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Graham v. Florida, 130 S. Ct. 2011 (Copy w/ Cite)

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130 S. Ct. 2011, *, 176 L. Ed. 2d 825, **,
2010 U.S. LEXIS 3881, ***, 22 Fla. L. Weekly Fed. S 328

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TERRANCE JAMAR GRAHAM, PETITIONER v. FLORIDA

No. 08-7412

SUPREME COURT OF THE UNITED STATES

130 S. Ct. 2011; 176 L. Ed. 2d 825; 2010 U.S. LEXIS 3881; 22 Fla. L. Weekly Fed. S 328

November 9, 2009, Argued

May 17, 2010, Decided

NOTICE:

The LEXIS pagination of this document is subject to change pending release of the final published version.

PRIOR HISTORY: [***1]

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT.

Graham v. State, 982 So. 2d 43, 2008 Fla. App. LEXIS 5230 (Fla. Dist. Ct. App. 1st Dist., 2008)

DISPOSITION: Reversed and remanded.

CASE SUMMARY

PROCEDURAL POSTURE: While he was a juvenile, although charged as an adult, defendant pleaded guilty to armed burglary with assault and attempted robbery, was adjudicated guilty after violating conditions of probation, and received the maximum sentence of life imprisonment without parole. Upon the grant of a writ of certiorari, the defendant appealed the judgment of the First District Court of Appeal of Florida which affirmed the defendant's sentence.

OVERVIEW: The defendant contended that, as a juvenile who did not commit or intend to commit homicide, the sentence of life imprisonment without parole constituted cruel and unusual punishment. The U.S. Supreme Court held that U.S. Const. amend. VIII prohibited the imposition of a life-without-parole sentence on the juvenile offender who committed a nonhomicide crime and, while the defendant need not be guaranteed eventual release from the life sentence, he must have some realistic opportunity to obtain release before the end of the life term. The practice of sentencing a juvenile who did not commit a homicide offense to life without parole was exceedingly rare and a national community consensus developed against it, and none of the recognized goals of penal sanctions, i.e., retribution, deterrence, incapacitation, and rehabilitation, provided an adequate

justification for the sentence. Further, it could not be conclusively determined at the time of sentencing that the juvenile defendant would be a danger to society for the rest of his life, and a sentence of life without parole improperly denied the juvenile offender a chance to demonstrate growth, maturity, and rehabilitation.

OUTCOME: The judgment affirming the defendant's sentence was reversed, and the case was remanded for further proceedings. 6-3 Decision; 2 Concurrences; 2 Dissents.

CORE TERMS: sentence, juvenile, parole, offender, nonhomicide, sentencing, adult, juvenile offender, proportionality, categorical, life-without-parole, prison, sentenced, commit, culpability, capital punishment, cruel, sentences of life, homicide, disproportionate, noncapital, burglary, severe, robbery, plurality opinion, rehabilitation, imprisonment, penological, probation, convicted

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 HN1 [See U.S. Const. amend. VIII.](#)

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HN2 [To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to the evolving standards of decency that mark the progress of a maturing society. This is because the standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.](#) [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN3 [The Cruel and Unusual Punishments Clause prohibits the imposition of inherently barbaric punishments under all circumstances. Punishments of torture, for example, are forbidden. Under the Eighth Amendment, the State must respect the human attributes even of those who have committed serious crimes.](#) [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN4 [For the most part, the U.S. Supreme Court's precedents consider punishments challenged not as inherently barbaric but as disproportionate to the crime. The concept of proportionality is central to the Eighth Amendment. Embodied in the U.S. Constitution's ban on cruel and unusual punishments is the precept of justice that punishment for crime should be graduated and proportioned to the offense.](#) [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN5 Community consensus, while entitled to great weight, is not itself determinative of whether a punishment is cruel and unusual. In accordance with the constitutional design, the task of interpreting the [Eighth Amendment](#) remains the responsibility of the U.S. Supreme Court. The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question. In this inquiry the Court also considers whether the challenged sentencing practice serves legitimate penological goals. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN6 Because juveniles have lessened culpability they are less deserving of the most severe punishments. As compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed. These salient characteristics mean that it 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. Accordingly, juvenile offenders cannot with reliability be classified among the worst offenders. A juvenile is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as that of an adult. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN7 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. There is a line between homicide and other serious violent offenses against the individual. Serious nonhomicide crimes may be devastating in their harm, but in terms of moral depravity and of the injury to the person and to the public, they cannot be compared to murder in their severity and irrevocability. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN8 Criminal punishment can have different goals, and choosing among them is within a legislature's discretion. It does not follow, however, that the purposes and effects of penal sanctions are irrelevant to the determination of [Eighth Amendment](#) restrictions. A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN9 Retribution is a legitimate reason to punish. Society is entitled to impose severe sanctions on an offender to express its condemnation of the crime and to seek restoration of the moral imbalance caused by the offense. But the heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN10 For a juvenile offender who did not commit homicide the [Eighth Amendment](#) forbids the sentence of life without parole. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN11 The [Eighth Amendment](#) does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN12 The U.S. Constitution prohibits the imposition of a life-without-parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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SYLLABUS

Petitioner Graham was 16 when he committed armed burglary and another crime. Under a plea agreement, the Florida trial court sentenced Graham to probation and withheld adjudication of guilt. Subsequently, the trial court found that Graham had violated the terms of his probation by committing additional crimes. The trial court adjudicated Graham guilty of the earlier charges, revoked his probation, and sentenced him to life in prison for the burglary. Because Florida has abolished its parole system, the life sentence left Graham no possibility of release except executive clemency. He challenged his sentence under the [Eighth Amendment's Cruel and Unusual Punishments Clause](#), but the State First District Court of Appeal affirmed.

Held: The Clause does not permit a juvenile offender to be sentenced to life in prison without parole for a nonhomicide crime. Pp. 7-31.

(a) Embodied in the cruel and unusual punishments ban is the "precept . . . that punishment for crime should be graduated and proportioned to [the] offense." *Weems v. United States*, 217 U.S. 349, 367, 30 S. Ct. 544, 54 L. Ed. 793. The Court's [***2] cases implementing the proportionality standard fall within two general classifications. In cases of the first type, the Court has considered all the circumstances to determine whether the length of a term-of-years sentence is unconstitutionally excessive for a particular defendant's crime. The second classification comprises cases in which the Court has applied certain categorical rules against the death penalty. In a subset of such cases considering the nature of the offense, the Court has concluded that capital punishment is impermissible for nonhomicide crimes against individuals. *E.g., Kennedy v. Louisiana*, 554 U.S. 407, ___, 128 S. Ct. 2641, 2660, 171 L. Ed. 2d 525, 550. In a second subset, cases turning on the offender's characteristics, the Court

has prohibited death for defendants who committed their crimes before age 18, *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1, or whose intellectual functioning is in a low range, *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335. In cases involving categorical rules, the Court first considers "objective indicia of society's standards, as expressed in legislative enactments and state practice" to determine whether there is a national consensus against the sentencing practice at issue. *Roper, supra*, at 563, 125 S. Ct. 1183, 161 L. Ed. 2d 1. Next, [***3] looking to "the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose," *Kennedy, supra*, at ___, 128 S. Ct. 2641, 171 L. Ed. 2d 525, the Court determines in the exercise of its own independent judgment whether the punishment in question violates the Constitution, *Roper, supra*, at 564, 125 S. Ct. 1183, 161 L. Ed. 2d 1. Because this case implicates a particular type of sentence as it applies to an entire class of offenders who have committed a range of crimes, the appropriate analysis is the categorical approach used in *Atkins*, *Roper*, and *Kennedy*. Pp. 7-10.

(b) Application of the foregoing approach convinces the Court that the sentencing practice at issue is unconstitutional. Pp. 10-31.

(1) Six jurisdictions do not allow life without parole sentences for any juvenile offenders. Seven jurisdictions permit life without parole for juvenile offenders, but only for homicide crimes. Thirty-seven States, the District of Columbia, and the Federal Government permit sentences of life without parole for a juvenile nonhomicide offender in some circumstances. The State relies on these data to argue that no national consensus against the sentencing practice in [***4] question exists. An examination of actual sentencing practices in those jurisdictions that permit life without parole for juvenile nonhomicide offenders, however, discloses a consensus against the sentence. Nationwide, there are only 129 juvenile offenders serving life without parole sentences for nonhomicide crimes. Because 77 of those offenders are serving sentences imposed in Florida and the other 52 are imprisoned in just 10 States and in the federal system, it appears that only 12 jurisdictions nationwide in fact impose life without parole sentences on juvenile nonhomicide offenders, while 26 States and the District of Columbia do not impose them despite apparent statutory authorization. Given that the statistics reflect nearly all juvenile nonhomicide offenders who have received a life without parole sentence stretching back many years, moreover, it is clear how rare these sentences are, even within the States that do sometimes impose them. While more common in terms of absolute numbers than the sentencing practices in, e.g., *Atkins* and *Enmund v. Florida*, 458 U.S. 782, 102 S. Ct. 3368, 73 L. Ed. 2d 1140, the type of sentence at issue is actually as rare as those other sentencing practices when viewed in proportion [***5] to the opportunities for its imposition. The fact that many jurisdictions do not expressly prohibit the sentencing practice at issue is not dispositive because it does not necessarily follow that the legislatures in those jurisdictions have deliberately concluded that such sentences would be appropriate. See *Thompson v. Oklahoma*, 487 U.S. 815, 826, n. 24, 850, 108 S. Ct. 2687, 101 L. Ed. 2d 702. Pp. 10-16.

(2) The inadequacy of penological theory to justify life without parole sentences for juvenile nonhomicide offenders, the limited culpability of such offenders, and the severity of these sentences all lead the Court to conclude that the sentencing practice at issue is cruel and unusual. No recent data provide reason to reconsider *Roper's* holding that because juveniles have lessened culpability they are less deserving of the most serious forms of punishment. 543 U.S., at 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1. Moreover, defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of such punishments than are murderers. E.g., *Kennedy, supra*. Serious nonhomicide crimes "may be devastating in their harm . . . but 'in terms of moral depravity and of the injury to the person and to the public,' . . . they [***6] cannot be compared to murder in their 'severity and irrevocability.'" *Id.*, at ___, 128 S. Ct. 2641, 2660, 171 L. Ed. 2d 525, 550. Thus, when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a

twice diminished moral culpability. Age and the nature of the crime each bear on the analysis. As for the punishment, life without parole is "the second most severe penalty permitted by law," *Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 S. Ct. 2680, 115 L. Ed. 2d 836, and is especially harsh for a juvenile offender, who will on average serve more years and a greater percentage of his life in prison than an adult offender, see, e.g., *Roper, supra*, at 572, 125 S. Ct. 1183, 161 L. Ed. 2d 1. And none of the legitimate goals of penal sanctions -- retribution, deterrence, incapacitation, and rehabilitation, see *Ewing v. California*, 538 U.S. 11, 25, 123 S. Ct. 1179, 155 L. Ed. 2d 108 -- is adequate to justify life without parole for juvenile nonhomicide offenders, see, e.g., *Roper*, 543 U.S., at 571, 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1. Because age "18 is the point where society draws the line for many purposes between childhood and adulthood," it is the age below which a defendant may not be sentenced to life without parole for a nonhomicide crime. *Id.*, at 574, 125 S. Ct. 1183, 161 L. Ed. 2d 1. A State is not required to guarantee eventual freedom to such an offender, but must [***7] impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. Pp. 16-24.

(3) A categorical rule is necessary, given the inadequacy of two alternative approaches to address the relevant constitutional concerns. First, although Florida and other States have made substantial efforts to enact comprehensive rules governing the treatment of youthful offenders, such laws allow the imposition of the type of sentence at issue based only on a discretionary, subjective judgment by a judge or jury that the juvenile offender is irredeemably depraved, and are therefore insufficient to prevent the possibility that the offender will receive such a sentence despite a lack of moral culpability. Second, a case-by-case approach requiring that the particular offender's age be weighed against the seriousness of the crime as part of a gross disproportionality inquiry would not allow courts to distinguish with sufficient accuracy the few juvenile offenders having sufficient psychological maturity and depravity to merit a life without parole sentence from [***8] the many that have the capacity for change. Cf. *Roper, supra*, at 572-573, 125 S. Ct. 1183, 161 L. Ed. 2d 1. Nor does such an approach take account of special difficulties encountered by counsel in juvenile representation, given juveniles' impulsiveness, difficulty thinking in terms of long-term benefits, and reluctance to trust adults. A categorical rule avoids the risk that, as a result of these difficulties, a court or jury will erroneously conclude that a particular juvenile is sufficiently culpable to deserve life without parole for a nonhomicide. It also gives the juvenile offender a chance to demonstrate maturity and reform. Pp. 24-29.

(4) Additional support for the Court's conclusion lies in the fact that the sentencing practice at issue has been rejected the world over: The United States is the only Nation that imposes this type of sentence. While the judgments of other nations and the international community are not dispositive as to the meaning of the Eighth Amendment, the Court has looked abroad to support its independent conclusion that a particular punishment is cruel and unusual. See, e.g., *Roper, supra*, at 575-578, 125 S. Ct. 1183, 161 L. Ed. 2d 1. Pp. 29-31.

982 So. 2d 43, reversed and remanded.

COUNSEL: Bryan S. Gowdy ✓ argued the cause for the petitioner.

Scott D. Makar ✓ argued the cause for the respondent.

JUDGES: KENNEDY ✓, J., delivered the opinion of the [***9] Court, in which STEVENS ✓, GINSBURG ✓, BREYER ✓, and SOTOMAYOR ✓, JJ., joined. STEVENS ✓, J., filed a concurring opinion, in which GINSBURG ✓ and SOTOMAYOR ✓, JJ., joined. ROBERTS ✓, C. J., filed an opinion concurring in the judgment. THOMAS ✓, J., filed a dissenting opinion, in which SCALIA ✓, J., joined, and in which ALITO ✓, J., joined as to Parts I and III. ALITO ✓, J., filed a dissenting opinion.

OPINION BY: [KENNEDY](#) ↘

OPINION

[832]** **[*2017]** JUSTICE [KENNEDY](#) ↘ delivered the opinion of the Court.

The issue before the Court is whether the Constitution permits a juvenile offender to be sentenced to life in prison without **[*2018]** parole for a nonhomicide crime. The sentence was imposed by the State of Florida. Petitioner challenges the sentence under the [Eighth Amendment's Cruel and Unusual Punishments Clause](#), made applicable to the States by the [Due Process Clause of the Fourteenth Amendment](#). *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962).

I

Petitioner is Terrance Jamar Graham. He was born on January 6, 1987. Graham's parents were addicted to crack cocaine, and their drug use persisted in his early years. Graham was diagnosed with attention deficit hyperactivity disorder in elementary school. He began drinking alcohol and using tobacco at age 9 and smoked marijuana **[***10]** at age 13.

In July 2003, when Graham was age 16, he and three other school-age youths attempted to rob a barbecue restaurant in Jacksonville, Florida. One youth, who worked at the restaurant, left the back door unlocked just before closing time. Graham and another youth, wearing masks, entered through the unlocked door. Graham's masked accomplice twice struck the restaurant manager in the back of the head with a metal bar. When the manager started yelling at the assailant and Graham, the two youths ran out and escaped in a car driven by the third accomplice. The restaurant manager required stitches for his head injury. No money was taken.

Graham was arrested for the robbery attempt. Under Florida law, it is within a prosecutor's discretion whether to charge 16- and 17-year-olds as adults or juveniles for most felony crimes. Fla. Stat. § 985.227(1)(b) (2003) (subsequently renumbered at § 985.557(1)(b) (2007)). Graham's prosecutor elected to charge Graham as an adult. The charges against Graham were armed burglary with assault or battery, a first-degree felony carrying a maximum penalty of life imprisonment without the possibility of parole, §§ 810.02(1)(b), (2) (a) (2003); and attempted **[***11]** armed-robbery, a second-degree felony carrying a maximum penalty of 15 years' imprisonment, §§ 812.13(2)(b), 777.04(1), (4)(a), 775.082 (3)(c).

On December 18, 2003, Graham pleaded guilty to both charges under a plea agreement. Graham wrote a letter to the trial court. After reciting "this is my first and last time getting in trouble," he continued "I've decided to turn my life around." App. 379-380. Graham said "I made a promise to God and myself that if I get a second chance, I'm going to do whatever it takes to get to the [National Football League]." *Id.*, at 380.

The trial court accepted the plea agreement. The court withheld adjudication of guilt as to both charges and sentenced Graham to concurrent 3-year terms of probation. Graham was required to spend the first 12 months of his probation in the county jail, but he received credit for the time he had served awaiting trial, and was released on June 25, 2004.

Less than 6 months later, on the night of December 2, 2004, Graham again was arrested. The State's case was as follows: Earlier that evening, Graham participated in a home invasion robbery. His two accomplices **[**833]** were Meigo Bailey and Kirkland Lawrence, both 20-year-old men. According to the State, at 7 **[***12]** p.m. that night, Graham,

Bailey, and Lawrence knocked on the door of the home where Carlos Rodriguez lived. Graham, followed by Bailey and Lawrence, forcibly entered the home and held a pistol to Rodriguez's chest. For the next 30 minutes, the three held Rodriguez and another man, a friend of Rodriguez, at gunpoint while they ransacked the home searching for money. Before leaving, Graham and his accomplices **[*2019]** barricaded Rodriguez and his friend inside a closet.

The State further alleged that Graham, Bailey, and Lawrence, later the same evening, attempted a second robbery, during which Bailey was shot. Graham, who had borrowed his father's car, drove Bailey and Lawrence to the hospital and left them there. As Graham drove away, a police sergeant signaled him to stop. Graham continued at a high speed but crashed into a telephone pole. He tried to flee on foot but was apprehended. Three handguns were found in his car.

When detectives interviewed Graham, he denied involvement in the crimes. He said he encountered Bailey and Lawrence only after Bailey had been shot. One of the detectives told Graham that the victims of the home invasion had identified him. He asked Graham, "Aside from the two **[***13]** robberies tonight how many more were you involved in?" Graham responded, "Two to three before tonight." *Id.*, at 160. The night that Graham allegedly committed the robbery, he was 34 days short of his 18th birthday.

On December 13, 2004, Graham's probation officer filed with the trial court an affidavit asserting that Graham had violated the conditions of his probation by possessing a firearm, committing crimes, and associating with persons engaged in criminal activity. The trial court held hearings on Graham's violations about a year later, in December 2005 and January 2006. The judge who presided was not the same judge who had accepted Graham's guilty plea to the earlier offenses.

Graham maintained that he had no involvement in the home invasion robbery; but, even after the court underscored that the admission could expose him to a life sentence on the earlier charges, he admitted violating probation conditions by fleeing. The State presented evidence related to the home invasion, including testimony from the victims. The trial court noted that Graham, in admitting his attempt to avoid arrest, had acknowledged violating his probation. The court further found that Graham had violated **[***14]** his probation by committing a home invasion robbery, by possessing a firearm, and by associating with persons engaged in criminal activity.

The trial court held a sentencing hearing. Under Florida law the minimum sentence Graham could receive absent a downward departure by the judge was 5 years' imprisonment. The maximum was life imprisonment. Graham's attorney requested the minimum nondeparture sentence of 5 years. A presentence report prepared by the Florida Department of Corrections recommended that Graham receive an even lower sentence -- at most 4 years' imprisonment. The State recommended that Graham receive 30 years on the armed burglary count and 15 years on the attempted armed robbery count.

After hearing Graham's testimony, **[**834]** the trial court explained the sentence it was about to pronounce:

"Mr. Graham, as I look back on your case, yours is really candidly a sad situation. You had, as far as I can tell, you have quite a family structure. You had a lot of people who wanted to try and help you get your life turned around including the court system, and you had a judge who took the step to try and give you direction through his probation order to give you a chance to get back onto **[***15]** track. And at the time you seemed through your letters that that is exactly what you wanted to do. And I don't know why it is that you threw your life away. I don't know why.

"But you did, and that is what is so sad about this today is that you have actually been given a chance to get **[*2020]** through this, the original charge, which were very serious charges to begin with The attempted robbery with a weapon was a very serious charge.

. . . .

"[I]n a very short period of time you were back before the Court on a violation of this probation, and then here you are two years later standing before me, literally the -- facing a life sentence as to -- up to life as to count 1 and up to 15 years as to count 2.

"And I don't understand why you would be given such a great opportunity to do something with your life and why you would throw it away. The only thing that I can rationalize is that you decided that this is how you were going to lead your life and that there is nothing that we can do for you. And as the state pointed out, that this is an escalating pattern of criminal conduct on your part and that we can't help you any further. We can't do anything to deter you. This is the way you are **[***16]** going to lead your life, and I don't know why you are going to. You've made that decision. I have no idea. But, evidently, that is what you decided to do.

"So then it becomes a focus, if I can't do anything to help you, if I can't do anything to get you back on the right path, then I have to start focusing on the community and trying to protect the community from your actions. And, unfortunately, that is where we are today is I don't see where I can do anything to help you any further. You've evidently decided this is the direction you're going to take in life, and it's unfortunate that you made that choice.

"I have reviewed the statute. I don't see where any further juvenile sanctions would be appropriate. I don't see where any youthful offender sanctions would be appropriate. Given your escalating pattern of criminal conduct, it is apparent to the Court that you have decided that this is the way you are going to live your life and that the only thing I can do now is to try and protect the community from your actions." *Id.*, at 392-394.

The trial court found Graham guilty of the earlier armed burglary and attempted armed robbery charges. It sentenced him to the maximum sentence authorized **[***17]** by law on each charge: life imprisonment for the armed burglary and 15 years for the attempted armed robbery. Because Florida has abolished its parole system, see Fla. Stat. § 921.002(1)(e) (2003), a life sentence gives a defendant no possibility of release unless he is granted executive clemency.

[835]** Graham filed a motion in the trial court challenging his sentence under the Eighth Amendment. The motion was deemed denied after the trial court failed to rule on it within 60 days. The First District Court of Appeal of Florida affirmed, concluding that Graham's sentence was not grossly disproportionate to his crimes. 982 So. 2d 43 (2008). The court took note of the seriousness of Graham's offenses and their violent nature, as well as the fact that they "were not committed by a pre-teen, but a seventeen-year-old who was ultimately sentenced at the age of nineteen." *Id.*, at 52. The court concluded further that Graham was incapable of rehabilitation. Although Graham "was given an unheard of probationary sentence for a life felony, . . . wrote a letter expressing his remorse and promising to refrain from the commission of further crime, and . . . had a strong family structure to support him,"

[*18]** the court noted, he "rejected his second chance and chose to continue committing crimes at an escalating pace." *Ibid.* The Florida Supreme Court denied review. 990 So. 2d 1058 (2008) (table).

We granted certiorari. 556 U.S. ___, 129 S. Ct. 2157, 173 L. Ed. 2d 1155 (2009).

[*2021] II

The Eighth Amendment states: ^{HN1}"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." ^{HN2}To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to "the evolving standards of decency that mark the progress of a maturing society." *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958) (plurality opinion)). "This is because '[t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.'" *Kennedy v. Louisiana*, 554 U.S. 407, ___, 128 S. Ct. 2641, 2649, 171 L. Ed. 2d 525, 538 (2008) (quoting *Furman v. Georgia*, 408 U.S. 238, 382, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972) (Burger, C. J., dissenting)).

^{HN3}The Cruel and Unusual Punishments Clause prohibits the imposition of inherently barbaric punishments under all circumstances. See, e.g., *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002). **[***19]** "[P]unishments of torture," for example, "are forbidden." *Wilkinson v. Utah*, 99 U.S. 130, 136, 25 L. Ed. 345 (1879). These cases underscore the essential principle that, under the Eighth Amendment, the State must respect the human attributes even of those who have committed serious crimes.

^{HN4}For the most part, however, the Court's precedents consider punishments challenged not as inherently barbaric but as disproportionate to the crime. The concept of proportionality is central to the Eighth Amendment. Embodied in the Constitution's ban on cruel and unusual punishments is the "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Weems v. United States*, 217 U.S. 349, 367, 30 S. Ct. 544, 54 L. Ed. 793 (1910).

The Court's cases addressing the proportionality of sentences fall within two general classifications. The first involves challenges to the **[**836]** length of term-of-years sentences given all the circumstances in a particular case. The second comprises cases in which the Court implements the proportionality standard by certain categorical restrictions on the death penalty.

In the first classification the Court considers all of the circumstances of the case to determine whether the sentence **[***20]** is unconstitutionally excessive. Under this approach, the Court has held unconstitutional a life without parole sentence for the defendant's seventh nonviolent felony, the crime of passing a worthless check. *Solem v. Helm*, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983). In other cases, however, it has been difficult for the challenger to establish a lack of proportionality. A leading case is *Harmelin v. Michigan*, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991), in which the offender was sentenced under state law to life without parole for possessing a large quantity of cocaine. A closely divided Court upheld the sentence. The controlling opinion concluded that the Eighth Amendment contains a "narrow proportionality principle," that "does not require strict proportionality between crime and sentence" but rather "forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Id.*, at 997, 1000-1001, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (KENNEDY, J., concurring in part and concurring in judgment). Again closely divided, the Court rejected a challenge to a sentence of 25 years to life for the theft of a few golf clubs under California's so-called three-strikes recidivist sentencing **[*2022]** scheme.

Ewing v. California, 538 U.S. 11, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (2003); see also *Lockyer v. Andrade*, 538 U.S. 63, 123 S. Ct. 1166, 155 L. Ed. 2d 144 (2003). [***21] The Court has also upheld a sentence of life with the possibility of parole for a defendant's third nonviolent felony, the crime of obtaining money by false pretenses, *Rummel v. Estelle*, 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980), and a sentence of 40 years for possession of marijuana with intent to distribute and distribution of marijuana, *Hutto v. Davis*, 454 U.S. 370, 102 S. Ct. 703, 70 L. Ed. 2d 556 (1982) (*per curiam*).

The controlling opinion in *Harmelin* explained its approach for determining whether a sentence for a term of years is grossly disproportionate for a particular defendant's crime. A court must begin by comparing the gravity of the offense and the severity of the sentence. 501 U.S., at 1005, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (opinion of KENNEDY, J.). "[I]n the rare case in which [this] threshold comparison . . . leads to an inference of gross disproportionality" the court should then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions. *Ibid.* If this comparative analysis "validate[s] an initial judgment that [the] sentence is grossly disproportionate," the sentence is cruel and unusual. *Ibid.*

The second classification of cases has used [***22] categorical rules to define Eighth Amendment standards. The previous cases in this classification involved the death penalty. The classification in turn consists of two subsets, one considering the nature of the offense, the other considering the characteristics of the offender. With respect to the nature of the offense, the Court has concluded that capital punishment is impermissible for nonhomicide crimes against individuals. [**837] *Kennedy, supra*, at ___, 128 S. Ct. 2641, 171 L. Ed. 2d 525 (slip op., at 28); see also *Enmund v. Florida*, 458 U.S. 782, 102 S. Ct. 3368, 73 L. Ed. 2d 1140 (1982); *Coker v. Georgia*, 433 U.S. 584, 97 S. Ct. 2861, 53 L. Ed. 2d 982 (1977). In cases turning on the characteristics of the offender, the Court has adopted categorical rules prohibiting the death penalty for defendants who committed their crimes before the age of 18, *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), or whose intellectual functioning is in a low range, *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002). See also *Thompson v. Oklahoma*, 487 U.S. 815, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988).

In the cases adopting categorical rules the Court has taken the following approach. The Court first considers "objective indicia of society's standards, as expressed in legislative enactments and state practice" to determine whether there is a national consensus against [***23] the sentencing practice at issue. *Roper, supra*, at 563, 125 S. Ct. 1183, 161 L. Ed. 2d 1. Next, guided by "the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose," *Kennedy*, 554 U.S., at ___, 128 S. Ct. 2641, 2650, 171 L. Ed. 2d 525, 540, the Court must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution. *Roper, supra*, at 564, 125 S. Ct. 1183, 161 L. Ed. 2d 1.

The present case involves an issue the Court has not considered previously: a categorical challenge to a term-of-years sentence. The approach in cases such as *Harmelin* and *Ewing* is suited for considering a gross proportionality challenge to a particular defendant's sentence, but here a sentencing practice itself is in question. This case implicates a particular type of sentence as it applies to an entire class of [*2023] offenders who have committed a range of crimes. As a result, a threshold comparison between the severity of the penalty and the gravity of the crime does not advance the analysis. Here, in addressing the question presented, the appropriate analysis is the one used in cases that involved the categorical approach, specifically *Atkins*, *Roper*, [***24] and *Kennedy*.

III

A

The analysis begins with objective indicia of national consensus. "[T]he 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'" *Atkins, supra*, at 312, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 331, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989)). Six jurisdictions do not allow life without parole sentences for any juvenile offenders. See Appendix, *infra*, Part III. Seven jurisdictions permit life without parole for juvenile offenders, but only for homicide crimes. *Id.*, Part II. Thirty-seven States as well as the District of Columbia permit sentences of life without parole for a juvenile nonhomicide offender in some circumstances. *Id.*, Part I. Federal law also allows for the possibility of life without parole for offenders as young as 13. See, e.g., 18 U.S.C. §§ 2241 (2006 ed. and Supp. II), 5032 (2006 ed.). Relying on this metric, the State and its amici argue that there is no national consensus against the sentencing practice at issue.

[**838] This argument is incomplete and unavailing. "There are measures of consensus other than legislation." *Kennedy, supra*, at ___, 128 S. Ct. 2641, 2657, 171 L. Ed. 2d 525, 547. Actual sentencing practices are an important part of the Court's [***25] inquiry into consensus. See *Enmund, supra*, at 794-796, 102 S. Ct. 3368, 73 L. Ed. 2d 1140; *Thompson, supra*, at 831-832, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (plurality opinion); *Atkins, supra*, at 316, 122 S. Ct. 2242, 153 L. Ed. 2d 335; *Roper, supra*, at 564-565, 125 S. Ct. 1183, 161 L. Ed. 2d 1; *Kennedy, supra*, at ___, 128 S. Ct. 2641, 171 L. Ed. 2d 525 (slip op., at 22-23). Here, an examination of actual sentencing practices in jurisdictions where the sentence in question is permitted by statute discloses a consensus against its use. Although these statutory schemes contain no explicit prohibition on sentences of life without parole for juvenile nonhomicide offenders, those sentences are most infrequent. According to a recent study, nationwide there are only 109 juvenile offenders serving sentences of life without parole for nonhomicide offenses. See P. Annino, D. Rasmussen, & C. Rice, *Juvenile Life without Parole for Non-Homicide Offenses: Florida Compared to Nation 2* (Sept. 14, 2009) (hereinafter Annino).

The State contends that this study's tally is inaccurate because it does not count juvenile offenders who were convicted of both a homicide and a nonhomicide offense, even when the offender received a life without parole sentence for the nonhomicide. See Brief for Respondent 34; Tr. of Oral Arg. in *Sullivan v. Florida*, O. T. 2009, No. 08-7621, pp. 28-31.

[***26] This distinction is unpersuasive. Juvenile offenders who committed both homicide and nonhomicide crimes present a different situation for a sentencing judge than juvenile offenders who committed no homicide. It is difficult to say that a defendant who receives a life sentence on a nonhomicide offense but who was at the same time convicted of homicide is not in some sense being punished in part for the homicide when the judge makes the sentencing determination. The instant case concerns only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense.

Florida further criticizes this study because the authors were unable to obtain complete information on some States and [*2024] because the study was not peer reviewed. See Brief for Respondent 40. The State does not, however, provide any data of its own. Although in the first instance it is for the litigants to provide data to aid the Court, we have been able to supplement the study's findings. The study's authors were not able to obtain a definitive tally for Nevada, Utah, or Virginia. See Annino 11-13. Our research shows that Nevada has five juvenile nonhomicide offenders serving life without parole sentences, [***27] Utah has none, and Virginia has eight. See Letter from Alejandra Livingston, Offender Management Division, Nevada Dept. of Corrections, to Supreme Court Library (Mar. 26, 2010) (available in Clerk of Court's case file); Letter from Steve Gehrke, Utah Dept. of Corrections, to Supreme Court Library (Mar. 29, 2010) (same); Letter from Dr. Tama S. Celi, Virginia Dept. of Corrections, to Supreme Court Library (Mar. 30, 2010) (same). The study also did not note

that there are six convicts in the federal prison system serving life without parole offenses for nonhomicide crimes. See Letter and Attachment from Judith Simon Garrett, U.S. Dept. of Justice, **[**839]** Federal Bureau of Prisons, to Supreme Court Library (Apr. 12, 2010) (available in Clerk of Court's case file).

Finally, since the study was completed, a defendant in Oklahoma has apparently been sentenced to life without parole for a rape and stabbing he committed at the age of 16. See Stogsdill, Delaware County Teen Sentenced in Rape, Assault Case, *Tulsa World*, May 4, 2010, p. A12. Thus, adding the individuals counted by the study to those we have been able to locate independently, there are 129 juvenile nonhomicide offenders serving life without **[**28]** parole sentences. A significant majority of those, 77 in total, are serving sentences imposed in Florida. Annino 2. The other 52 are imprisoned in just 10 States -- California, Delaware, Iowa, Louisiana, Mississippi, Nebraska, Nevada, Oklahoma, South Carolina, and Virginia -- and in the federal system. *Id.*, at 14; *supra*, at 12-13; Letter from Thomas P. Hoey, Dept. of Corrections, Government of the District of Columbia, to Supreme Court Library (Mar. 31, 2010) (available in Clerk of Court's case file); Letter from Judith Simon Garrett, U.S. Dept. of Justice, Federal Bureau of Prisons, to Supreme Court Library (Apr. 9, 2010) (available in Clerk of Court's case file). Thus, only 12 jurisdictions nationwide in fact impose life without parole sentences on juvenile nonhomicide offenders -- and most of those impose the sentence quite rarely -- while 26 States as well as the District of Columbia do not impose them despite apparent statutory authorization.

The numbers cited above reflect all current convicts in a jurisdiction's penal system, regardless of when they were convicted. It becomes all the more clear how rare these sentences are, even within the jurisdictions that do sometimes impose **[**29]** them, when one considers that a juvenile sentenced to life without parole is likely to live in prison for decades. Thus, these statistics likely reflect nearly all juvenile nonhomicide offenders who have received a life without parole sentence stretching back many years. It is not certain that this opinion has identified every juvenile nonhomicide offender nationwide serving a life without parole sentence, for the statistics are not precise. The available data, nonetheless, are sufficient to demonstrate how rarely these sentences are imposed even if there are isolated cases that have not been included in the presentations of the parties or the analysis of the Court.

It must be acknowledged that in terms of absolute numbers juvenile life without parole sentences for nonhomicides are more common than the sentencing practices **[*2025]** at issue in some of this Court's other *Eighth Amendment* cases. See, e.g., *Enmund*, 458 U.S., at 794, 102 S. Ct. 3368, 73 L. Ed. 2d 1140 (only six executions of nontriggerman felony murderers between 1954 and 1982) *Atkins*, 536 U.S., at 316, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (only five executions of mentally retarded defendants in 13-year period). This contrast can be instructive, however, if attention is first given to the base number **[**30]** of certain types of offenses. For example, in the year 2007 (the most recent year for which statistics are available), a total of 13,480 persons, adult and juvenile, were arrested for homicide crimes. That same year, 57,600 juveniles were arrested for aggravated assault; 3,580 for forcible rape; 34,500 for robbery; 81,900 for burglary; 195,700 for drug offenses; and 7,200 for arson. See Dept. **[**840]** of Justice, Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book, online at <http://ojjdp.ncjrs.org/ojstatbb/> (as visited May 14, 2010, and available in Clerk of Court's case file). Although it is not certain how many of these numerous juvenile offenders were eligible for life without parole sentences, the comparison suggests that in proportion to the opportunities for its imposition, life without parole sentences for juveniles convicted of nonhomicide crimes is as rare as other sentencing practices found to be cruel and unusual.

The evidence of consensus is not undermined by the fact that many jurisdictions do not prohibit life without parole for juvenile nonhomicide offenders. The Court confronted a similar situation in *Thompson*, where a plurality concluded that the **[**31]** death penalty for

offenders younger than 16 was unconstitutional. A number of States then allowed the juvenile death penalty if one considered the statutory scheme. As is the case here, those States authorized the transfer of some juvenile offenders to adult court; and at that point there was no statutory differentiation between adults and juveniles with respect to authorized penalties. The plurality concluded that the transfer laws show "that the States consider 15-year-olds to be old enough to be tried in criminal court for serious crimes (or too old to be dealt with effectively in juvenile court), but tells us nothing about the judgment these States have made regarding the appropriate punishment for such youthful offenders." 487 U.S., at 826, n. 24, 108 S. Ct. 2687, 101 L. Ed. 2d 702. Justice O'Connor, concurring in the judgment, took a similar view. *Id.*, at 850, 108 S. Ct. 2687, 101 L. Ed. 2d 702 ("When a legislature provides for some 15-year-olds to be processed through the adult criminal justice system, and capital punishment is available for adults in that jurisdiction, the death penalty becomes at least theoretically applicable to such defendants . . . [H]owever, it does not necessarily follow that the legislatures in those jurisdictions have **[**32]** deliberately concluded that it would be appropriate").

The same reasoning obtains here. Many States have chosen to move away from juvenile court systems and to allow juveniles to be transferred to, or charged directly in, adult court under certain circumstances. Once in adult court, a juvenile offender may receive the same sentence as would be given to an adult offender, including a life without parole sentence. But the fact that transfer and direct charging laws make life without parole possible for some juvenile nonhomicide offenders does not justify a judgment that many States intended to subject such offenders to life without parole sentences.

For example, under Florida law a child of any age can be prosecuted as an adult for certain crimes and can be sentenced to life without parole. The State acknowledged at oral argument that even a 5-year-old, theoretically, could receive such **[*2026]** a sentence under the letter of the law. See Tr. of Oral Arg. 36-37. All would concede this to be unrealistic, but the example underscores that the statutory eligibility of a juvenile offender for life without parole does not indicate that the penalty has been endorsed through deliberate, express, and full **[**33]** legislative consideration. Similarly, the many States that allow life without parole for juvenile nonhomicide offenders but do not impose the punishment should not be treated as if they have expressed the view that the sentence **[**841]** be ris appropriate. The sentencing practice now under consideration is exceedingly rare. And "it is fair to say that a national consensus has developed against it." *Atkins*, *supra*, at 316, 122 S. Ct. 2242, 153 L. Ed. 2d 335.

B

^{HNS}Community consensus, while "entitled to great weight," is not itself determinative of whether a punishment is cruel and unusual. *Kennedy*, 554 U.S., at 128 S. Ct. 2641, 2658, 171 L. Ed. 2d 525, 548. In accordance with the constitutional design, "the task of interpreting the *Eighth Amendment* remains our responsibility." *Roper*, 543 U.S., at 575, 125 S. Ct. 1183, 161 L. Ed. 2d 1. The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question. *Id.*, at 568, 125 S. Ct. 1183, 161 L. Ed. 2d 1; *Kennedy*, *supra*, at 128 S. Ct. 2641, 171 L. Ed. 2d 525, 552 (slip op., at 27-28); cf. *Solem*, 463 U.S., at 292, 103 S. Ct. 3001, 77 L. Ed. 2d 637. In this inquiry the Court also considers whether the challenged sentencing practice serves legitimate penological goals. *Kennedy*, *supra*, at 128 S. Ct. 2641, 2662, 171 L. Ed. 2d 525, 552; **[**34]** *Roper*, *supra*, at 571-572, 125 S. Ct. 1183, 161 L. Ed. 2d 1; *Atkins*, *supra*, at 318-320, 122 S. Ct. 2242, 153 L. Ed. 2d 335.

Roper established that ^{HNS}because juveniles have lessened culpability they are less deserving of the most severe punishments. 543 U.S., at 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1. As compared to adults, juveniles have a "lack of maturity and an underdeveloped sense of

responsibility"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their characters are "not as well formed." *Id.*, at 569-570, 125 S. Ct. 1183, 161 L. Ed. 2d 1. These salient characteristics mean 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." *Id.*, at 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1. Accordingly, "juvenile offenders cannot with reliability be classified among the worst offenders." *Id.*, at 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1. A juvenile is not absolved of responsibility for his actions, but his transgression "is not as morally reprehensible as that of an adult." *Thompson, supra*, at 835, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (plurality opinion).

No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles. As petitioner's *amici* point out, [***35] developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. See Brief for American Medical Association et al. as *Amici Curiae* 16-24; Brief for American Psychological Association et al. as *Amici Curiae* 22-27. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. *Roper*, 543 U.S., at 570, 125 S. Ct. 1183, 161 L. Ed. 2d 1. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's [***2027] character deficiencies [***842] will be reformed." *Ibid*. These matters relate to the status of the offenders in question; and it is relevant to consider next the nature of the offenses to which this harsh penalty might apply.

The Court has recognized that ^{HNS} 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. *Kennedy, supra*; *Enmund*, 458 U.S. 782, 102 S. Ct. 3368, 73 L. Ed. 2d 1140; [***36] *Tison v. Arizona*, 481 U.S. 137, 107 S. Ct. 1676, 95 L. Ed. 2d 127 (1987); *Coker*, 433 U.S. 584, 97 S. Ct. 2861, 53 L. Ed. 2d 982. There is a line "between homicide and other serious violent offenses against the individual." *Kennedy*, 554 U.S., at 128 S. Ct. 2641, 2660, 171 L. Ed. 2d 525, 550. Serious nonhomicide crimes "may be devastating in their harm . . . but 'in terms of moral depravity and of the injury to the person and to the public,' . . . they cannot be compared to murder in their 'severity and irrevocability.'" *Id.*, at 128 S. Ct. 2641, 2660, 171 L. Ed. 2d 525, 550 (quoting *Coker*, 433 U.S., at 598, 97 S. Ct. 2861, 53 L. Ed. 2d 982 (plurality opinion)). This is because "[l]ife is over for the victim of the murderer," but for the victim of even a very serious nonhomicide crime, "life . . . is not over and normally is not beyond repair." *Ibid*. (plurality opinion). Although an offense like robbery or rape is "a serious crime deserving serious punishment," *Enmund, supra*, at 797, 102 S. Ct. 3368, 73 L. Ed. 2d 1140, those crimes differ from homicide crimes in a moral sense.

It follows that, when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability. The age of the offender and the nature of the crime each bear on the analysis.

As for the punishment, life without parole is "the second most severe [***37] penalty permitted by law." *Harmelin*, 501 U.S., at 1001, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (opinion of KENNEDY, J.). It is true that a death sentence is "unique in its severity and irrevocability," *Gregg v. Georgia*, 428 U.S. 153, 187, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.); yet life without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency -- the remote possibility of which does not mitigate the harshness of the sentence. *Solem*, 463

U.S., at 300-301, 103 S. Ct. 3001, 77 L. Ed. 2d 637. As one court observed in overturning a life without parole sentence for a juvenile defendant, this sentence "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days." *Naovarath v. State*, 105 Nev. 525, 526, 779 P.2d 944 (1989).

The Court has recognized [***38] the severity of sentences that deny convicts the possibility of parole. In *Rummel*, 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382, the Court rejected an Eighth Amendment challenge to a life sentence for a defendant's third nonviolent felony but stressed that the sentence gave the defendant the [***843] possibility of parole. Noting that "parole is an established variation on imprisonment of convicted criminals," it was evident that an analysis of the petitioner's sentence "could hardly ignore the possibility that he will not actually be imprisoned for the rest of his life." *Id.*, at 280-281, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (internal quotation marks omitted). And in *Solem*, the only previous case striking down a sentence for [***2028] a term of years as grossly disproportionate, the defendant's sentence was deemed "far more severe than the life sentence we considered in *Rummel*," because it did not give the defendant the possibility of parole. 463 U.S., at 297, 100 S. Ct. 1133, 63 L. Ed. 2d 382.

Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in [***39] name only. See *Roper, supra*, at 572, 125 S. Ct. 1183, 161 L. Ed. 2d 1; cf. *Harmelin, supra*, at 996, 111 S. Ct. 2680, 115 L. Ed. 2d 836 ("In some cases . . . there will be negligible difference between life without parole and other sentences of imprisonment -- for example, . . . a lengthy term sentence without eligibility for parole, given to a 65-year-old man"). This reality cannot be ignored.

The penological justifications for the sentencing practice are also relevant to the analysis. *Kennedy, supra*, at 128 S. Ct. 2641, 171 L. Ed. 2d 525 (slip op., at 30-36); *Roper*, 543 U.S., at 571-572, 125 S. Ct. 1183, 161 L. Ed. 2d 1; *Atkins, supra*, at 318-320, 122 S. Ct. 2242, 153 L. Ed. 2d 335. ^{HNB} Criminal punishment can have different goals, and choosing among them is within a legislature's discretion. See *Harmelin, supra*, at 999, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (opinion of KENNEDY, J.) ("[T]he Eighth Amendment does not mandate adoption of any one penological theory"). It does not follow, however, that the purposes and effects of penal sanctions are irrelevant to the determination of Eighth Amendment restrictions. A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense. With respect to life without parole for juvenile nonhomicide offenders, none of the goals of penal sanctions that have been recognized as legitimate -- retribution, deterrence, [***40] incapacitation, and rehabilitation, see *Ewing*, 538 U.S., at 25, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (plurality opinion) -- provides an adequate justification.

^{HNS} Retribution is a legitimate reason to punish, but it cannot support the sentence at issue here. Society is entitled to impose severe sanctions on a juvenile nonhomicide offender to express its condemnation of the crime and to seek restoration of the moral imbalance caused by the offense. But "[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *Tison*, 481 U.S., at 149, 107 S. Ct. 1676, 95 L. Ed. 2d 127. And as *Roper* observed, "[w]hether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult." 543 U.S., at 571, 125 S. Ct. 1183, 161 L. Ed. 2d 1. The case becomes even weaker with respect to a juvenile who did not commit homicide. *Roper* found that "[r]etribution is [***844] not proportional if the law's most severe penalty is imposed" on the juvenile murderer. *Ibid*. The considerations underlying that holding support as well the conclusion

that retribution does not justify imposing the second most severe penalty [***41] on the less culpable juvenile nonhomicide offender.

Deterrence does not suffice to justify the sentence either. *Roper* noted that "the same characteristics that render juveniles less culpable than adults suggest . . . that juveniles will be less susceptible to deterrence." *Ibid.* Because juveniles' "lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions," *Johnson v. Texas*, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993), they are less likely to take a possible punishment into consideration when [***2029] making decisions. This is particularly so when that punishment is rarely imposed. That the sentence deters in a few cases is perhaps plausible, but "[t]his argument does not overcome other objections." *Kennedy*, 554 U.S., at ___, 128 S. Ct. 2641, 2662, 171 L. Ed. 2d 525, 552. Even if the punishment has some connection to a valid penological goal, it must be shown that the punishment is not grossly disproportionate in light of the justification offered. Here, in light of juvenile nonhomicide offenders' diminished moral responsibility, any limited deterrent effect provided by life without parole is not enough to justify the sentence.

Incapacitation, a third legitimate reason [***42] for imprisonment, does not justify the life without parole sentence in question here. Recidivism is a serious risk to public safety, and so incapacitation is an important goal. See *Ewing*, *supra*, at 26, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (plurality opinion) (statistics show 67 percent of former inmates released from state prisons are charged with at least one serious new crime within three years). But while incapacitation may be a legitimate penological goal sufficient to justify life without parole in other contexts, it is inadequate to justify that punishment for juveniles who did not commit homicide. To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable. "It 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." *Roper*, *supra*, at 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1. As one court concluded in a challenge to a life without parole sentence for a 14-year-old, "incorrigibility is inconsistent [***43] with youth." *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. App. 1968).

Here one cannot dispute that this defendant posed an immediate risk, for he had committed, we can assume, serious crimes early in his term of supervised release and despite his own assurances of reform. Graham deserved to be separated from society for some time in order to prevent what the trial court described as an "escalating pattern of criminal conduct," App. 394, but it does not follow that he would be a risk to society for the rest of his life. Even if the State's judgment that Graham was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate [***845] because that judgment was made at the outset. A life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity. Incapacitation cannot override all other considerations, lest the Eighth Amendment's rule against disproportionate sentences be a nullity.

Finally there is rehabilitation, a penological goal that forms the basis of parole systems. See *Solem*, 463 U.S., at 300, 103 S. Ct. 3001, 77 L. Ed. 2d 637; *Mistretta v. United States*, 488 U.S. 361, 363, 109 S. Ct. 647, 102 L. Ed. 2d 714 (1989). The concept of rehabilitation [***44] is imprecise; and its utility and proper implementation are the subject of a substantial, dynamic field of inquiry and dialogue. See, e.g., Cullen & Gendreau, *Assessing Correctional Rehabilitation: Policy, Practice, and Prospects*, 3 *Criminal Justice* 2000, pp. 119-133 (2000) (describing scholarly debates regarding the effectiveness of rehabilitation over the last several decades). It is for legislatures to determine what rehabilitative techniques are appropriate and effective.

A sentence of life imprisonment without parole, however, cannot be justified by the [***2030] goal of rehabilitation. The penalty forswears altogether the rehabilitative ideal. By denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person's value and place in society. This judgment is not appropriate in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability. A State's rejection of rehabilitation, moreover, goes beyond a mere expressive judgment. As one *amicus* notes, defendants serving life without parole sentences are often denied access to vocational training and other rehabilitative services that are available to other inmates. [***45] See Brief for Sentencing Project as *Amicus Curiae* 11-13. For juvenile offenders, who are most in need of and receptive to rehabilitation, see Brief for J. Lawrence Aber et al. as *Amici Curiae* 28-31 (hereinafter *Aber Brief*), the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more evident.

In sum, penological theory is not adequate to justify life without parole for juvenile nonhomicide offenders. This determination; the limited culpability of juvenile nonhomicide offenders; and the severity of life without parole sentences all lead to the conclusion that the sentencing practice under consideration is cruel and unusual. This Court now holds that ^{HN10} *for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole. This clear line is necessary to prevent the possibility that life without parole sentences will be imposed on juvenile nonhomicide offenders who are not sufficiently culpable to merit that punishment. Because "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood," those who were below that age when the offense was committed [***46] may not be sentenced to life without parole for a nonhomicide crime. *Roper*, 543 U.S., at 574, 125 S. Ct. 1183, 161 L. Ed. 2d 1.

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for [***846] the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. ^{HN11} *The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.

C

Categorical rules tend to be imperfect, but one is necessary here. [***47] Two alternative approaches are not adequate to address the relevant constitutional concerns. First, the State argues that the laws of Florida and other States governing criminal procedure take sufficient account of the age of a juvenile offender. Here, Florida notes that under its law prosecutors are required to charge 16- and 17-year-old offenders as adults only for certain serious felonies; that prosecutors have discretion to charge those offenders as adults for other felonies; and that prosecutors may not charge nonrecidivist 16- and 17-year-old [***2031] offenders as adults for misdemeanors. Brief for Respondent 54 (citing Fla. Stat. § 985.227 (2003)). The State also stresses that "in only the narrowest of circumstances" does Florida law impose no age limit whatsoever for prosecuting juveniles in adult court. Brief for Respondent 54.

Florida is correct to say that state laws requiring consideration of a defendant's age in charging decisions are salutary. 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. Florida, like other States, has made substantial efforts to enact comprehensive [***48] rules governing the treatment of youthful offenders by its criminal justice system. See generally Fla. Stat. § 958 *et seq.* (2007).

The provisions the State notes are, nonetheless, by themselves insufficient to address the constitutional concerns at issue. Nothing in Florida's laws prevents its courts from sentencing a juvenile nonhomicide offender to life without parole based on a subjective judgment that the defendant's crimes demonstrate an "irretrievably depraved character." *Roper, supra*, at 570, 125 S. Ct. 1183, 161 L. Ed. 2d 1. This is inconsistent with the Eighth Amendment. Specific cases are illustrative. In Graham's case the sentencing judge decided to impose life without parole -- a sentence greater than that requested by the prosecutor -- for Graham's armed burglary conviction. The judge did so because he concluded that Graham was incorrigible: "[Y]ou decided that this is how you were going to lead your life and that there is nothing that we can do for you. . . . We can't do anything to deter you." App. 394.

Another example comes from *Sullivan v. Florida*, No. 08-7621, 130 S. Ct. 2059, 176 L. Ed. 2d 919, 2010 U.S. LEXIS 3878. *Sullivan* was argued the same day as this case, but the Court has now dismissed the writ of certiorari in *Sullivan* as improvidently granted. *Post*, [***49] p. _____. The facts, however, demonstrate the flaws of Florida's system. The petitioner, [**847] Joe Sullivan, was prosecuted as an adult for a sexual assault committed when he was 13 years old. Noting Sullivan's past encounters with the law, the sentencing judge concluded that, although Sullivan had been "given opportunity after opportunity to upright himself and take advantage of the second and third chances he's been given," he had demonstrated himself to be unwilling to follow the law and needed to be kept away from society for the duration of his life. Brief for Respondent in *Sullivan v. Florida*, O. T. 2009, No. 08-7621, p. 6. The judge sentenced Sullivan to life without parole. As these examples make clear, existing state laws, allowing the imposition of these sentences based only on a discretionary, subjective judgment by a judge or jury that the offender is irredeemably depraved, are insufficient to prevent the possibility that the offender will receive a life without parole sentence for which he or she lacks the moral culpability.

Another possible approach would be to hold that the Eighth Amendment requires courts to take the offender's age into consideration as part of a case-specific [***50] gross disproportionality inquiry, weighing it against the seriousness of the crime. This approach would allow courts to account for factual differences between cases and to impose life without parole sentences for particularly heinous crimes. Few, perhaps no, judicial responsibilities are more difficult than sentencing. The task is usually undertaken by trial judges who seek with diligence and professionalism to take account of the human existence of the offender and the just demands of a wronged society.

The case-by-case approach to sentencing must, however, be confined by some [*2032] boundaries. The dilemma of juvenile sentencing demonstrates this. For even if we were to assume that some juvenile nonhomicide offenders might have "sufficient psychological maturity, and at the same time demonstrat[e] sufficient depravity," *Roper*, 543 U.S., at 572, 125 S. Ct. 1183, 161 L. Ed. 2d 1, to merit a life without parole sentence, it does not follow that courts taking a case-by-case proportionality approach could with sufficient accuracy distinguish the few incorrigible juvenile offenders from the many that have the capacity for change. *Roper* rejected the argument that the Eighth Amendment required only that juries be told they must [***51] consider the defendant's age as a mitigating factor in sentencing. The Court concluded that an "unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death." *Id.*, at 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1. Here, as with the death penalty, "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive" a sentence of life without parole for a nonhomicide crime "despite

insufficient culpability." *Id.*, at 572-573, 125 S. Ct. 1183, 161 L. Ed. 2d 1.

Another problem with a case-by-case approach is that it does not take account of special difficulties encountered by counsel in juvenile representation. As some *amici* note, the features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings. [**848] Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it. They are less likely than adults to work effectively [***52] with their lawyers to aid in their defense. Brief for NAACP, Legal Defense & Education Fund et al. as *Amici Curiae* 7-12; Henning, Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases, 81 *Notre Dame L. Rev.* 245, 272-273 (2005). Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by one charged with a juvenile offense. *Aber* Brief 35. These factors are likely to impair the quality of a juvenile defendant's representation. Cf. *Atkins*, 536 U.S., at 320, 122 S. Ct. 2242, 153 L. Ed. 2d 335 ("Mentally retarded defendants may be less able to give meaningful assistance to their counsel"). A categorical rule avoids the risk that, as a result of these difficulties, a court or jury will erroneously conclude that a particular juvenile is sufficiently culpable to deserve life without parole for a nonhomicide.

Finally, a categorical rule gives all juvenile nonhomicide offenders a chance to demonstrate maturity and reform. The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition [***53] of human worth and potential. In *Roper*, that deprivation resulted from an execution that brought life to its end. Here, though by a different dynamic, the same concerns apply. Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. A young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual. In some prisons, moreover, the system itself [*2033] becomes complicit in the lack of development. As noted above, see *supra*, at 23, it is the policy in some prisons to withhold counseling, education, and rehabilitation programs for those who are ineligible for parole consideration. A categorical rule against life without parole for juvenile nonhomicide offenders avoids the perverse consequence in which the lack of maturity that led to an offender's crime is reinforced by the prison term.

Terrance Graham's sentence guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what [***54] he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes. The State has denied him any chance to later demonstrate that he is fit to rejoin society based solely on a nonhomicide crime that he committed while he was a child in the eyes of the law. This the Eighth Amendment does not permit.

D

There is support for our conclusion in the fact that, in continuing to impose life without parole sentences on juveniles who did not commit homicide, the United States adheres to a sentencing practice rejected the world over. This observation does not control our decision. The judgments of [**849] other nations and the international community are not dispositive as to the meaning of the Eighth Amendment. But "[t]he climate of international opinion concerning the acceptability of a particular punishment" is also "not irrelevant." *Enmund*, 458 U.S., at 796, n. 22, 102 S. Ct. 3368, 73 L. Ed. 2d 1140. The Court has looked beyond our Nation's borders for support for its independent conclusion that a particular punishment is cruel and unusual. See, e.g., *Roper*, 543 U.S., at 575-578, 125 S. Ct. 1183, 161 L. Ed. 2d 1; [***55] *Atkins, supra*, at 317-318, n. 21, 122 S. Ct. 2242, 153 L. Ed. 2d

335; *Thompson*, 487 U.S., at 830, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (plurality opinion); *Emmund*, *supra*, at 796-797, n. 22, 102 S. Ct. 3368, 73 L. Ed. 2d 1140; *Coker*, 433 U.S., at 596, n. 10, 97 S. Ct. 2861, 53 L. Ed. 2d 982 (plurality opinion); *Trop*, 356 U.S., at 102-103, 78 S. Ct. 590, 2 L. Ed. 2d 630 (plurality opinion).

Today we continue that longstanding practice in noting the global consensus against the sentencing practice in question. A recent study concluded that only 11 nations authorize life without parole for juvenile offenders under any circumstances; and only 2 of them, the United States and Israel, ever impose the punishment in practice. See M. Leighton & C. de la Vega, *Sentencing Our Children to Die in Prison: Global Law and Practice* 4 (2007). An updated version of the study concluded that Israel's "laws allow for parole review of juvenile offenders serving life terms," but expressed reservations about how that parole review is implemented. De la Vega & Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S. F. L. Rev. 983, 1002-1003 (2008). But even if Israel is counted as allowing life without parole for juvenile offenders, that nation does not appear to impose that sentence for nonhomicide crimes; all of the seven Israeli prisoners whom commentators [***56] have identified as serving life sentences for juvenile crimes were convicted of homicide or attempted homicide. See Amnesty International, *Human Rights Watch, The Rest of Their Lives: Life without Parole for Child Offenders in the United States* 106, n. 322 (2005); Memorandum and Attachment from Ruth Levush, Law Library of Congress, to Supreme Court Library (Feb. 16, 2010) (available in Clerk of Court's case file).

[*2034] Thus, as petitioner contends and respondent does not contest, the United States is the only Nation that imposes life without parole sentences on juvenile nonhomicide offenders. We also note, as petitioner and his *amici* emphasize, that Article 37(a) of the United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U. N. T. S. 3 (entered into force Sept. 2, 1990), ratified by every nation except the United States and Somalia, prohibits the imposition of "life imprisonment without possibility of release . . . for offences committed by persons below eighteen years of age." Brief for Petitioner 66; Brief for Amnesty International et al. as *Amici Curiae* 15-17. As we concluded in *Roper* with respect to the juvenile death penalty, "the United States now stands alone [***57] in a world that has turned its face against" life without parole for juvenile nonhomicide offenders. 543 U.S., at 577, 125 S. Ct. 1183, 161 L. Ed. 2d 1.

The State's *amici* stress that no international legal agreement that is binding on the United States prohibits life without parole for juvenile offenders and thus urge us to ignore [***850] the international consensus. See Brief for Solidarity Center for Law and Justice et al. as *Amici Curiae* 14-16; Brief for Sixteen Members of United States House of Representatives as *Amici Curiae* 40-43. These arguments miss the mark. The question before us is not whether international law prohibits the United States from imposing the sentence at issue in this case. The question is whether that punishment is cruel and unusual. In that inquiry, "the overwhelming weight of international opinion against" life without parole for nonhomicide offenses committed by juveniles "provide[s] respected and significant confirmation for our own conclusions." *Roper*, *supra*, at 578, 125 S. Ct. 1183, 161 L. Ed. 2d 1.

The debate between petitioner's and respondent's *amici* over whether there is a binding *jus cogens* norm against this sentencing practice is likewise of no import. See Brief for Amnesty International 10-23; Brief for Sixteen Members [***58] of United States House of Representatives 4-40. The Court has treated the laws and practices of other nations and international agreements as relevant to the Eighth Amendment not because those norms are binding or controlling but because the judgment of the world's nations that a particular sentencing practice is inconsistent with basic principles of decency demonstrates that the Court's rationale has respected reasoning to support it.

* * *

^{HN12} The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term. The judgment of the First District Court of Appeal of Florida is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

APPENDIX

I. JURISDICTIONS THAT PERMIT LIFE WITHOUT PAROLE FOR JUVENILE NONHOMICIDE OFFENDERS

Alabama Ala. Code § 12-15-203 (Supp. 2009); §§ 13A-3-3, 13A-5-9(c), 13A-6-61 (2005); § 13A-7-5 (Supp. 2009)

Arizona Ariz. Rev. Stat. Ann. §§ 13-501, [***59] § 13-1423 (West 2010)

Arkansas Ark. Code § 9-27-318(b) (2009); § 5-4-501(c) (Supp. 2009)

[*2035] California Cal. Penal Code Ann. § 667.7(a)(2) (1999); § 1170.17 (2004)

Delaware Del. Code Ann., Tit., 10, § 1010 (Supp. 2008); *id.*, Tit., 11, § 773(c) (2003)

District of Columbia D. C. Code § 16-2307 (2009 Supp. Pamphlet); § 22-3020 (Supp. 2007)

Florida Fla. Stat. §§ 810.02, 921.002(1)(e), 985.557 (2007)

Georgia Georgia Code Ann. § 15-11-30.2 (2008); § 16-6-1(b) (2007)

[***851] Idaho Idaho Code § 18-6503 (Lexis 2005); §§ 19-251.3, 20-509 (Lexis Supp. 2009)

Illinois Ill. Comp. Stat., ch. 705, §§ 405/5-805, 405/5-130 (West 2008); *id.*, ch. 720, § 5/12-13(b)(3) (West 2008); *id.*, ch. 730, § 5/3-3-3(d) (West 2008)

Indiana Ind. Code § 31-30-3-6(1); § 35-50-2-8.5(a) (West 2004)

Iowa Iowa Code §§ 232.45(6), 709.2, 902.1 (2009)

Louisiana La. Child. Code Ann., Arts. 305, 857(A), (B) (West Supp. 2010); La. Stat. Ann. § 14:44 (West 2007)

Maryland Md. Cts. & Jud. Proc. Code Ann. §§ 3-8A-Q3(d)(1), 3-8A-06(a)(2) (Lexis 2006); Md. Crim. Law Code Ann. § 3-303(d)(2), (3) (Lexis Supp. 2009)

Michigan Mich. Comp. Laws Ann. § 712A.4 (West 2002); § 750.520b(2)(c) (West Supp. 2009); § 769.1 (West 2000)

Minnesota Minn. Stat. §§ 260B.125(1), 609.3455(2) (2008) [***60]

Mississippi Miss. Code Ann. § 43-21-157 (2009); §§ 97-3-53, 99-19-81 (2007); § 99-19-83 (2006)

Missouri Mo. Rev. Stat. §§ 211.071, 558.018 (2000)

Nebraska Neb. Rev. Stat. §§ 28-105, 28-416(8)(a), 29-2204(1), (3), 43-247, 43-276 (2008)

Nevada Nev. Rev. Stat. §§ 62B.330, 200.366 (2009)

New Hampshire N. H. Rev. Stat. Ann. § 169-B:24; § 628:1 (2007); §§ 632-A:2, 651:6 (Supp. 2009)

New York N. Y. Penal Law Ann. §§ 30.00, § 60.06 (West 2009); § 490.55 (West 2008)

North Carolina N. C. Gen. Stat. Ann. §§ 7B-2200, 15A-1340.16B(a) (Lexis 2009)

North Dakota N. D. Cent. Code Ann. § 12.1-04-01 (Lexis 1997); § 12.1-20-03 (Lexis Supp. 2009); § 12.1-32-01 (Lexis 1997)

Ohio Ohio Rev. Code Ann. § 2152.10 (Lexis 2007); § 2907.02 (Lexis 2006); § 2971.03(A)(2) (2010 Lexis Supp. Pamphlet)

Oklahoma Okla. Stat., Tit. 10A, §§ 2-5-204, 2-5-205, 2-5-206 (2009 West Supp.); *id.*, Tit. 21, § 1115 (2007 West Supp.)

Oregon Ore. Rev. Stat. §§ 137.707, 137.719(1) (2009)

Pennsylvania 42 Pa. Cons. Stat. § 6355(a) (2000); 18 *id.*, § 3121(e)(2) (2008); 61 *id.*, § 6137(a) (2009)

Rhode Island R. I. Gen. Laws §§ 14-1-7, 14-1-7.1, 11-47-3.2 (Lexis 2002)

South Carolina S. C. Code Ann. § 63-19-1210 (2008 Supp. Pamphlet); § 16-11-311(B) (Westlaw 2009) [***61]

South Dakota S. D. Codified Laws § 26-11-3.1 (Supp. 2009); § 26-11-4 (2004); §§ 22-3-1, 22-6-1(2),(3) (2006); § 24-15-4 (2004); §§ 22-19-1, 22-22-1 (2006)

[***852] Tennessee Tenn. Code Ann. §§ 37-1-134, 40-35-120(g) (Westlaw 2010)

Utah Utah Code Ann. §§ 78A-6-602, 78A-6-703, 76-5-302 (Lexis 2008)

Virginia Va. Code Ann. §§ 16.1-269.1, § 18.2-61, § 53.1-151(B1) (2009)

Washington Wash. Rev. Code § 13.40.110 (2009 Supp.); §§ 9A.04.050, 9.94A.030(34), 9.94A.570 (2008)

West Virginia W. Va. Code Ann. § 49-5-10 (Lexis 2009); § 61-2-14a(a) (Lexis 2005)

Wisconsin Wis. Stat. §§ 938.18, 938.183 (2007-2008); § 939.62(2m)(c) (Westlaw 2005)

Wyoming Wyo. Stat. Ann. §§ 6-2-306(d),(e), 14-6-203 (2009)

Federal 18 U.S.C. § 2241 (2006 ed. and Supp. II); § 5032 (2006 ed.)

II. JURISDICTIONS THAT PERMIT LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS CONVICTED OF HOMICIDE CRIMES ONLY

Connecticut Conn. Gen. Stat. § 53a-35a (2009)

Hawaii Haw. Rev. Stat. § 571-22(d) (2006); § 706-656(1) (2008 Supp. Pamphlet)

Maine Me. Rev. Stat. Ann., Tit. 15, § 3101(4) (Supp. 2009); *id.*, Tit. 17-A, § 1251 (2006)

Massachusetts Mass Gen. Laws ch. 119, § 74; *id.*, ch. 265, § 2 (2008)

New Jersey N. J. Stat. Ann. § 2A:4A-26 (West Supp. 2009); [***62] § 2C:11-3(b)(2) (West Supp. 2009)

New Mexico N. M. Stat. Ann. § 31-18-14 (Supp. 2009); § 31-18-15.2(A) (Westlaw 2010)

Vermont Vt. Stat. Ann., Tit. 33, § 5204 (2009 Cum. Supp.); *id.*, Tit. 13, § 2303 (2009)

III. JURISDICTIONS THAT FORBID LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS

[*2036] Alaska Alaska Stat. § 12.55.015(g) (2008)

Colorado Colo. Rev. Stat. Ann. § 18-1.3-401(4)(b) (2009)

Montana Mont. Code Ann. § 46-18-222(1) (2009)

Kansas Kan. Stat. Ann. § 21-4622 (West 2007)

Kentucky Ky. Rev. Stat. Ann. § 640.040 (West 2008); *Shepherd v. Commonwealth*, 251 S. W. 3d 309, 320-321 (Ky. 2008)

Texas Tex. Penal Code Ann. § 12.31 (West Supp. 2009)

CONCUR BY: STEVENS ↘; ROBERTS ↘

CONCUR

[***853] JUSTICE STEVENS ↘, with whom JUSTICE GINSBURG ↘ and JUSTICE SOTOMAYOR ↘ join, concurring.

In his dissenting opinion, JUSTICE THOMAS ↘ argues that today's holding is not entirely consistent with the controlling opinions in *Lockyer v. Andrade*, 538 U.S. 63, 123 S. Ct. 1166, 155 L. Ed. 2d 144 (2003), *Ewing v. California*, 538 U.S. 11, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (2003), *Harmelin v. Michigan*, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991), and *Rummel v. Estelle*, 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980). *Post*, at 7-9. Given that "evolving standards of decency" have played a central role in our Eighth Amendment jurisprudence for at least a century, see *Weems v. United States*, 217 U.S. 349, 373-378, 30 S. Ct. 544, 54 L. Ed. 793 (1910), [***63] this argument suggests the dissenting opinions in those cases more accurately describe the law today than does JUSTICE THOMAS ↘' rigid interpretation of the Amendment. Society changes. Knowledge accumulates. We learn, sometimes, from our mistakes. Punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time; unless we are to abandon the moral commitment embodied in the Eighth Amendment, proportionality review must never become effectively obsolete, *post*, at 8-9, and n. 2.

While JUSTICE THOMAS ↘ would apparently not rule out a death sentence for a \$ 50 theft by a 7-year-old, see *post*, at 4, 10, n. 3, the Court wisely rejects his static approach to the law. Standards of decency have evolved since 1980. They will never stop doing so.