.

*Nikki Morris**

201. *Miller*, 132 S. Ct. at 2464.

202. *Id.* at 2468.

* J.D. Candidate 2015, University of Arkansas at Little Rock, William H. Bowen School of Law; Bachelor of Arts in International Studies & History, *summa cum laude*, Texas A&M University, 2010. I am sincerely grateful for the guidance of my Advisor, Lee Short, and my Associate Notes Editor, Meredith Strong, in editing and preparing this note. I would also like to thank my husband, Sam Morris, and my friends and family for their love and support during this process.