THE VIOLENCE OF BRIGHT LINES

Terrell Woolfolk & Kathryn E. Miller***

The U.S. Supreme Court interprets the Eighth Amendment to prohibit members of certain groups from serving extreme punishments, such as the death penalty and life without parole. For example, the Court has long banned death sentences for people with intellectual disability and for those who were under eighteen years old at the time of their crime. More recently, in Graham v. Florida *and* Miller v. Alabama, *the Court extended this reasoning to sentences of life without parole for those under eighteen—prohibiting the sentence altogether for nonhomicide crimes and barring its mandatory imposition for homicides.*

Many scholars and advocates have applauded these decisions as necessary to constrain judges and juries from imposing such punishments on members of vulnerable, less culpable groups. They have argued that, for the members of these groups, traditional aims of punishment, such as deterrence and retribution, are less applicable. Although we agree with this underlying logic, we write to raise questions about the potential costs of these "categorical bars," which draw bright lines to separate those who are constitutionally deserving of mercy and redemption from those who are not. We have found that, although the Court may have sought to make extreme punishment less arbitrary, such stark demarcation often contributes to arbitrariness by tying punishment more to birth date than to culpability. These bright lines favor blunt administrability at the cost of nuanced, individualized sentencing determinations.

In drawing these conclusions, we rely not only on research but on lived experience. One of us, Terrell ("Rell") Woolfolk, was sentenced to life without parole for a crime committed as a young man in his twenties. Following Graham *and* Miller*, Rell was initially buoyed by the Court's recognition that brain development impacted both crime and culpability.*

* Prison rights activist and West Philadelphia native. After serving over three decades of a life without parole sentence, Pennsylvania Governor Tom Wolf commuted his sentence, and Terrell was released in July 2022.

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However, he grew disenchanted with the decision to draw a hard line at eighteen—an age not supported by the very same neuroscience that the Court's opinion appeared to rest on. Rell saw firsthand how the Court's jurisprudence resulted in arbitrary outcomes: relief bestowed on people who had committed intentional murder at age seventeen but denied from those only a few months older, whose killings were unintentional. The other of us, Kathryn Miller, experienced the Graham *and* Miller *decisions from a more privileged position. As a criminal defense attorney, she attempted to seek relief for qualifying individuals. Although she interviewed potential clients at the same facility at which Rell was incarcerated, their paths never crossed because Rell's age categorically barred him from consideration as a potential client.*

Through a critical inventory of Eighth Amendment jurisprudence, scholarship, and experience, we argue for state solutions to this constitutional myopia. States should blur the lines associated with sentencing relief. Rather than focus on a person's age, they should create individualized sentencing opportunities for anyone facing sentences of death by incarceration whose stories exhibit the characteristics underlying the reasoning of Graham *and* Miller. *Individuals who can demonstrate that they possessed the immaturity, impulsivity, or vulnerability that the Court recognized reduces culpability, along with the changeability that demonstrates their redemption, should qualify for sentencing relief.*

"Neither legal interpretation nor the violence it occasions may be properly understood apart from one another."[1]

INTRODUCTION

In August of 1980, teenagers Sammy and David Maldonado were hanging out at a local swimming hole, drinking, and smoking weed.[2] The brothers started talking to some White teenagers who had traded them beer for some of their weed.[3] Sammy and David stole a cardboard box from the White teenagers, believing it contained valuables.[4] Sammy ran off with the box, and nineteen-year-old Steven Monahan gave chase.[5] As Monahan tackled him, Sammy abandoned the box.[6] David stabbed Monahan twice with a steak knife that he had snatched from nearby picnic supplies.[7] The brothers ran away, and Monahan died.[8] Sammy and David were tried and convicted of felony murder.[9] Both were sentenced to mandatory life without parole.[10]

In May of 2017, David was released from prison after serving thirty-seven years.[11] He received a reduced sentence following the U.S. Supreme Court's decision in *Miller v. Alabama*,[12] which held that mandatory life without parole sentences were unconstitutional for people, like David, who were under eighteen at the time of the murder.[13] David had been seventeen.[14] Sammy, although he never had a weapon and never stabbed anyone, remains incarcerated.[15] Sammy did not qualify for resentencing under *Miller* because at the time of the crime he was eighteen—specifically eighteen years, four months, and ten days old.[16] Barring legislative reform, Sammy Maldonado will die in prison.

The more culpable brother freed; the less culpable locked up forever. Few would find this outcome satisfying. Yet courts remain steadfast, consistently denying sentencing relief based on a defendant's date of birth. The U.S. Court of Appeals for the Sixth Circuit has explained, "Considerations of

1. Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986).
2. *See* Jessica Lussenhop, *Two Brothers, Same Murder, but One Goes Free. Why?*, BBC (June 25, 2017), https://www.bbc.com/news/world-us-canada-40375420 [https://perma.cc/Q7HW-PBTH].
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*
12. 567 U.S. 460 (2012).
13. *See id.* at 465; Lussenhop, *supra* note 2.
14. *See* Lussenhop, *supra* note 2.
15. *See Inmate/Parolee Locator*, PA. DEP'T OF CORR., https://inmatelocator.cor.pa.gov [https://perma.cc/38UL-CTL3] (last visited Mar. 7, 2025) (search by entering "Samuel" in the first name box; then type "Maldonado" in the last name box; then type "04/03/1962" in the date of birth box).
16. *See* Lussenhop, *supra* note 2.

efficiency and certainty require a bright line separating adults from juveniles. For purposes of the Eighth Amendment, an individual's eighteenth birthday marks that bright line. We decline to create exceptions . . . ."[17]

This practice of line drawing has long been touted as a feature of Eighth Amendment jurisprudence. Shortly after the Court affirmed the constitutionality of the death penalty in 1976,[18] the Court began exempting certain offenses and certain groups of people—including children—from capital punishment.[19] These cases make up the Court's "categorical bar" jurisprudence. Then, drawing on the concept that children were fundamentally different from adults, the Court shifted its focus beyond the capital punishment context to include children sentenced to life without parole. First, the Court banned life without parole as a punishment for individuals who committed a nonhomicide crime before their eighteenth birthday.[20] Then, it banned the mandatory imposition of life without parole on those who committed homicides before turning eighteen.[21]

Many scholars and advocates have praised the Eighth Amendment's categorical bar jurisprudence as necessary fetters on sentencer discretion.[22] They emphasize that the decisions prevent the imposition of extreme punishments on members of vulnerable, less culpable groups for whom the traditional aims of punishment are less applicable.[23]

Less has been written about how these demarcation lines create stark normative judgments about worthiness. At a constitutional level, *Graham v. Florida*[24] and *Miller* separate those who are deserving of mercy and redemption from those who are not, reducing the question to a simple binary. Those who do not qualify as members of a category are deemed

17. United States v. Marshall, 736 F.3d 492, 500 (6th Cir. 2013).

18. *See* Gregg v. Georgia, 428 U.S. 153, 169 (1976).

19. *See, e.g.*, Coker v. Georgia, 433 U.S. 584 (1977) (finding that a death sentence cannot be imposed for the nonhomicide rape of an adult); Thompson v. Oklahoma, 487 U.S. 815 (1988) (exempting those under eighteen from capital punishment).

20. *See* Graham v. Florida, 560 U.S. 48, 74 (2010).

21. *See* Miller v. Alabama, 567 U.S. 460, 465 (2012).

22. *See, e.g.*, Jeffrey Fagan, Atkins, *Adolescence, and the Maturity Heuristic: Rationales for a Categorical Exemption for Juveniles from Capital Punishment*, 33 N.M. L. REV. 207, 246–48 (2003) (arguing—two years before the Supreme Court's decision barring the imposition of the death penalty for those under eighteen years old in *Roper v. Simmons*—that categorically exempting youth from capital punishment was a superior approach to merely permitting defendants to rely on their age as a mitigating factor); Sheri Lynn Johnson, John H. Blume & Hannah L. Freedman, *The Pre*-Furman *Juvenile Death Penalty in South Carolina: Young Black Life Was Cheap*, 68 S.C. L. REV. 331, 352 (2017) (arguing that categorical exemptions from punishment are valuable because historical evidence suggests that juries "did not give any weight to immaturity" as a mitigating factor); Alice Reichman Hoesterey, *Confusion in* Montgomery*'s Wake: State Responses, the Mandates of* Montgomery*, and Why a Complete Categorical Ban on Life Without Parole for Juveniles Is the Only Constitutional Option*, 45 FORDHAM URB. L.J. 149, 187 (2017) (arguing that "[a] categorical ban is the only way to adequately protect the rights of the vast majority juvenile offenders").

23. *See* Fagan, *supra* note 22, at 253; Johnson et al., *supra* note 22, at 352; Hoestery, *supra* note 22, at 187.

24. 560 U.S. 48 (2010).

fundamentally unworthy of relief from state violence. These bright lines serve not only to *include* but to *exclude*. In the life without parole context, these lines favor blunt administrability at the cost of nuanced, individualized sentencing determinations. And by tying punishment more to birth month than to culpability, these decisions increase arbitrary sentencing outcomes like the ones Sammy and David Maldonado experienced.

This need not be the case. Indeed, these lines are not so bright in the capital context. There, the questions of qualification and worthiness are disentangled. Those who qualify as members of a relevant category are exempted from capital punishment; however, those who do not qualify can still benefit from these decisions because they are entitled to individualized sentencing. This means that nonqualifying defendants still have an opportunity to show they are worthy of mercy. They can invoke the characteristics that they have in common with the relevant category as mitigating circumstances that make them undeserving of a death sentence. These blurred lines thus include without excluding.

This Essay argues for a similar solution in the life without parole context. States have the power to blur the lines associated with sentencing relief by interpreting *Graham* and *Miller* as floors instead of ceilings. They have the power to guarantee individualized sentencing for all defendants facing a sentence of life without parole, regardless of birthdate. They can and should create second-look sentencing opportunities for individuals whose stories exhibit the characteristics underlying the reasoning of *Graham* and *Miller*. Such solutions do not undermine the holdings of *Graham* and *Miller*. Instead, they disentangle the questions of qualification and worthiness to allow those who do not qualify to demonstrate their worthiness by pointing to mitigating factors.

The authors of this Essay, Terrell Woolfolk and Kathryn Miller, have personal experience with *Graham* and *Miller*. Although now a law professor and Eighth Amendment scholar, when *Miller* was decided, Kathryn[25] was a lawyer at a nonprofit committed to representing children "condemned to die in prison" in resentencing hearings.[26] Part of her job was to interview incarcerated people who fit the nonprofit's criteria and to assess them as possible clients. For Terrell, affectionately known as Rell, the *Miller* decision was more intimate. At the time, Rell was incarcerated, alongside David and Sammy Maldonado. All three men were serving sentences of life without parole at Graterford State Correctional Institution ("Graterford") for murders committed as young men. The *Miller* decision initially excited Rell. The Court's reliance on the neuroscience of the developing brain brought him

25. Throughout this Essay, we refer to ourselves in the third person, using first names, in the tradition of participatory law scholarship. *See generally* Rachel López, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795 (2023). This choice seeks to emphasize our coauthorship, camaraderie, and the coequal status of our expertise. *See id.* at 1798, 1827–31, 1836–37.

26. *See Children in Adult Prison*, EJI, https://eji.org/issues/children-in-prison/ [https://perma.cc/5XSQ-67HR] (last visited Mar. 7, 2025).

hope that he might qualify for resentencing. He began to imagine a world where he would not die in prison.

But *Miller* was not Rell's salvation. The Pennsylvania courts would repeatedly dismiss his resentencing petition in cursory fashion, stating that regardless of the merits of his argument, irrespective of how many characteristics he shared with defendants discussed in *Miller* and *Graham*, and no matter what the neuroscientific evidence said, Rell simply had the wrong birth date.[27] Because he was twenty-two years old at the time of his crime, no court would consider the merits of his argument. And although Kathryn spent many days at Graterford interviewing possible clients, Rell was not among them. He did not fit the criteria; once again, Rell's birth date instantly disqualified him.[28] He was on the wrong side of *Miller*'s bright line.

In this Essay, we draw on the methodology of Participatory Law Scholarship[29] (PLS) to question both the efficacy and the necessity of the bright line approach to sentencing relief. PLS involves a collaboration between members of the traditional legal academy, like Kathryn, and individuals, like Rell, whose expertise in the law's dysfunction stems from lived experience.[30] It operates from the premise that lived experience is a valid and necessary form of expertise that is often unjustly excluded from legal scholarship.[31] This Essay centers Rell's experience as a person condemned to die in prison who was denied resentencing relief following *Miller* based solely on his birthdate. It places Rell's experiences in the doctrinal frame of the Eighth Amendment's categorical bar jurisprudence and the states' implementation of *Graham* and *Miller*. It concludes that states can and should interpret *Miller* and *Graham* to the benefit of all individuals facing life without parole in a way that is consistent with the Court's capital jurisprudence—that states should blur the bright lines that currently bar sentencing relief.

We make the case for a blurred line sentencing in three parts. Part I supplies necessary background information regarding the Supreme Court's Eighth Amendment categorical bar jurisprudence and details how most states interpreted *Graham* and *Miller* as creating a bright line for sentencing relief. Part II unpacks the harms associated with these bright lines, both on the individual and societal levels. Part III proposes state solutions that rest on the reasoning of *Graham* and *Miller* instead of on arbitrary dates of birth. In doing so, these solutions seek to harmonize *Graham* and *Miller* with their capital forebears and ameliorate arbitrary sentencing outcomes like those suffered by the Maldonados.

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27. *See, e.g.*, Commonwealth v. Carter, No. 1247 EDA 2019, 2020 WL 2070377, at *3 (Pa. Super. Ct. Apr. 29, 2020).

28. Although Kathryn likely stood feet away from Rell when she visited Graterford, their paths would not cross for another decade, when Kathryn had become a law professor and Rell a free man, had won executive clemency through the strength of his own advocacy.

29. *See generally* López, *supra* note 25.

30. *See id.* at 1798.

31. *See id.* at 1798, 1800.

I. BANS ON PUNISHMENT

In this section, we chronicle the Supreme Court's categorical bar jurisprudence and explain the Court's history of and reasons for drawing bright lines with respect to punishment. We then focus on the facts of the *Miller* trilogy—three Supreme Court cases that limit the power to bestow extreme punishment on individuals who were under the age of eighteen at the time of their crimes. Finally, we discuss common state reactions to the *Miller* trilogy, as many chose to rely on this bright line to limit relief.

A. The Supreme Court's Categorical Bans

Over the last thirty years, the Supreme Court has interpreted the Eighth Amendment to prohibit certain types of punishment for certain groups of people. Because these groups possess characteristics that make them less culpable than average, the Court has held that the imposition of certain extreme punishments violates "the evolving standards of decency" and are unconstitutionally disproportionate.[32] These group exclusions are known as "categorical bans" because they exempt entire categories of people from these punishments, regardless of individual characteristics.[33] Put another way, proof of group membership is sufficient to qualify for an exemption. The individual need not also prove that they, as an individual, possess any of the underlying characteristics of reduced culpability attributed to the group.

Categorical bans first arose in the death penalty context, with the Court finding that death was a disproportionate punishment for certain crimes, such as rape of an adult[34] or some types of felony murder,[35] based on the nature of the harm caused or the degree of an individual's participation. In 1986, the Court moved beyond crimes and first considered the possibility that the Eighth Amendment also prohibited the execution of certain groups of especially vulnerable people. In *Ford v. Wainwright*,[36] the Court concluded that the U.S. Constitution placed a substantive constraint on the power of a state to inflict death on an incarcerated man who became mentally

32. *See* Roper v. Simmons, 543 U.S. 551, 561 (2005) ("[The Court has] affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual." (quoting Trop v. Dulles, 356 U.S. 86, 100–01 (1958) (plurality opinion))). For a discussion of the history and application of the evolving standards of decency test, see Kathryn E. Miller, *No Sense of Decency*, 98 WASH. L. REV. 115, 122–27 (2023).

33. *See* Miller v. Alabama, 567 U.S. 460, 470 (2012) (discussing the Court's categorical ban jurisprudence).

34. *See* Coker v. Georgia, 433 U.S. 584, 592 (1977).

35. *Enmund v. Florida*, 458 U.S. 782, 797 (1982), and *Tison v. Arizona*, 481 U.S. 137, 158 (1987), establish that the Eighth Amendment prohibits the imposition of capital punishment for the crime of felony murder unless an individual: (1) actually killed, (2) attempted to kill, (3) intended for a killing to occur, or (4) was a "major participant" in the underlying felony and acted with reckless indifference to human life. *Enmund*, 458 U.S. at 787 n.2, 797; *Tison*, 481 U.S. at 158 n.12.

36. 477 U.S. 399 (1986).

incompetent while awaiting execution.[37] The Court emphasized the longstanding common law prohibition on executing people deemed insane, along with the contemporary practice of states forbidding such executions,[38] before concluding, "It is no less abhorrent today than it has been for centuries to exact in penance the life of one whose mental illness prevents him from comprehending the reasons for the penalty or its implications."[39]

In the following years, the Court considered the proportionality of imposing death sentences on two groups whose vulnerabilities existed prior to the commission of their crime: intellectually disabled people and adolescents. In *Atkins v. Virginia*,[40] the Court categorically banned death sentences for individuals with intellectual disability.[41] Because intellectual disability impacts judgment, reasoning, and impulse control, the Court reasoned that members of this group were less morally culpable for their crimes.[42] Consequently, their execution did not serve the penological ends of retribution and deterrence.[43] The Court based these conclusions, in part, on the clinical definitions of what was then known as "mental retardation" and on medical and legal scholarship.[44] And as it did with insanity, the Court found that a societal consensus against executing individuals with intellectual disability was reflected in contemporary state laws.[45]

Thompson v. Oklahoma[46] was the first in a series of cases that categorically banned the imposition of certain punishments on youth. The case concerned William Thompson, a fifteen-year-old boy, who had been convicted of the capital murder of his brother-in-law.[47] The *Thompson* Court held that a death sentence constituted cruel and unusual punishment when it was imposed on a child who was only fifteen at the time of his crime.[48] The Court spent little time excavating the life of William Thompson or the specific facts of his crime but instead turned to state laws as indicators of widely held societal values.[49] The Court found a national consensus that children had different

37. *See id.* at 409–10.
38. *See id.* at 406–10.
39. *Id.* at 417.
40. 536 U.S. 304 (2002).
41. *See id.* (overruling *Penry v. Lynaugh*, 492 U.S. 302 (1989), which held that imposing capital punishment on the intellectually disabled did not violate the Eighth Amendment).
42. *See id.* at 306–07.
43. *See id.* at 319–20.
44. *See id.* at 308 n.3, 318.
45. *See id.* at 315–16 (noting the increase in prohibition of execution of intellectually disabled people following the Court's decision in *Penry*: "It is not so much the number of these States that is significant, but the consistency of the direction of change.").
46. 487 U.S. 815 (1988).
47. *See id.* at 819. According to the facts of the case, William and three adult friends kidnapped the man, shot him, cut his throat, and disposed of his body in a river, in retaliation for the man having physically abused William's sister. *See id.* at 848.
48. *See id.* at 818–19, 838.
49. Neither the pleadings nor the Court's opinion detail the circumstances of William Thompson's life before the murder. The dissent did note that there was testimony at trial indicating that William had not fully understood the consequences of his actions: "The psychologist testified that Thompson believed that because of his age he was beyond any

rights and duties under the law than adults, as evinced by the plethora of state laws—including contracts, torts, voting rights, jury service, and criminal prosecution—that recognized this distinction.[50] These laws supported the notion that youth had certain characteristics that made them less culpable than adults, including immaturity, vulnerability, impulsivity, and less capacity to engage in long-term thinking.[51] Although the Court recognized that many of these states drew different lines between childhood and adulthood, it underscored that no state articulated an age below sixteen as a minimum age for capital eligibility.[52] Thus the Court concluded—conservatively—that the Constitution constrained states from imposing death on children who were under sixteen at the time of their crimes.[53]

Almost twenty years later, in *Roper v. Simmons*[54] the Court expanded its categorical ban, moving the line between childhood and adulthood up to eighteen.[55] Unlike in *Thompson*, the majority did not shy away from the specific facts of the crime. Justice Anthony M. Kennedy began the majority opinion by noting, "At the age of 17, when he was still a junior in high school, Christopher Simmons, the respondent here, committed murder."[56] The Court noted that there was "little doubt" that Christopher[57] "was the instigator of the crime."[58] The Court stated that prior to the crime Simmons had announced a desire to murder someone and "[i]n chilling, callous terms he talked about his plan" with his two younger, teenage friends.[59] Christopher and another boy then kidnapped a woman, bound and gagged her, and threw her off a railroad trestle into a river where she drowned.[60] The majority cited some characteristics of Christopher as an individual, including evidence of a psychiatric evaluation that deemed him to be impulsive, immature, and easily susceptible to manipulation; that described his "difficult home environment"; and that detailed his struggles with school and drug and alcohol use.[61]

However, the *Simmons* Court again rested its conclusions more on societal notions of youth in aggregate than on the specific facts related to Christopher

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severe penalty of the law, and accordingly did not believe there would be any severe repercussions from his behavior." *Id.* at 862 (Scalia, J., dissenting).

50. *See id.* at 823–24 (majority opinion).

51. *See id.* at 834.

52. *See id.* at 823–24.

53. *See id.* at 838. Because the petitioner was only fifteen years old at the time of his crime, the Court was not required to reach the broader questions of whether death could be imposed on those over sixteen or whether a bright line existed separating childhood and adulthood for Eighth Amendment purposes. *See id.* at 818–19, 829–30.

54. 543 U.S. 551 (2005).

55. *See id.* at 569–71 (overruling *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989), which held that the imposition of death sentences on sixteen- and seventeen-year-olds was constitutional).

56. *Id.* at 556.

57. The authors' use of the first names seeks to underscore the youth, humanity, and individual characteristics of those convicted of crimes.

58. *Id.*

59. *Id*.

60. *See id.* at 556–57.

61. *See id.* at 559.

Simmons. The Court underscored *Thompson*'s conclusion that youths were less culpable than adults due to three key characteristics.[62] First, they exhibited immaturity and "an underdeveloped sense of responsibility," which often led to impetuous behavior.[63] Second, they were vulnerable to the negative influence of others.[64] Third, they possessed a heightened capacity for change because their personality was still developing.[65] The *Simmons* Court justified its decision to redraw the line at eighteen both because it reasoned that sixteen- and seventeen-year-olds were not markedly different from younger teens and because an increasing number of state laws prohibited the death penalty for children under eighteen.[66]

Given the mitigating characteristics of immaturity, vulnerability, and changeability, the Court expressed skepticism that any child could "fall[] among the worst offenders" for whom the death penalty was intended.[67] Moving beyond the rhetoric of *Thompson*, the *Simmons* Court directly cited scientific and sociological studies as evidentiary support for its findings.[68] Moreover, it concluded that an expanded categorical ban was necessary to eliminate the risk of a child receiving a death sentence who did not deserve it: "The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."[69] Finally, the Court found the categorical ban necessary to prevent prosecutors from erroneously arguing that the characteristics of youth were aggravating, instead of mitigating.[70]

Five years later, the Court's categorical jurisprudence moved beyond the death penalty to bar the imposition of sentences of life without parole on adolescents under eighteen who committed nonhomicide crimes. In *Graham v. Florida*,[71] the Court found that the extreme length of a sentence of life without parole for young people made the punishment akin to the death penalty: "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 name only."[72] Moreover, the Court found, both punishments impose a permanent and irrevocable loss of freedom on individuals that disincentivizes rehabilitation.[73]

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62. *See id.* at 569.
63. *See id.*
64. *See id.*
65. *See id.* at 570.
66. *See id.* at 564–68, 573–74.
67. *See id.* at 570.
68. *See id.* at 569–70.
69. *Id.* at 572–73.
70. *See id.* at 558, 573. At Christopher's capital trial, the prosecutor made this argument to the sentencing jury: "Age, he says. Think about age. Seventeen years old. Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary." *Id.* at 558.
71. 560 U.S. 48 (2010).
72. *Id.* at 70.
73. *See id.* at 69–70.

Graham concerned seventeen-year-old Terrence Graham who had received a sentence of life without parole for a series of robberies that concluded with Terrence driving into a telephone pole while being pursued by police.[74] For the first time, the Court emphasized the conditions that led up to the crimes at issue, recounting vulnerabilities in Terrence's life.[75] Specifically, the Court noted that Terrence grew up with two parents who were addicted to crack.[76] At a young age, he was diagnosed with attention deficit and hyperactivity disorder.[77] By nine, he had begun drinking alcohol and smoking cigarettes, and by thirteen, he was smoking marijuana.[78]

The Court then found that the culpability of Terrence and his peers was "twice diminished" because they had the reduced culpability characteristic of youth and because they committed crimes that did not evince an intent to kill.[79] The *Graham* Court reemphasized the three key characteristics that made youth less culpable than adults: immaturity, vulnerability, and changeability.[80] This time, the Court explicitly grounded its conclusions in "developments in psychology and brain science [that] continue to show fundamental differences between juvenile and adult minds," citing studies presented to the Court by the American Psychological Association (APA) and the American Medical Association (AMA).[81]

However, these studies revealed that the line between adolescence and adulthood could not be neatly determined. The APA explicitly stated that many of these mitigating characteristics continued beyond age eighteen and that that age was a socially-determined, not a scientifically-determined, line between youth and adulthood.[82] The AMA revealed that neuroscientific studies and brain imaging showed that parts of the brain often continued to develop after adolescence: "[D]evelopment of the region of the brain associated with voluntary behavior control (i.e., risk assessment, impulse control, and emotional regulation) is not complete until late adolescence or

74. *See id.* at 54–55.
75. *See id.* at 53.
76. *See id.*
77. *See id.*
78. *See id.*
79. *See id.* at 69–72.
80. *See id.* at 68.
81. *Id.*
82. *See* Brief for the American Psychological Ass'n et al. as Amici Curiae Supporting Petitioners at 6 n.3, Graham v. Florida, 560 U.S. 48 (2010) (No. 08-7412), 2009 WL 2236778, at *6 n.3 ("In this brief, we use the terms 'juvenile' and 'adolescent' to refer to individuals between the ages of 12 and 17. Science cannot, of course, draw bright lines precisely demarcating the boundaries between childhood, adolescence, and adulthood; the 'qualities that distinguish juveniles from adults do not disappear when an individual turns 18.' . . . Nonetheless, because those under 18, on the whole, share certain developmental characteristics that mitigate their culpability, and because '[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood,' this Court concluded in *Simmons* that it was appropriate to draw the line for death-eligibility at age 18." (second alteration in original) (citation omitted) (quoting Roper v. Simmons, 534 U.S. 551, 574 (2005))).

beyond."[83] Despite this information, neither Graham nor any amici requested that the Court consider a categorical ban beyond age eighteen, and the Court did not do so.

The *Graham* Court concluded once again that total prohibition was required because of the risk that sentencers would become inflamed by the facts of a crime and impose an undeservedly harsh sentence.[84] It similarly rejected the State's argument for individualized sentencing determinations, expressing doubt that sentencers could accurately determine whether a youth was one of the very few whose incorrigibility was permanent instead of one of the many who possessed a significant capacity for change.[85] A categorical ban entitled individuals under eighteen to a "meaningful opportunity to obtain release" that allowed them to put forth evidence of their maturity and growth.[86]

A few years later, in *Miller*, the Court carved out a second sentencing exception for those who were youths at the time of an intentional homicide crime.[87] *Miller* concerned two different fourteen-year-old boys: Evan Miller and Kuntrell Jackson.[88] Evan Miller received a sentence of life without parole in Alabama for a murder where he and another boy attempted to rob a neighborhood drug dealer, then beat the man and burned down his trailer.[89] Kuntrell Jackson received the same sentence in Arkansas for felony murder in which another boy shot and killed the clerk of a video store.[90]

This time, the Court failed to accept the petitioners' arguments that life without parole should be categorically banned for those under fifteen.[91] The *Miller* Court prohibited the mandatory imposition of life without parole sentences on members of this group who committed intentional homicide.[92] What offended the Constitution this time was not the sentence itself but its mandatory imposition.[93] As a remedy, the Court required individualized sentencing—previously only a requirement in capital cases—where sentencers must consider the specific circumstances of the crime and of the defendant before imposing punishment.[94]

The *Miller* Court once again underscored the unique characteristics of youth, citing as evidence neurological studies demonstrating that individuals

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83. *See* Brief for the American Medical Ass'n & the American Academy of Child & Adolescent Psychiatry as Amici Curiae in Support of Neither Party at 23, Graham v. Florida, 560 U.S. 48 (2010) (No. 08-7412), 2009 WL 2247127, at *23.

84. *See Graham*, 560 U.S at 77.

85. *See id.*

86. *Id.* at 79.

87. *See* Miller v. Alabama, 567 U.S. 460, 465 (2012).

88. *See id.* at 465, 467.

89. *See id.* at 469.

90. *See id.* at 465–66.

91. *See id.* at 479 ("Because that holding is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger.").

92. *See id.* at 465.

93. *See id.*

94. *See id.*

with still-developing brains exhibited "transient rashness, proclivity for risk, and inability to assess consequences."[95] The Court emphasized that mandatory sentencing unconstitutionally precluded evidence of mitigating circumstances, including "age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; "the family and home environment"; the circumstances of the crime, including the degree of participation and extent of peer pressure; "incompetencies associated with youth," including difficulties interacting with police or assisting attorneys; and capacity for rehabilitation.[96]

The Court then assessed the individual characteristics exhibited by Evan Miller and Kuntrell Jackson through the lens of their youth. For Evan Miller, the Court emphasized his vulnerable upbringing, indicating that he had been "in and out of foster care" due to his mother's struggles with drugs and alcohol and his stepfather's physical abuse.[97] Evan himself regularly used drugs and drank alcohol and, by age fourteen, had attempted suicide four times, beginning at age six.[98] The Court also held that the circumstances of Evan's crime were consistent with his youth, noting that the crime had occurred only after Evan was high on drugs that he had consumed with the adult decedent.[99]

Although the Court touched on Kuntrell Jackson's family life, noting that he had been exposed to violent family members, it emphasized the facts of the crime as illustrative of his youth.[100] Kuntrell and two other boys decided to rob a video store.[101] On the way to the store, Kuntrell learned for the first time that one of the other boys had brought a sawed-off shotgun.[102] Kuntrell decided to stay outside the video store, while the other two boys went inside.[103] When Kuntrell later entered the store, disputed testimony established that he either warned the clerk that "we ain't playin'" or told the other two boys, "I thought you all was playin'."[104] When the clerk threatened to call the police, one of the other two boys shot her.[105] All three boys then

95. *See id.* at 472.
96. *See id.* at 474, 477–78, 489.
97. *See id.* at 467, 478–79 ("And if ever a pathological background might have contributed to a 14-year-old's commission of a crime, it is here.").
98. *See id.*
99. *See id.* at 478–79. The rest of the facts of the crime also reveal impulsivity and unplanned risk-taking. After a neighbor sold drugs to Evan Miller's mother, Evan and a friend followed the neighbor back to his trailer, where they drank and smoked marijuana with him. *See id.* at 468. After the neighbor fell asleep, Evan attempted to steal his wallet, but the neighbor awoke and grabbed Evan by the throat. *See id.* Evan grabbed a baseball bat and beat the neighbor into unconsciousness. *See id.* He and his friend fled but later returned to burn down the trailer to destroy evidence of the crime. *See id.* The neighbor died of a combination of his injuries and smoke inhalation. *See id.*
100. *See id.* at 478.
101. *See id.* at 465.
102. *See id.*
103. *See id.*
104. *See id.* at 465–66.
105. *See id.* at 466.

ran away without any money.[106] The Court underscored that Jackson did not shoot the victim and that the State never established that he intended for the clerk to die.[107] It also found that Kuntrell's last-minute notice that his friend was carrying a gun left him with very little time to reassess his participation, concluding that "his age could well have affected his calculation of the risk that posed, as well as his willingness to walk away at that point."[108]

B. State Responses to Graham *and* Miller

Scholars and judges often observe that the interpretation of individual rights in the federal constitution is meant to set a floor and not a ceiling.[109] States are free to grant broader rights to their citizens through their own constitutions or statutes.[110] However, following *Graham* and *Miller*, states enacted laws that strictly adhered to the decisions' holdings, automatically converting life without parole sentences to sentences with parole eligibility.[111] Like the decisions themselves, these "legislative fixes" were categorical: they applied to all individuals who were under the age of eighteen at the time of their crime.[112] Individuals who could demonstrate that the science underlying *Graham* and *Miller* applied to them—that they were equally impulsive, vulnerable, and changeable as the Court had found Terrence Graham, Evan Miller, and Kuntrell Jackson to be—found no relief if they did not also meet the age cutoff.[113]

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106. *See id.*

107. *See id.* at 478.

108. *See id.*

109. *See, e.g.*, Mark Denniston & Christoffer Binning, *The Role of State Constitutionalism in Determining Juvenile Life Sentences*, 17 GEO. J.L. & PUB. POL'Y 599, 601 (2019) ("[T]he Supreme Court sets only a floor when establishing federal precedent, providing state supreme courts with the freedom to expand rights for defendants on the basis of state constitutional rights."); Justice John M. Greaney (Ret.), *Foreword*, 44 SUFFOLK U. L. REV. 327, 329 (2011) ("[T]he federal expressions of rights create floors, but not ceilings, when interpretation of similar rights in state constitutions is called for."); Rachael N. Pine, *Speculation and Reality: The Role of Facts in Judicial Protection of Fundamental Rights*, 136 U. PA. L. REV. 655, 725 n.320 (1988) (state constitutions cannot grant less protection to individual rights than the protection granted by the federal constitution); Smith v. Lindstrom, 699 F. Supp. 549, 570 n.28 (W.D. Va. 1988) ("The protections afforded by the United States Constitution must be considered a floor, so that no state constitution may be read to afford protections less potent than those contained in the federal constitution. However, the guarantees of the federal constitution are not a ceiling.").

110. *See* Denniston & Binning, *supra* note 109, at 601.

111. *See Legislation Eliminating Life-Without-Parole Sentences for Juveniles*, JUV. SENT'G PROJECT, https://juvenilesentencingproject.org/legislation-eliminating-lwop [https://perma.cc/757T-Y7ZF] (last visited Mar. 7, 2025) (cataloging legislative changes in the states since *Miller*).

112. *See* Maren Hurley, *The End of De Facto Life for Juveniles*, EMANCIPATE (June 29, 2022), https://emancipatenc.org/new-jlwop-rulings-from-the-nc-supreme-court/ [https://perma.cc/2QMZ-FLMT] (referring to North Carolina's "*Miller* fix" statute); THE SENT'G PROJECT, SLOW TO ACT: STATE RESPONSES TO 2012 SUPREME COURT MANDATE ON LIFE WITHOUT PAROLE 2 (2014) (discussing state legislative responses to *Miller*).

113. Even states that expanded relief opportunities did not increase the age cutoff. In 2013, the California legislature permitted children sentenced to life without parole to petition for resentencing after serving fifteen years of their sentence, and, again if denied, after serving twenty, twenty-four, and twenty-five years. CAL. PENAL CODE §§ 1170(d)(1)(A), (d)(10)

Following *Miller*, states took more steps to confine the holding.[114] State prosecutors and attorneys general banded together to challenge the decision's retroactive application.[115] They argued that *Miller* did not apply to children sentenced to mandatory life without parole before the case was decided because *Miller* mandated only a new sentencing process, not a substantive change in the law.[116] This retroactive litigation blocked resentencing efforts in many states entirely until 2016 when the Supreme Court made clear in *Montgomery v. Louisiana*[117] that *Miller* applied to the many individuals who had received sentences before it was decided.[118]

States that did not make resentencing automatic required the recipients of these extreme sentences to affirmatively petition for relief.[119] Typically, this process involved the filing of a state postconviction petition in which the petitioner pled facts demonstrating both (1) that they qualified for resentencing under *Miller* and (2) that they were deserving of a reduced sentence.[120]

The decision to require postconviction petitions further cabined *Miller* relief. In most states, the postconviction process is laden with procedural pitfalls—if the petitioner does not perfectly follow the rules of the postconviction process, the courts will deny their petition without ever considering the merits of their claim.[121] These rules often impose strict filing deadlines—often within a year or a few months of conviction.[122] Although most states recognize a new constitutional ruling as grounds for restarting the filing clock, the petitioner only gets the benefit of the new deadline if they can demonstrate that the new constitutional ruling clearly applies to them.[123]

(West 2024). Delaware allowed those under eighteen at the time they committed a homicide to twice petition for resentencing: once after serving thirty years and again after five more years (although the court could choose to prohibit the second petition). DEL. CODE ANN. tit. 11, § 4204A(d)(2)–(3) (West 2022). Florida permitted one petition after twenty-five years of incarceration. FLA. STAT. ANN. § 921.1402(2)(a) (West 2015).

114. *See* Montgomery v. Louisiana, 577 U.S. 190, 208–09 (2016).

115. *See id.*

116. *See id.*

117. 577 U.S. 190 (2016).

118. *See id.* at 208–09.

119. *See, e.g.*, Commonwealth v. Stewart, No. 139 MDA 2023, 2024 WL 3673509, at *3 (Pa. Super. Ct. Aug. 6, 2024) (discussing Pennsylvania's Post Conviction Relief Act (PCRA) procedure for seeking relief pursuant to *Miller*); 42 PA. STAT. AND CONS. STAT. ANN. § 9543 (West 2018).

120. *See, e.g.*, § 9543.

121. *See, e.g.*, Commonwealth v. Scott, No. 2246 EDA 2016, 2017 WL 6505366, at *1 (Pa. Super. Ct. Dec. 20, 2017) (affirming dismissal of the PCRA petition because Scott's petition was untimely, and she was unable to satisfy the "new constitutional right" time-bar exception based on *Miller*); ARIZ. R. CRIM. P. 33.2; *see also* Laurie L. Levenson, *Searching for Injustice: The Challenge of Postconviction Discovery, Investigation, and Litigation*, 87 S. CAL. L. REV. 545, 548–49 (2014) (observing that "[l]ayers of procedural hurdles stand between a petitioner and his or her chance of having a court evaluate any postconviction claims on the merits").

122. *See, e.g.*, 42 PA. STAT. AND CONS. STAT. ANN. § 9545(b)(1) (West 2018); ALA. R. CRIM. P. 32.2(c); ARIZ. R. CRIM. P. 32.4(b)(3), 32.7(a)(1); ARK. R. CRIM. P. 37.2(c).

123. *See, e.g.*, § 9545(b)(1)(iii); FLA. R. CRIM. P. 3.850(b)(2) (indicating new filing deadlines for claims based on newly established constitutional rights); *see also* Click v. Alabama, 215 So. 3d 1189, 1194 (Ala. Crim. App. 2016) (explaining how legal claims related

In making this decision, reviewing courts nearly universally drew the same bright line that they believed had been drawn in *Miller*: only petitioners under eighteen need apply.[124] No matter how compelling their argument that the *Miller* factors pertained to them, those over eighteen at the time of the crime could not benefit from the new filing clock because, courts found, *Miller* was legally irrelevant to them.[125]

State actors could have chosen to focus on the underlying reasoning of the cases—those with still-developing brains were constitutionally less deserving of the most extreme punishments.[126] Such an interpretation would have been consistent with the science cited by the Court.[127] It also would have expanded relief to all individuals who could demonstrate that impulsivity and vulnerability contributed to their crime and that they were capable of rehabilitation and redemption.[128] That is, that they were constitutionally less culpable. Instead, state legislators enacted stark age cutoffs, while prosecutors and courts utilized strict procedural mechanisms to guarantee that relief would turn on an individual's birth date.[129] Consequently, *Graham* and *Miller* became an impenetrable ceiling for those born too early.

II. THE HUMAN COSTS OF CATEGORICAL BANS

In this section, we unpack the human costs of the Supreme Court's categorical bar jurisprudence. We begin with Rell's lived experience as a young man sentenced to die in prison who attempted to seek sentencing relief based on *Miller*. We then situate Rell's experience as part of a trend in

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to substantive constitutional rights found to be retroactive may be raised under the state postconviction statute).

124. *See, e.g.*, *Scott*, 2017 WL 6505366, at *1 (finding petitioner ineligible for relief because she was nineteen at the time of her crime); United States v. Lopez-Cabrera, No. S5 11-CR-1032, 2015 WL 3880503, at *1–2 (S.D.N.Y. June 22, 2015) (finding three defendants aged eighteen to twenty-two did not qualify for *Miller* relief because they were over seventeen at the time of their crimes); Wesley v. United States, No. 97-CR-382, 2016 WL 3579010, at *2 (E.D. Va. Feb. 24, 2016) (finding petitioner did not qualify for *Miller* relief because he was nineteen at the time of his crime); *In re* Manning, 24 F.4th 1107, 1109 (6th Cir. 2022) (finding petition untimely because petitioner was eighteen at the time of his crime and thus ineligible for *Miller* relief); Marshall v. State, 277 So. 3d 1149, 1151 (Fla. Dist. Ct. App. 2019) (finding petitioner ineligible for relief under state's *Miller*-fix sentencing statutes because petitioner was an adult at the time of his crime); State v. Hogan, 113 So. 3d 1195, 1202 (La. 2013) (finding *Miller* did not apply to petitioner who was over eighteen at the time of his crime); Commonwealth v. Lee, 206 A.3d 1, 2 (Penn. 2019) (holding that petitioner, who was over eighteen at the time of her crime, was time barred because her age made her ineligible for *Miller* relief).

125. *See, e.g.*, *In re Manning*, 24 F.4th at 1109 (finding petition untimely because petitioner was eighteen at the time of his crime and thus ineligible for *Miller* relief); *Lee*, 206 A.3d at 2 (holding petitioner who was over eighteen at the time of her crime was time barred because her age made her ineligible for *Miller* relief); *Marshall*, 277 So. 3d at 1151 (finding petitioner ineligible for relief under state's *Miller*-fix sentencing statutes because petitioner was an adult at the time of his crime).

126. *See supra* notes 51, 62–65, 79–80.

127. *See* Miller v. Alabama, 567 U.S. 460, 472–89 (2012).

128. *See id.*

129. *See supra* notes 119–20.

arbitrary resentencing outcomes in the wake of the *Miller* trilogy. We make the case that these outcomes are inconsistent both with the values undergirding Eighth Amendment doctrine and with the scientific evidence relied on in *Miller*.

A. How the Miller *Cliff Impacts Individuals (Rell's Experience)*

On June 6, 1992, at the age of twenty-two, I was arrested and charged with one count of general murder. Six months later, I was convicted and condemned to spend the rest of my life in a maximum-security prison. This story is not a tale that begins four years prior to my conviction when I turned eighteen. This is a story that stretches back to the very beginnings of who I am. It is a tale that begins from my earliest childhood memories that consisted of feelings of inferiority and deep shame. It is a story of a boy who in every turn was conditioned to hate himself, to hate his blackness. It is a tale of a boy who went to bed at night, pleading to God that when he awakened in the morning, his dark skin, like the dawn chasing away the night, would be a shade or two lighter.

But of course, God would never grant that plea, so I would go through my days feeling cursed, rejected, and ashamed. So, by the time I was a preteen I was ripe to succumb to a world of materialistic brokenness. I was like the emperor with no clothes who cloaked himself with invisible threads of gold. By the time I was fourteen years old, I believed that I could hide my shame behind things that sparkled. My first invisible thread was a Members Only jacket. If I had this jacket, I would no longer be too Black. I worked hard at the local supermarket to earn the money for the purchase of my self-esteem, only to have it taken from me at gunpoint a week later.

So, there I was, a boy stumbling blindly through a fog of self-hate, fear, and doubt—a circumstance that was exacerbated by my fourteen-year-old eyes staring into the black hole of the barrel end of a gun. I was forced to remove my designer jacket, my cloak of self-esteem, leaving me exposed, vulnerable, deathly afraid, and traumatized. It was a dog-eat-dog world, and I had just been bitten. My reaction to this violation was: "Never again. Never again will I be a victim." It was at that point my life would switch lanes, and I ended up on this dead-end road called self-destruction.

As a child, I made an adult decision to be what I feared. Little did I know that choice would change my concept of the world. How I thought and what drove my decisions would be mired in the quicksand of low self-esteem, a paralyzing shame, and the fear of being victimized. At the same time all of this was happening, I still carried the weight of a cursed identity. So, I made another choice as a child: to fill my mind and body with substances that allowed me to temporarily block the pain of being me. When I was intoxicated, I did not care about being too Black. If materialism was the asphalt of this road to self-destruction, intoxication was the vehicle I used to propel myself forward at a blinding speed.

The age of adulthood, eighteen, is not this magical point of your life where all the things that shaped you up to that point no longer play a role in how you see and operate within the world. I made decisions as a child out of feelings of rejection, shame, and fear without—as we all know now due to the science the Court relied on in the *Miller* decision—the full capacity of my brain. On the journey of my life, these life-altering choices created a role, a character that I internalized, that I grew into. By the time I was twenty-two, I was shaped by the choices of a traumatized little boy who hated himself. Because of that, the character that I had created to protect myself was no longer a role, and the road that I had been traveling on abruptly ended, and I drove straight into my demise.

In 1992, I was a twenty-two-year-old who knew everything about absolutely nothing. I was impulsive. I lived only in the moment, chasing things outside of myself that glittered but were nothing more than fool's gold. It was a pursuit of an artificial happiness that consisted of mind-numbing intoxicants that provided camouflage for insecurities that lasted only in the moment that they existed. There was no thought of consequence, there was no consideration of risk versus reward. It was a life of decision-making determined solely by the burden of not feeling too good about who I was and desperately wanting to.

In June of that year, I had been arrested and charged with one count of general murder. By the time December rolled around, my life had been one of just trying to survive the insanely violent world of Philadelphia's most notorious county prison, Holsmburg—what we, the men who were housed there, referred to as "The Terror Dome." It was a life of this intense, extreme, never-ending level of stress. Although not the sensationalized television and movie versions of prison life, the rapes, the assaults, and the murders were real possibilities that made my existence in that place one teetering on a precipice of losing myself in an abyss of primitive toxic masculinity. It was a constant challenge of moral fortitude—when in Rome, maintain who you are, but do not become a Roman. It was a time and place that took all my wit, energy, and focus, leaving nothing in reserve for me to think about my upcoming trial. It had been six months and, to my limited knowledge, the waiting period for after arrest to trial took at least twelve months or more, so I was not expecting to see my court-appointed attorney when he popped up to see me on a December morning.

I had only seen my attorney once, and that was during my preliminary hearing. There was no interview at that time: it was simply a five-minute meeting where he introduced himself as my counsel to give me the discovery of my case. At the time, I did not have the capacity to understand the severity of my situation. I am not saying that I did not know that murder is a serious charge, it is just that I could not comprehend how far that rabbit hole descended. A five-minute meeting, not seeing him at all until days before my trial, and thinking that was normal were factors indicative of that lack of understanding.

I heard my prison number being called over the cacophony of voices that echoed off the concrete walls of the cell block. I thought that one of my

family members had come to see me, so I was surprised when I walked into the visitor's room and saw my attorney standing there. I took my seat opposite him, and after some preliminary introductions, I began telling him my side of the events. As I was speaking, I could see doubt clouding his eyes, and at that moment, I felt an intense urgency that I needed to convince him of my truth. No matter what I said, his eyes did not change. They told a tale of disbelief and impatience, as if what I had to say placed last on his list of priorities. Forty-five minutes later he stood, looked at his watch, and informed me that he had some last-minute Christmas shopping to do, signaling that our interview was over. Before turning to leave, he looked at me with those doubt-filled eyes and told me that my trial would start Monday; it was Saturday—one day and a wake up away. Suffice it to say there was no investigation done; my attorney did not interview any witnesses (well, not in a traditional sense but, to be fair, my attorney did interview the few witnesses he called, but it was during the trial and right before they got on the stand). There was no trial strategy, and by Wednesday, I was convicted of second-degree murder and sentenced to a mandatory life without parole prison sentence.

After being in a state penitentiary for four years, in 1996, the U.S. Congress passed the Antiterrorism and Effective Death Penalty Act,[130] and soon after, the Pennsylvania legislature passed its own version by "reforming" the Pennsylvania Post Conviction Relief Act[131] (PCRA). These changes in the law effectively placed time constraints on when and how many times you could file for collateral relief.[132] I was a destitute twenty-six-year-old with no attorney who knew absolutely nothing about the law. As you can imagine, under those circumstances, I ruined any chance I had for collateral relief, which in and of itself was a tall order.

After a conviction, the burden of proof shifts from the prosecutor to the defendant. In theory, it makes sense. After all, after a fair trial where one is duly convicted by peers, the conviction becomes the truth. But the reality is a far cry from the theory. I had been deemed guilty the moment the handcuffs were placed upon my wrists. No one believed what I had to say, not even my attorney, which was evident in how he represented me. So, for me, the theory of innocent until proven guilty existed only on TV shows and in novels. My reality was one of guilty until proven innocent, which in and of itself is problematic because innocent until proven guilty is supposed to be foundational. It is the mortar that holds together the concept of reasonable doubt, the heart and soul of the American judicial system. Like most people, I grew up believing in the American judicial system—that everyone had a right to a fair trial—but my experience would show me otherwise. I would learn quickly that there is no right to a fair trial, only a speedy one, and my circumstance was a testament to that.

130. Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified as amended in scattered titles of the U.S. Code).

131. 42 PA. STAT. AND CONS. STAT. ANN. § 9543 (West 2018).

132. *Id.* §§ 9545(b), 9571(d).

For almost two decades, without the aid of an attorney, I filed appeal after appeal after appeal only to be denied again and again and again. By the time 2012 rolled around, I had been totally disillusioned with the legal process, and I was on the verge of giving up completely. But then *Miller* happened, and suddenly there was a light at the end of this dark tunnel. The Supreme Court ruled that it was unconstitutional to sentence juveniles to mandatory life without parole prison sentences.[133] Although I was not a juvenile, I was filled with a renewed sense of hope because the ruling was based upon neuroscience that suggested that the prefrontal lobe brain, the part of the brain responsible for executive decision-making, was not fully developed until a person reached their mid-twenties.

I had already begun to ask myself the hard questions: Why would I make a decision that would ultimately lead to someone losing their life? How did my life take such a dramatic turn for the worse? Writing was key. I began to write these reflective narratives in an attempt to answer these questions and in the process, I was able to expose myself to myself. The words that I expressed on these white spaces in between blue lines laid all my vulnerabilities bare. I began to see this unadulterated version of myself imprisoned within invisible walls of fear, self-doubt, selfishness, inconsideration, and denial. Writing became the key that I was able to use to deconstruct those invisible walls brick by brick. By the time I turned twenty-six, my maturity level had risen to the point that made self-reflection possible. This was merely the beginning of a lifelong journey of knowing myself well enough to effectuate the kind of transformation that could facilitate redemption.

Through a painstaking reflective process that took years, I was able to identify, at least on a basic level, that how I felt about myself was the driving force behind the decisions I made as a child. I was able to understand that those decisions shaped who I was as a young adult. I also came to the conclusion that the age of eighteen is not a magic number that presto, once you reach that threshold, you somehow begin to process things differently. I had no empirical evidence to substantiate what my thinking was at the time. It was only what made sense to me.

But then the *Miller* decision came down, and the science behind that ruling clarified things for me. The science in that ruling was the empirical evidence that gave what I had been thinking substance. There was a biological explanation as to why, as a young man, I moved so impulsively and why I never considered the long-term consequences of the choices I made. The neuroscience that the Supreme Court relied on filled in the blanks of why and renewed my sense of hope. Now began the rush to file a postconviction, newly discovered evidence claim based on the science that the *Miller* decision was grounded in.

My hope did not last long. I would soon find out that the science was not enough to persuade a court hell-bent on following mindless procedural rules.

133. *See* Miller v. Alabama, 567 U.S. 460, 479 (2012).

There existed rules about jurisdiction that would not allow argument on the question of whether *Miller* should be expanded to include those of us who were over the age of seventeen.[134] After the judgment in my case became final, there was a one-year time period where I could file a PCRA petition.[135] After that year expired, I had to meet statutory exceptions. There are three of these statutory exceptions, but the one that is relevant to this Essay was the one dealing with newly discovered evidence.[136] For me it was simple: the new discoveries on brain development that the Supreme Court relied on to make the ruling in *Miller* applied to me; therefore, for me and others who were similarly situated, the neuroscience in the *Miller* case was new. But because the Supreme Court only ruled on the juvenile question, the lower courts claimed they lacked jurisdiction to address the issue of expanding *Miller* to those of us over seventeen although the same scientific evidence applied.[137]

Disillusionment began to set in again. I was stuck in this quagmire of arguing within the time constraint rules my issue of logically expanding the *Miller* ruling, never to be heard by the courts.

The problem with eighteen being the age of adulthood is not the number in and of itself, but rather it is the uncompromising way that it is applied, specifically when it comes to the criminal legal system. Much like mandatory minimums, it is an idea that does not allow for context. It is this one-size-fits-all application, a societal dictate based off antiquated understandings that fly in the face of, in the words of the Supreme Court, evolving standards of decency.[138] It is an unfit simplification of the complex way human beings develop from childhood to adulthood. Through my own life experience, this unfit simplification becomes crystallized.

B. Arbitrary Harms Due to Arbitrary Lines

By many measures, *Graham* and *Miller* have had positive impacts. Since *Miller*, the number of people serving life without parole for crimes committed as children has fallen from 2,800 to just under 500.[139] Since 2016, when the Court decided that *Miller* was retroactive, more than 1,100 children sentenced to life without parole have been released from prison.[140] But Rell's experience was not the only incongruous one. Most state courts treated *Miller* as a cliff for anyone older than seventeen, reflexively affirming their sentence of death by incarceration. As a result, nearly 9,000 people continue

134. 42 PA. STAT. AND CONS. STAT. ANN. § 9545 (West 2018).
135. *Id.* § 9545(b).
136. *Id.* § 9545(b)(1)(ii).
137. *See supra* note 125.
138. *See* Graham v. Florida, 560 U.S. 48, 58 (2010) (quoting Estelle v. Gamble, 429 U.S. 97, 102 (1976)).
139. *See Sentencing Children to Life Without Parole: National Numbers*, CAMPAIGN FOR FAIR SENT'G YOUTH (May 6, 2024), https://cfsy.org/sentencing-children-to-life-without-parole-national-numbers/ [https://perma.cc/TV6T-GVDX].
140. *See id.*

to serve sentences of life without parole for crimes they committed between the ages of eighteen and twenty-five.[141]

This stark difference in treatment based on birthdate offends the bedrock Eighth Amendment principle that punishment should bear some relationship to the offense and the offender's culpability.[142] The *Miller* trilogy's use of age as a *proxy* for culpability has only exacerbated arbitrary outcomes in individual cases like those of the Maldonado brothers, where more culpable individuals received reduced sentences and less culpable ones remained categorically ineligible for relief.

Eighth Amendment scholar Professor William W. Berry III has observed that unfair outcomes resulting from bright lines increase the closer the defendant is to the line and the more arbitrary the line is.[143] Thus, the Court's use of eighteen as a proxy for vulnerability, impulsivity, and potential for rehabilitation is particularly harmful to defendants in their late teens and early twenties, many of whom possess these characteristics but are barred from presenting evidence of them in mitigation.

Consider the case of Marie Scott who was sentenced to life without parole for felony murder.[144] Marie and her boyfriend, sixteen-year-old Leroy Saxon, were robbing a gas station when Leroy shot and killed the gas station attendant.[145] Both Marie and Leroy received sentences of life without parole.[146] However, Leroy was resentenced following *Miller* and was released on parole in 2020.[147] But Pennsylvania courts have found that Marie, who was only nineteen at the time of the crime, was too old to qualify for *Miller* relief.[148] They refused to consider evidence of who Marie was at the time of the crime: a vulnerable teen with impulsive thinking. Marie had grown up parentless after her mother died while her father was incarcerated.[149] Abused in childhood, at fifteen, she had given birth to her

141. This rough estimate was arrived at by considering data from two sources: CAMPAIGN FOR FAIR SENT'G YOUTH, *supra* note 139 (indicating that, prior to *Miller*, 2,800 people were serving life without parole sentences for crimes committed as children) and ASHLEY NELLIS & NIKI MONAZZAM, SENT'G PROJECT, LEFT TO DIE IN PRISON 2 (2023) (finding that 11,600 of the people sentenced to life without parole between 1995 and 2017 were under twenty-six at the time of their crime). Subtracting the *Miller* cohort from the 11,600 total suggests that the number serving life without parole for crimes committed as eighteen- to twenty-five-year-olds was approximately 8,800 people as of 2017.

142. *See* Thompson v. Oklahoma, 487 U.S. 815, 834 (1988) ("It is generally agreed 'that punishment should be directly related to the personal culpability of the criminal defendant.'").

143. *See* William W. Berry III, *Eighth Amendment Presumptive Penumbras (and Juvenile Offenders)*, 106 IOWA L. REV. 1, 2–3 (2020).

144. *See* Peter Hall & Miranda Jeyaretnam, *Pennsylvania Supreme Court to Weigh Life Sentences for Felony Murder*, PA. CAP.-STAR (June 4, 2024, 5:30 AM), https://penncapital-star.com/justice-the-courts/felony-murder-pennsylvania-supreme-court-case-marie-scott-derek-lee/ [https://perma.cc/428S-6329].

145. *See id.*

146. *See id.*

147. *See id.*

148. *See* Commonwealth v. Scott, No. 2246 EDA 2016, 2017 WL 6505366, at *1 (Pa. Super. Ct. Dec. 20, 2017) (affirming the court's PCRA decision that Marie Scott did not qualify for *Miller* relief because she was nineteen at the time of her crime).

149. *See* Hall & Jeyaretnam, *supra* note 144.

first child.[150] She fell under Leroy's spell after he pulled out a gun to protect her during a robbery at a restaurant that she managed.[151] A self-described codependent personality, she was desperate for any kind of love and committed the later robberies with Leroy because she believed she "owed" him.[152] She immediately confessed to her participation in the robbery, and did not understand that the sentence she received meant that she could never be released from prison.[153] Pennsylvania courts have also refused to consider evidence of Marie's changeability.[154] During her more than fifty years of incarceration, Marie has, among other things, completed a culinary degree, written a play, and drafted legislation to benefit the children of both crime victims and incarcerated parents.[155] Like Sammy Maldonado, Marie Scott remains in prison.[156]

The harm inflicted on people like Sammy Maldonado, Marie Scott, Rell, and countless others is compounded because the line between seventeen and eighteen is particularly arbitrary.[157] Even the Court has recognized that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18."[158] Nevertheless, the Court held that the line was appropriate because of societal reasons: "The age of 18 is the point where society draws the line for many purposes between childhood and adulthood."[159]

This "age of adulthood" is indeed a social construct. It has fluctuated throughout history, typically in response to military needs, but also based on social class, profession, and identity.[160] Eighteen is a relatively recent division point; as recently as 1960, most states recognized the age of adulthood to be twenty-one.[161] The roots of this particular demarcation line stem from English common law, which recognized adulthood to begin at twenty-one for most men, dating back as far as the Magna Carta.[162] But prior to the Magna Carta, in ninth and tenth century England, the age of majority was fifteen.[163] These two ages tracked the age of eligibility for knighthood,

150. *See id.*
151. *See id.*
152. *See id.*
153. *See* Ellen Melchiondo, *OP-ED: Mechie—40 Years into a Life Sentence That Began at 19*, JUV. JUST. INFO. EXCH. (Oct. 21, 2013), https://jjie.org/2013/10/21/op-ed-mechie-40-years-into-a-life-sentence-that-began-at-19/ [https://perma.cc/3VPV-UTFP].
154. *See* Scott v. Pa. Bd. of Prob. & Parole, 256 A.3d 483, 488 (Pa. Commw. Ct. 2021) (citing decision denying *Miller*-based relief based on age alone).
155. *See* Hall & Jeyaretnam, *supra* note 144.
156. *See id.*; *Inmate/Parolee Locator*, PA. DEP'T OF CORR., https://inmatelocator.cor.pa.gov [https://perma.cc/E8QQ-MZTC] (last visited Mar. 7, 2025) (search by entering "Marie" into "first name"; then type "Scott" into "last name"; then click "search").
157. *See* Roper v. Simmons, 543 U.S. 551, 574 (2005).
158. *Id.*
159. *Id.*
160. *See* T. E. James, *The Age of Majority*, 4 AM. J. LEGAL HIST. 22, 22–28 (1960).
161. *See id.* at 22, 24 (T.E. James observed in 1960 that "[a] child is regarded, in common parlance, as a person under the age of twenty-one years. In the eyes of the common law, all persons were esteemed infants until they attained this age.").
162. *See id.* at 26.
163. *See id.*

and some evidence suggests that the increase in age occurred in response to the needs of contemporary warfare.[164] The growing weight of arms and armor and the physical capacity required to fight from horseback instead of on foot likely necessitated an older age of adulthood.[165] For lords and tenants involved solely in agricultural feudalism, the age of adulthood at the time of the Magna Carta remained closer to fifteen, as these actors lacked military obligations.[166] For marriage purposes, boys attained adulthood at fourteen and girls at sixteen; yet as of the passage of the Marriage Act of 1753,[167] both parties required parental consent to marry before age twenty-one.[168]

The use of twenty-one as the age of majority carried over into colonial America and remained the norm until the mid-twentieth century.[169] As it had historically, the age of adulthood adjusted to changing military needs. In 1942, a need for more troops prompted Congress to lower the age of conscription from twenty-one to eighteen.[170] Following this change, calls began to give eighteen-year-olds, who were now obligated to fight for their country, the right to vote.[171] When eighteen-year-olds were once again conscripted during the Vietnam War, student activists rallied behind the chant: "Old Enough to Fight, Old Enough to Vote."[172] Support for youth enfranchisement culminated with the passage of the Twenty-Sixth Amendment in 1971, which lowered the voting age from twenty-one to eighteen.[173] Following this change, states began adjusting other age-related laws to conform.[174] Soon, nearly all states and the federal government had adopted eighteen as the age of majority, at least for men.[175]

Despite this trend, some states maintained distinct ages of majority based on gender well into the 1970s, with females attaining legal adulthood before

164. *See id.* at 26–27.

165. *See id.*

166. *See id.* at 30–31 (indicating the age of majority of socage tenants was fourteen or fifteen and that a lord attained majority "as soon as he became capable of attaining to husbandry and 'of conducting his rustic employs'").

167. An Act for the better preventing of clandestine Marriages 1753, 26 Geo 2 c. 33 (1753).

168. *See id.* at 31–32.

169. *See* Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 TUL. L. REV. 55, 64 (2016).

170. *See id.*; WENDELL W. CULTICE, YOUTH'S BATTLE FOR THE BALLOT: A HISTORY OF VOTING AGE IN AMERICA 20 (1992).

171. *See* CULTICE, *supra* note 170, at 20–21.

172. The popular rallying cry originated following World War II but was revived during the Vietnam War. *See* Dante A. Ciampaglia, *How the Vietnam War Draft Spurred the Fight for Lowering the Voting Age*, HISTORY, https://www.history.com/news/vietnam-war-draft-voting-age-26-amendment [https://perma.cc/JQ25-ARA2] (July 12, 2024).

173. U.S. CONST. amend. XXVI ("The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.").

174. *See* Hamilton, *supra* note 169, at 65.

175. *See id.*

males in the civil context[176] but after males in the criminal context.[177] In explaining the basis for Utah's distinction, the Utah Supreme Court declared, "To judicially hold that males and females attain their maturity at the same age is to be blind to the biological facts of life."[178] The Utah civil distinction continued until 1977 when the state legislature lowered the age of majority for males to eighteen in response to a Supreme Court ruling that the statute violated the Equal Protection Clause.[179]

Race has also played a role in delineating childhood and adulthood. Although the age of majority has not explicitly differed for different racial groups in the way that it has for different sexes, research has long established that Black children are more likely than their White peers to be viewed and treated as adults, particularly in the criminal legal system.[180] Researchers have found that "Black children may be viewed as adults as soon as thirteen, with average age overestimations of Black children exceeding four and a half years in some cases."[181] Black children are eighteen times more likely to be sentenced as adults than their White peers.[182] Professor Priscilla Ocen has argued that the roots of this division date back to the nineteenth century.[183] Legal reforms enacted to protect White children from labor abuses were

176. *See, e.g.*, Craig v. Boren, 429 U.S. 190, 191–92, 197–98 (1976) (discussing Oklahoma's historically higher civil age of majority for males and finding OKLA. STAT. tit. 37, §§ 241, 245 (1958 and Supp. 1976) unconstitutional because they permitted the sale of 3.2 percent beer to eighteen-year-old females while requiring males to be at least twenty-one years old); Stanton v. Stanton, 421 U.S. 7, 8–9, 17–18 (1975) (*Stanton I*) (invalidating Utah statute that required parents to financially support their female children until age eighteen and their male children until age twenty-one); Harrigfeld v. Dist. Ct. of Seventh Jud. Dist. In & For Freemont Cnty., 511 P.2d 822, 823 n.1 (Idaho 1973) (discussing Idaho statute that until 1972 defined the age of majority of males as twenty-one and females as eighteen); Tang v. Ping, 209 N.W.2d 624, 628 (N.D. 1973) (finding statute that set the age of majority as eighteen for females and twenty-one for males unconstitutional).

177. *See, e.g.*, *Craig*, 429 U.S. at 197 (discussing statute setting Oklahoma's criminal age of majority for males at sixteen and for females at eighteen); People v. Ellis, 311 N.E.2d 98, 101 (Ill. 1974) (invalidating Illinois statute treating seventeen-year-old males as adults and seventeen-year-old females as juveniles); *Ex parte* Matthews, 488 S.W.2d 434, 438 (Tex. Cr. App. 1973) (invalidating Texas statute treating seventeen-year-old males as adults and seventeen-year-old females as juveniles), *overruled by Ex parte* Trahan, 591 S.W.2d 837 (Tex. Crim. App. 1979).

178. Stanton v. Stanton, 552 P.2d 112, 114 (Utah 1976), *vacated*, 429 U.S. 501 (1977).

179. *See* Stanton v. Stanton, 564 P.2d 303, 304 (Utah 1977) (explaining that the Utah legislature lowered the age of majority to eighteen for males following *Stanton I*, 421 U.S. at 8); *see also* Stanton v. Stanton (*Stanton II*), 429 U.S. 501, 503 (1977) (reaffirming that "males and females cannot be treated differently for child-support purposes consistently with the Equal Protection Clause of the United States Constitution").

180. *See, e.g.*, Phillip Atiba Goff, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta & Natalie Ann DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526, 540 (2014); REBECCA EPSTEIN, JAMILIA J. BLAKE & THALIA GONZÁLEZ, GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS' CHILDHOOD 4–5 (2017) (providing examples of how Black girls are viewed and treated as adults); Priscilla A. Ocen, *(E)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1591–93 (2015).

181. *See* Goff et al., *supra* note 180, at 541.

182. *See id.* at 526.

183. *See* Ocen, *supra* note 180, at 1605–06.

inapplicable to the many Black children who were still enslaved.[184] After Reconstruction, child labor prohibitions were ignored as newly-freed Black children were required to participate in mandatory apprenticeships.[185] Black children without an apprenticeship were subject to criminal prosecution.[186] Professor Ocen writes that "[s]uch constructions infused Black children with contradictory characteristics of both childhood and adulthood that at once placed them outside the protections of childhood and inside the punitive posture of the criminal law."[187]

In contemporary America, although most states have set the age of majority at eighteen, a few outliers still exist. Alabama[188] and Nebraska[189] consider nineteen the age of majority, whereas Mississippi sets the age at twenty-one for most purposes.[190] And although attaining the age of majority affords an individual the rights of adulthood for many purposes, states may still mandate different ages for specific rights and privileges. The threshold age at which individuals can make medical decisions, drive, hold certain types of employment, consent to sex, marry, attend R-rated movies without an adult, enlist in the military, form contracts, and purchase cigarettes or alcohol ranges from fifteen to twenty-one.[191] The Patient Protection and Affordable Care Act[192] provides health care coverage to "adult children" through age twenty-six.[193] In the criminal context, states often set a different age of majority for criminal prosecution and may allow children as young as twelve to be prosecuted and sentenced as adults.[194] All states with a higher age of majority than eighteen nevertheless use eighteen as a cutoff for sentencing relief under the *Miller* trilogy.[195]

The social construction of adulthood at eighteen, or even twenty-one, is at odds with scientific evidence.[196] Neuroscience and behavioral science

184. *See id.*
185. *See id.*
186. *See id.* at 1609.
187. *Id.* at 1610.
188. ALA. CODE § 26-1-1 (2019).
189. NEB. REV. STAT. ANN. § 43-245(2) (West 2019).
190. MISS. CODE ANN. § 1-3-27 (West 2023) (defining minors as those under twenty-one but permitting eighteen-year-olds to enter into contracts).
191. *See* Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 28 ISSUES SCI. & TECH. 67, 76 (2012).
192. Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered titles of the U.S. Code).
193. 42 U.S.C. § 18014(d)(2)(E).
194. *See Age Matrix*, INTERSTATE COMM'N FOR JUVS., https://juvenilecompact.org/age-matrix [https://perma.cc/8VSH-322M] (Feb. 3, 2025).
195. *See, e.g.*, State v. Ware, 870 N.W.2d 637, 640 (Neb. 2015) (finding *Miller* did not apply to individuals over eighteen at the time of their crime); ALA. CODE § 13A-5-39(1) (2016) (disqualifying from death sentences those who were "under the age of 18 years at the time of the capital offense"); Hodges v. State, 912 So. 2d 730, 790 (Miss. 2005) (finding *Simmons* did not apply to individuals like the defendant who were not under eighteen at the time of their capital crime).
196. *See, e.g.*, Douglas S. Diekema, *Adolescent Brain Development and Medical Decision-Making*, 146 PEDIATRICS S18, S22 (2020) ("The current age of majority (18–21 years of age depending on the state) is not clearly supported by empirical data, at least for some decisions.").

research, including that cited by the Court in the *Miller* trilogy,[197] indicates that the qualities of impulsivity, vulnerability to peer pressure, and capacity for change are present in most people beyond the age of eighteen.[198] Some developmental changes may continue as late as age twenty-five.[199] Researchers have concluded that it is "very difficult to draw a bright line

197. The majority opinion in *Miller* cited to briefs submitted by amici curiae APA and J. Lawrence Aber for its neuroscientific conclusions. *See* Miller v. Alabama, 567 U.S. 460, 472 n.5 (2012). Both briefs included multiple citations to studies that made clear that the characteristics that the Justices associated with youth persist into the early to mid-twenties. *See, e.g.*, Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 340–44, 366–67 (1992) (reviewing literature that demonstrates that sensation seeking and reckless behavior are normal parts of adolescent development into the early or mid-twenties) (cited by APA in amicus brief); Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741, 758–59 (2000) ("[S]ignificant numbers of adolescents exhibit high enough levels of maturity of judgment to outperform less mature adults . . . . The irony of employing a developmental perspective in the analysis of transfer policy is that the exercise reveals the inherent inadequacy of policies that draw bright-line distinctions between adolescence and adulthood.") (cited by APA in amicus brief); Laurence Steinberg, Dustin Albert, Elizabeth Cauffmann, Marie Banich, Sandra Graham & Jennifer Woolard, *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 DEV. PSYCH. 1764, 1774–76 (2008) (finding that impulse control continues to develop into adulthood and noting that there is "strong evidence of structural and functional maturation over the course of adolescence and well into the 20s of brain regions that subserve impulse control and other aspects of self-regulation") (cited by APA in amicus brief).

198. *See* Emily Buss, *What the Law Should (and Should Not) Learn from Child Development Research*, 38 HOFSTRA L. REV. 13, 39 (2009) (making this point with respect to the *Simmons* Court); *see also* Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 AM. PSYCH. 469, 474–75 (2000) (finding that identity formation and high-risk behaviors reach their peak during "emerging adulthood," from age eighteen to twenty-five); Laurence Steinberg, Elizabeth Cauffmann, Jennifer Woolard, Sandra Graham & Marie Banich, *Are Adolescents Less Mature Than Adults?: Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop*", 64 AM. PSYCH. 583, 590 fig.1, 591 fig.2 (2009) (finding that impulse control and sensation-seeking behavior, along with ability to ignore peer pressure and grapple with future consequences, continues to develop through the twenties); Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89, 152 (2009) ("[M]any scientists have opined that structural brain maturation is not complete until the mid-20s."); Kathryn Monahan, Laurence Steinberg & Alex R. Piquero, *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 CRIME & JUST. 577, 578–79 (2015) ("Adolescents demonstrate unique decision-making processes compared with adults, there are continued changes and growth in brain functioning and maturation from mid adolescence to the mid-20s, and most criminal offending ceases as youths move from adolescence into adulthood.").

199. *See, e.g.*, Jane E. Anderson, *The Teenage Brain Under Construction*, 38 ISSUES L. & MED. 107, 107 (2023) ("[S]cientists are confirming . . . that the adolescent's brain is not fully mature until approximately 23–25 years of age."); Tell Me More, *Brain Maturity Extends Well Beyond Teen Years*, NPR (Oct. 10, 2011), https://www.npr.org/2011/10/10/141164708/brain-maturity-extends-well-beyond-teen-years (interview with neuroscientist Sandra Aamodt stating, "[N]euroscientists have caught up and brain scans show clearly that the brain is not fully finished developing until about age 25."); Mariam Arain, Maliha Haque, Lina Johal, Puja Mathur, Wynand Nel, Afsha Rais, Ranbir Sandhu & Sushil Sharma, *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 449–50, 453–54 (2013); Commonwealth v. Mattis, 224 N.E.3d 410, 424 (Mass. 2024) (citing testimony of Professor Laurence Steinberg that brain maturation can continue as late as age twenty-five).

about the age at which an adolescent brain is like an adult brain, because the answer depends on the individual and the aspect of functioning in question."[200] Moreover, most studies on the developing brain have a critical limitation: they are typically conducted on White, well-resourced test subjects with easy access to university hospitals.[201] More recent studies have shown that environmental factors like poverty, trauma, racism, and substance abuse can delay brain development.[202]

This period of continuing brain development roughly coincides with what psychologist Jeffrey Arnett has termed "emerging adulthood," which describes the developmental period between eighteen and twenty-five.[203] Emerging adulthood is characterized by change and exploration when young people strive to attain self-responsibility and independent decision-making,

200. *See* Monahan et al., *supra* note 198, at 585–86.

201. *See* NAT'L ACADEMIES OF SCI., ENG'G & MED., THE PROMISE OF ADOLESCENCE 96, 354 (Richard J. Bonnie & Emily P. Backes, eds., 2019) (indicating that "individuals living in poverty, including ethnically diverse participants, those without medical providers, and those from rural areas" are underrepresented as test subjects in studies involving the developing brain); Francesca Benson, *Does the Brain Really Mature at the Age of 25?*, IFL SCIENCE (May 19, 2023), https://www.iflscience.com/does-the-brain-really-mature-at-the-age-of-25-68979 [https://perma.cc/4SQL-YDH2] (quoting neuroscientist Dr. Richard Bethlehem concerning the limited identities of test subjects in a study involving MRI scans of 101,457 participants).

202. *See, e.g.*, NAT'L ACADEMIES OF SCI., ENG'G & MED., *supra* note 201, at 118–20 (discussing studies that show that high individual, family, or community stress can delay childhood brain development, as can exposure to violence); Darby Saxbe, Hannah Lyden, Sarah I. Gimbel, Matthew Sachs, Larissa B. Del Piero, Gayla Margolin & Jonas T. Kaplan, *Longitudinal Associations Between Family Aggression, Externalizing Behavior, and the Structure and Function of the Amygdala*, 28 J. RSCH. ON ADOLESCENCE 134, 134 (2018) (finding that exposure to violence in early adolescence can impact mid-adolescent brain structure and function); Gene H. Brody, Joshua C. Gray, Tianyi Yu, Allen W. Barton, Steven R. H. Beach, Adrianna Galván, James MacKillop, Michael Windle, Edith Chen, Gregory E. Miller & Lawrence H. Sweet, *Protective Prevention Effects on the Association of Poverty with Brain Development*, 171 JAMA PEDIATRICS 46, 46–52 (2017) (study of African American youth in Georgia finding that attendance in a supportive parenting program could potentially ameliorate the association between childhood poverty and adult brain development); Nicole H. Weiss, Svetlana Goncharenko, Shannon R. Forkus, Jewelia J. Ferguson & Manshu Yang, *Longitudinal Investigation of Bidirectional Relations Between Childhood Trauma and Emotion-Driven Impulsivity in the Adolescent Brain Cognitive Development Study*, 73 J. ADOLESCENT HEALTH 731, 735 (2023) (finding an association between earlier childhood trauma and later emotion-driven impulsivity); Victor G. Carrion & Shane S. Wong, *Can Traumatic Stress Alter the Brain?: Understanding the Implications of Early Trauma on Brain Development and Learning*, 51 J. ADOLESCENT HEALTH S23, S23–S28 (2012) (finding an association between childhood post-traumatic stress symptoms and reduced volume of the hippocampus and prefrontal cortex, impacting memory and executive functioning); Ken C. Winters & Amelia Arria, *Adolescent Brain Development and Drugs*, 18 PREVENTION RESEARCHER 21, 22–23 (2011) (discussing human studies indicating an association between adolescents with alcohol dependence and reduced volume of the hippocampus and substance abuse alongside animal studies showing an association between alcohol exposure and brain damage); L. M. Squeglia, J. Jacobus & S. F. Tapert, *The Influence of Substance Use on Adolescent Brain Development*, 40 CLINICAL EEG & NEUROSCIENCE 31, 32–36 (2009) ("Current research suggests that substance use in adolescence leads to abnormalities in brain functioning, including poorer neurocognitive performance, white matter quality, changes in brain volume, and abnormal neuronal activation patterns.").

203. *See* Arnett, *supra* note 198, at 471–75.

but engage in increased risk-taking.[204] Although Arnett ascribes a general time frame to this developmental stage, the range is not set in stone: "Like adolescence, emerging adulthood is a period of the life course that is culturally constructed, not universal and immutable."[205]

Some historical precedent supports the notion that a person did not reach all the powers of adulthood until their mid-to-late twenties. Roman law fixed the age of full maturity at age twenty-five.[206] Thus, although a Roman man attained many of the rights of adulthood at age fourteen, he remained under the law's protection for certain purposes as a minor until reaching age twenty-five.[207] For example, although a Roman under twenty-five could form commercial contracts, any commercial transaction deemed harmful to him could be legally canceled.[208] Although English common law never formally adopted this dividing point, custom dictated that many gifts devised via will or settlement should not vest until age twenty-five, indicating that "donors considered that the beneficiaries would attain a true sense of discretion at that age."[209] In the United States, the framers made twenty-five the minimum age for serving in the House of Representatives,[210] thirty for the Senate,[211] and thirty-five for the presidency[212] and vice presidency.[213] Similarly, most states have set a minimum age of twenty-five or thirty to serve as governor.[214] Today, some private industries employ minimum age requirements in the mid-twenties or beyond.[215]

Both the socially constructed fluidity of the age of majority and the latest scientific research indicate that a categorical bar of life without parole solely for those under eighteen is arbitrary. Its rigidity leads to outcomes where an

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204. *See id.*
205. *Id.* at 470.
206. *See* James, *supra* note 160, at 33.
207. *See* Wojciech Kosior, *Human Age and Its Importance in Roman Commercial Law*, 49 J. MOD. SCI. 91, 97–98 (2022); HENRY SUMNER MAINE, ANCIENT LAW 162 (2d ed. 1863).
208. *See* Kosior, *supra* note 207, at 97–98.
209. *See* James, *supra* note 160, at 33.
210. U.S. CONST. art. I, § 3, cl. 3.
211. *Id.* § 2, cl. 2.
212. *Id.* art. II, § 1, cl. 5.
213. *Id.* amend. XII.
214. *See Qualifications for Governor in Each State*, BALLOTPEDIA, https://ballotpedia.org/Qualifications_for_governor_in_each_state [https://perma.cc/T2TK-3BTY] (Sept. 2024).
215. Car rental companies typically require a renter to be at least twenty-one and employ surcharges for those aged twenty-one to twenty-five. *See* Christopher Elliot, *Car Rental Age Restrictions Can Be Complicated. Here's What to Know*, WASH. POST. (Jan. 18, 2023), https://www.washingtonpost.com/travel/tips/car-rental-age-restrictions/ [https://perma.cc/S5E6-KNFV]. In an effort to prevent unauthorized house parties, Airbnb began prohibiting people under twenty-five from renting entire homes locally. *See* Lucas Manfredi, *Airbnb Blocks Home Bookings for Some Guests Under 25 to Crack Down on Unauthorized Parties*, FOX BUS. (July 2, 2020, 7:16 PM), https://www.foxbusiness.com/lifestyle/airbnb-restricts-home-bookings-for-some-25-and-under-guests-to-crack-down-on-unauthorized-parties [https://perma.cc/2797-T3RQ]. Citing high insurance costs, Uber mandated that California drivers be at least twenty-five-years old. *See Uber Raises the Minimum Age for Most California Drivers to 25, Saying Insurance Costs Are Too High*, ASSOCIATED PRESS (Aug. 24, 2023), https://apnews.com/article/uber-age-restriction-drivers-35ac187d3c8cb982cc1e352032efafc5 [https://perma.cc/A36G-25FW].

individual's punishment is disproportionate because it bears little relationship to their personal culpability.

C. The Bright Line Signal of Unworthiness

One theory of punishment is that punishment constitutes society's normative judgment of an individual and their actions.[216] Punishment reflects judgments about an individual's moral worth.[217] In general, those considered more blameworthy are deemed more worthy of punishment.[218] Death sentences and sentences of death by incarceration are signals that an individual has been found unworthy of any opportunity for redemption.[219]

Not only do bright lines create stark divisions between those who get relief and those who do not, but they also create stark divisions between the worthy and the unworthy. They are normative judgments that declare David Maldonado worthy of redemption and his brother Sammy unworthy; Leroy Saxon worthy of redemption and his girlfriend Marie Scott unworthy; seventeen-year-old Rell worthy of redemption, but twenty-two-year-old Rell unworthy—despite the fact that all were bound by decisions made as much younger children when they committed their crimes.

These bright lines ignore a central question: how can a person who shares characteristics that make them less blameworthy also be worthy of death solely because of their age? But ignoring this question reveals the criminal legal system for what it is: an institution that favors blunt administrability over coherent moral signaling. Not only does this incoherence call the value of bright lines into question, but it also undermines faith in the criminal legal system as a whole. When considering the fact that a disproportionate number of the people deemed unworthy of redemption are Black,[220] the system is no longer merely incoherent; rather, it functions as an instrument of racial subordination.[221]

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216. *See, e.g.*, Lee Kovarsky, *Muscle Memory and the Local Concentration of Capital Punishment*, 66 DUKE L.J. 259, 302 (2016) (discussing the relationship between retribution and desert).

217. *See id.*

218. *See id.*

219. *See* Terrell Carter, Rachel López & Kempis Songster, *Redeeming Justice*, 116 NW. U. L. REV. 315, 318 (2021) ("To use the Supreme Court's own words, our sentence 'forswears altogether the rehabilitative ideal.' It was 'an irrevocable judgment about [our] value and place in society.' We were said to have no value to add to and no place in free society. To us, such a sentence feels more like death than life and is more aptly called death by incarceration, or DBI.").

220. *See* ASHLEY NELLIS & DEVYN BROWN, THE SENT'G PROJECT, STILL CRUEL AND UNUSUAL: EXTREME SENTENCES FOR YOUTH AND EMERGING ADULTS 7 (2024), https://www.sentencingproject.org/app/uploads/2024/09/Still-Cruel-and-Unusual-Extreme-Sentences-for-Youth-and-Emerging-Adults.pdf [https://perma.cc/TD8F-XD5] (noting Black people accounted for two-thirds of emerging adults sentenced to life without parole and more than half of adults sentenced to life without parole).

221. *See* Kathryn E. Miller, *The Antisubordination Eighth Amendment*, 112 CALIF. L. REV. 2065, 2067–72 (2024) (discussing the racially subordinating nature of the criminal legal system).

III. THE PROMISE OF STATE SOLUTIONS

The arbitrary and disproportionate sentencing that results from *Miller*'s bright line is inconsistent with the values that underlie the Eighth Amendment. Although the Court is unlikely to reconsider its categorical rulings in the juvenile context any time soon, there is ample opportunity for state judiciaries and legislatures to more expansively apply the reasoning of *Miller* and *Graham*. Four options for reform exist: they may adjust the bright line, underscore it, erase it, or blur it. We discuss each option before recommending blurring the line as the best path forward.

A. Adjusting the Bright Line

To date, several states have opted to adjust the bright line to include higher age groups.[222] Three state judiciaries have done so, holding under their state constitutions that the reasoning of *Miller* applies to some individuals eighteen or older.[223] In *People v. Parks*,[224] the Michigan Supreme Court held that the state's constitutional ban on "cruel or unusual" punishment provided broader protection than its federal counterpart and forbade the mandatory imposition of life without parole on eighteen-year-olds.[225] The court found that because eighteen-year-olds shared the same attributes of youth as juveniles, eighteen-year-olds were equally entitled to individualized sentencing.[226] The court emphasized the arbitrariness of drawing a bright line at eighteen: "It is cruel punishment to mandatorily impose a life-without-parole sentence on an 18-year-old who is one day older and has the same immaturity, impetuosity, and failure to appreciate risks and consequences . . . as a 17-plus-364-day-old when that 17-year-old is likely to receive a less-severe sentence."[227] However, because Kemo Knicombi Parks, the defendant in the case, was eighteen at the time of the crime, the court made no finding regarding older defendants.[228] The Michigan Supreme Court recognized the limits of the *Parks* holding: "We acknowledge that some of the mitigating characteristics in the scientific research submitted by amici and defense counsel apply to young adults, in some form, up to the age of 25. We also do not dispute the dissent's point that any line-drawing will, at times, lead to arbitrary results."[229]

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222. *See, e.g.*, Commonwealth v. Mattis, 224 N.E.3d 410 (Mass. 2024); People v. Parks, 987 N.W.2d 161 (Mich. 2022); Matter of Monschke, 482 P.3d 276 (Wash. 2021); *see also* CAL. PENAL CODE § 3051 (West 2020); D.C. CODE ANN. § 24-403.03 (West 2021); 730 ILL. COMP. STAT. 5/5-4.5-115 (2020); WYO. STAT. ANN. §§ 7-13-1002 to -1003 (West 2021).

223. *See, e.g.*, *Mattis*, 224 N.E.3d at 410; *Parks*, 987 N.W.2d at 161; *Matter of Monschke*, 482 P.3d at 276.

224. 987 N.W.2d 161 (Mich. 2022).

225. *See id.* at 164, 170. The *Parks* court held that the Constitution did not forbid the mandatory imposition of life without parole on those who were eighteen at the time of their crime. *See id.*

226. *See id.* at 171.

227. *Id.* at 180 (quoting Miller v. Alabama, 567 U.S. 460, 477 (2012)).

228. *See id.* at 171 (indicating that defendant John Antonio Poole in the companion case at bar was also eighteen at the time of his crime).

229. *Id.*

Similarly, the state supreme courts of both Washington and Massachusetts have expanded the protections of *Miller* and *Graham* to eighteen-, nineteen-, and twenty-year-olds. In *Matter of Monschke*,[230] the Washington Supreme Court held that its state constitution prohibited mandatory sentences of life without parole for anyone under twenty-one.[231] Finding that "no meaningful neurological bright line" existed between ages seventeen and eighteen, nineteen, or twenty, and that statutory ages of majority were inherently flexible, the court expanded *Miller*'s individualized requirement to these age groups.[232] In *Commonwealth v. Mattis*,[233] the Massachusetts Supreme Judicial Court went a step further and categorically barred sentences of life without parole for those who were under twenty-one at the time of their crime.[234] The court found sufficient evidence that emerging adults and juveniles were neurologically similar with respect to impulsivity, risk-taking, vulnerability to peer pressure, and capacity for change, and accordingly found that the Massachusetts Constitution required parole eligibility for both groups.[235]

Several state legislatures have enacted laws that have shifted *Miller*'s bright line to include greater ages. The District of Columbia passed a second-look sentencing provision that enables people convicted of crimes committed before age twenty-five to apply for a sentence reduction.[236] Illinois abolished life without parole for most people under twenty-one at the time of their crimes.[237] California shifted youthful offender parole eligibility upward to include those convicted of crimes committed before age twenty-five,[238] whereas Wyoming expanded youthful offender sentencing protections to anyone under thirty.[239]

The benefit of adjusting *Miller*'s bright line upward is that doing so is more consistent with the science indicating that neurological and behavioral development continues well beyond age eighteen.[240] It is also more consistent with the recognition of a period of emergent adulthood where young adults harbor unique characteristics, more consistent with adolescence than full adulthood.[241] Proponents may also argue that an age eligibility

230. 482 P.3d 276 (Wash. 2021).
231. *See id.* at 287.
232. *See id.* at 283, 287.
233. 224 N.E.3d 410 (Mass. 2024).
234. *See id.* at 415.
235. *See id.* at 421–24, 434–38.
236. D.C. CODE ANN. § 24-403.03 (West 2021).
237. 730 ILL. COMP. STAT. 5/5-4.5-115 (2020).
238. CAL. PENAL CODE § 3051 (West 2020).
239. WYO. STAT. ANN. §§ 7-13-1002 to -1003 (West 2021).
240. *See generally* Brief for the American Psychological Ass'n et al. as Amici Curiae Supporting Petitioners, *supra* note 82; Brief for the American Medical Ass'n & the American Academy of Child & Adolescent Psychiatry as Amici Curiae in Support of Neither Party, *supra* note 83.
241. *See generally* Brief for the American Psychological Ass'n et al. as Amici Curiae Supporting Petitioners, *supra* note 82; Brief for the American Medical Ass'n & the American Academy of Child & Adolescent Psychiatry as Amici Curiae in Support of Neither Party, *supra* note 83.

requirement limits litigation that could overwhelm courts. However, an adjusted bright line is still a bright line, and the problem of arbitrary individual outcomes merely shifts upstream to higher age groups. As birth date continues to carry more importance than culpability, courts are unable to make nuanced determinations based on an individual's life experiences, community, and opportunities. Bright line sentencing is unable to account for the complexity of a human experience like Rell's, where decisions made as a child not only bound his future self but also interfered with his maturation and development.

B. Underscoring the Bright Line

Many states have opted to extend *Graham* and *Miller* by underscoring the demarcation line between seventeen and eighteen. These states have increased the availability of relief for youth who committed a crime when they were under eighteen. Some of these states have gone beyond *Miller*'s guarantee of individualized sentencing, abolishing life without parole sentences for juveniles who committed homicide crimes.[242]

Other states have banned other lengthy sentences for the same cohort, typically deeming them "de facto" or "constructive" life without parole.[243] In doing so, state courts have applied the reasoning of *Graham*, which called for those under eighteen to be entitled to a sentence that provides "some meaningful opportunity to obtain relief," instead of the letter of *Graham*, which only outlawed life without parole for nonhomicide crimes.[244] Several legislatures have also adopted second-look sentencing provisions—

242. As of 2023, thirty-three states and the District of Columbia have banned life without parole sentences for individuals engaged in criminal activity before age eighteen. *See States That Ban Life Without Parole for Children*, CAMPAIGN FOR FAIR SENT'G YOUTH, https://cfsy.org/media-resources/states-that-ban-juvenile-life-without-parole/ [https://perma.cc/9FE7-Q3CJ] (last visited Mar. 7, 2025).

243. *See, e.g.*, Casiano v. Comm'r of Corr., 115 A.3d 1031, 1047 (Conn. 2015) (finding a fifty-year sentence constituted de facto life without parole); People v. Stovall, 987 N.W.2d 85, 95 (Mich. 2022) (finding life with parole sentence for second-degree murder violated state constitution when imposed on person under eighteen); State *ex rel.* Carr v. Wallace, 527 S.W.3d 55, 62–63 (Mo. 2017) (finding life sentence with parole after fifty years constituted de facto life without parole); State v. Comer, 266 A.3d 374, 380–81 (N.J. 2022) (holding certain lengthy mandatory sentences unconstitutional when imposed on those under eighteen at the time of their crimes and creating a judicial review mechanism for resentencing this cohort); State v. Kelliher, 873 S.E.2d 366, 389–90 (N.C. 2022) (finding sentence of forty years or more unconstitutional under state constitution when imposed on individual under eighteen); State v. Booker, 656 S.W.3d 49, 68 (Tenn. 2022) (finding a sentence of fifty-one years constituted a de facto life sentence and ordering a parole hearing after twenty to thirty-six years of incarceration); State v. Haag, 495 P.3d 241, 251 (Wash. 2021) (en banc) (finding sentence of forty-six years violated the federal and state constitutions for a seventeen-year-old); Bear Cloud v. State, 334 P.3d 132, 141–42 (Wyo. 2014) (finding consecutive sentence that ordered parole hearing after fifty years constituted de facto life without parole); CAMPAIGN FOR FAIR SENT'G YOUTH, *supra* note 139.

244. *See* Graham v. Florida, 560 U.S. 48, 75 (2010) ("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.").

corrective legislation to allow incarcerated defendants to seek resentencing for existing sentences—for those under eighteen with these extreme sentences.[245]

Although abolition or reconsideration of these lengthy sentences is appealing to reformers who desire shorter sentences, the stark age cutoff does little to reduce arbitrary outcomes. By underscoring the demarcation line between seventeen and eighteen and widening the gulf between sentencing outcomes, this solution increases the potential for arbitrariness in individual cases. However, these solutions do set a precedent of flexibility by blurring a second bright line: the line between literal and constructive life without parole. Flexibility on sentence length may be an indicator that flexibility on age is also a politically feasible solution.

C. Erasing the Bright Line

Other states have opted to erase the bright line entirely by pursuing sentencing reform that is not age dependent.[246] This type of reform typically occurs via second-look sentencing provisions.[247] Although some of these second-look statutes are age dependent,[248] many do not use age as a criterion. Connecticut allows anyone, regardless of age or sentence length, who was convicted at trial and given a nonmandatory sentence to petition for resentencing.[249] New York and Oklahoma offer resentencing opportunities to some survivors of domestic violence, regardless of age.[250] California allows military veterans who suffered from trauma, substance abuse, or mental health issues as a result of their service to petition for resentencing.[251] Separate legislation in California allows most individuals to petition for resentencing if a judge, a prosecutor, the attorney general, or the secretary of

245. *See, e.g.*, D.C. CODE ANN. § 24-403.03 (West 2021); OR. REV. STAT. ANN. § 420A.203(1)(A) (West 2020); FLA. STAT. ANN. § 921.1402 (West 2015); N.D. CENT. CODE ANN. § 12.1-32-13.1 (West 2023); *see also* State v. Comer, 266 A.3d 374, 380–81 (N.J. 2022) (holding certain mandatory sentences unconstitutional when imposed on those under eighteen at the time of their crimes and creating a judicial review mechanism for resentencing this cohort); DEL. R. CRIM. P. SUPER. CT. § 35A(a)(1) (2024).

246. *See infra* notes 245–49.

247. *See infra* notes 245–49.

248. *See supra* note 241.

249. *See* CONN. GEN. STAT. ANN. § 53a-39 (West 2024). Those who accepted guilty pleas of less than seven years may also apply for resentencing. *Id.* § 53a-39(b).

250. *See* N.Y. CRIM. PROC. § 440.47 (McKinney 2024); OKLA. STAT. ANN. tit. 22, §§ 1090.1–.5 (West 2024); Oliva Empson, *Oklahoma Law to Allow Resentencing for Incarcerated Domestic Violence Survivors*, GUARDIAN (June 17, 2024, 7:00 AM), https://www.theguardian.com/us-news/article/2024/jun/17/oklahoma-survivors-act-domestic-violence [https://perma.cc/9CEA-BSQC]. Illinois also has a second-look sentencing act provision aimed at domestic violence survivors. 735 ILL. COMP. STAT. ANN. § 5/2-1401 (West 2025). However, the petition must be filed within two years of the original sentence and does not apply to individuals sentenced before 2014. *Id.* As a result, few people have benefited from the law. *See Domestic Violence Survivors Aren't Getting the Reduced Sentences They Qualify for*, PBS NEWS (July 14, 2021, 1:54 PM), https://www.pbs.org/newshour/nation/domestic-violence-survivors-arent-getting-the-reduced-sentences-they-qualify-for [https://perma.cc/DF86-2XV2].

251. CAL. PENAL CODE § 1170.91 (West 2023).

the California Department of Corrections and Rehabilitation supports the effort.[252] Similarly, Illinois, Minnesota, Oregon, and Washington have prosecutor-initiated resentencing laws, which broadly permit prosecutors to petition the court for resentencing individuals with felony convictions.[253] Finally, Colorado has recently passed a second-look provision that permits habitual offenders to petition for a reduced sentence; however, the law only applies to those sentenced after July 1, 2023.[254]

Second-look sentencing provisions aimed at groups like veterans or domestic violence survivors, whose personal trauma history may have factored into their crime of conviction, have the potential to make sentencing outcomes less arbitrary by incorporating contemporary understandings of culpability.[255] However, none of the states that have enacted these provisions have provided similar opportunities for youth and/or emerging adults. Accordingly, these laws remain blind to contemporary findings in both the legal and scientific realms regarding the reduced culpability of these groups. The result is an incomplete and arbitrary acknowledgment of the factors known to mitigate blameworthiness.

D. Blurring the Bright Line: Individualized Sentencing for Extreme Sentences

A final approach to reform involves blurring the line; the line is kept in place for the categorical ban of certain punishments but individuals outside the line are permitted to apply for relief based on shared mitigating qualities. Put another way, extreme punishments would be banned for individuals below an agreed-upon age. But *anyone* facing a sentence of actual or constructive life without parole would be entitled to individualized sentencing and given an opportunity to argue that their own characteristics of vulnerability, impulsivity, and changeability qualify as mitigation.[256]

This is how the Court's categorical jurisprudence already operates in the death penalty context.[257] In capital cases, the Court has found that the Eighth Amendment guarantees individualized sentencing.[258] Individualized sentencing requires capital sentencers to consider any aspect of the character of the defendant or the characteristics of the crime when imposing punishment.[259] This individualized sentencing requirement means that people age eighteen and over can benefit from the reasoning of *Simmons* in

252. *Id.* § 1172.1.

253. *See* 725 ILL. COMP. STAT. ANN. § 5/122-9 (West 2022); MINN. STAT. ANN. § 609.133 (West 2024); OR. REV. STAT. ANN. § 137.218 (West 2022); WASH. REV. CODE ANN. § 36.27.130 (West 2020).

254. COLO. REV. STAT. ANN. § 18-1.3-801 (West 2023).

255. *See supra* notes 244–48.

256. States could implement individualized sentencing both prospectively in the form of sentencing hearings after trial and retroactively via second-look sentencing provisions.

257. *See* Woodson v. North Carolina, 428 U.S. 280, 304 (1976).

258. *See id.*

259. *See* Lockett v. Ohio, 438 U.S. 586, 605 (1978); Eddings v. Oklahoma, 455 U.S. 104, 112 (1982).

capital cases. They are entitled to introduce mitigating evidence of youth—including their vulnerability, impulsivity, and changeability—in support of a sentence less than death.

This is not the case with *Graham* and *Miller* because these cases involve sentences of life without parole, not death sentences.[260] *Graham* banned life without parole for individuals under eighteen convicted of nonhomicides but did nothing at all for those eighteen and over because these individuals were not constitutionally entitled to individualized sentencing.[261] *Miller* expanded individualized sentencing beyond the capital punishment realm by applying it to youth under eighteen who committed homicide crimes.[262] But, unlike with *Simmons*, individuals on the wrong side of the *Graham*/*Miller* bright line cannot take advantage of the logic of these cases by introducing mitigating evidence of youth in support of an argument for a lesser sentence. States can and do still constitutionally subject individuals eighteen and over to mandatory sentences, including mandatory life without parole. Thus, for *Graham*/*Miller* defendants, the bright line operates at its most violent.

Blurring the line by keeping a defendant's age as a qualifier for a categorical ban but allowing all defendants to benefit from the reasoning of the *Miller* trilogy has several advantages. First, it pulls the Court's juvenile life without parole cases back in line with its death penalty cases and makes for a more harmonious Eighth Amendment jurisprudence. Although state adoption of this solution does not directly demand the Supreme Court's reconsideration, the actions of state legislatures will be taken into account when the Court evaluates evolving standards of decency in future Eighth Amendment cases.[263] A critical mass of state legislatures could push the Court to mandate individualized sentencing for anyone facing a sentence of death by incarceration.[264]

Second, this solution reflects changing societal norms and growing scientific research concerning maturation into adulthood. It acknowledges both that particular ages have some scientific and social significance and that this significance is not all-encompassing.[265] Its flexibility mirrors a society that sets a variety of ages of majority, based on community, context, and a

260. *See generally* Graham v. Florida, 560 U.S. 48 (2010); Miller v. Alabama, 567 U.S. 460 (2012).

261. *See Graham*, 560 U.S. at 82.

262. *See Miller*, 567 U.S. at 477, 480.

263. *See, e.g.*, McCleskey v. Kemp, 481 U.S. 279, 300 (1987) ("In assessing contemporary values, we have eschewed subjective judgment, and instead have sought to ascertain 'objective indicia that reflect the public attitude toward a given sanction.' First among these indicia are the decisions of state legislatures, 'because the . . . legislative judgment weighs heavily in ascertaining contemporary standards.'" (internal citations omitted)); *see also* Miller, *supra* note 32, at 122–27 (discussing the history and application of the evolving standards of decency test and the importance of the decisions of state legislatures in assessing it).

264. *See, e.g.*, Atkins v. Virginia, 536 U.S. 304, 315 (2002) (assessing the actions of state legislatures in holding that the Eighth Amendment categorically forbade the execution of people with intellectual disability and finding that "[i]t is not so much the number of these States that is significant, but the consistency of the direction of change").

265. States can determine whether the age is eighteen, twenty-one, twenty-five, or something else, depending on community norms and scientific study.

growing understanding of neuroscience.[266] There is value in a categorical ban on certain punishments. The Supreme Court has traditionally found categorical bans necessary when sentencer discretion is especially untrustworthy. The Court has found that characteristics such as intellectual disability and youth carry a risk of being seen as aggravating instead of mitigating.[267] The *Simmons* Court emphasized that the trial prosecutor had told the jury that Christopher's young age made him *more* culpable: "Think about age. Seventeen years old. Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary."[268] A categorical bar prevents sentencers from being tempted by sophistry of this type.

Third, a blurred line solution gives judges the power to correct the facially unjust outcomes suffered by less culpable co-defendants like Sammy Maldonado and Marie Scott. It allows people like Rell a chance to explain how his life circumstances and thought processes as a twenty-two-year-old were a lot more like those of his teenage self than the man he is today. It gives countless individuals a meaningful opportunity to avoid dying in prison. Discretion always creates a risk of increased arbitrariness. But by keeping the categorical bar in place for some people and permitting individualized sentencing for the rest, this solution necessarily channels discretion toward leniency. Put another way, with a blurred line solution in place, no individual will end up with a harsher sentence than the one they have under the current regime.

E. Possible Objections to a Blurred Line Solution

Some may question the administrative feasibility of guaranteeing individualized sentencing for all individuals faced with a sentence of death by incarceration. Indeed, those who support bright lines often cite their administrative ease. First, there are reasons to believe that administrability fears are unlikely to be realized. People serving sentences of death by incarceration already file numerous challenges to their sentence, often in a pro se capacity, for the simple reason that they have little incentive not to do so. For example, Rell drafted and filed a pro se PCRA petition under *Miller*, even after learning that the Court would likely find his claim procedurally barred due to his age. So did many others.[269] A blurred line solution provides incarcerated people who are already engaged in litigation with an

266. *See supra* Part II.B.

267. *See, e.g.*, *Atkins*, 536 U.S. at 321 ("[R]eliance on mental retardation as a mitigating factor can be a two-edged sword that may enhance the likelihood that the aggravating factor of future dangerousness will be found by the jury."); Roper v. Simmons, 543 U.S. 551, 558, 573 (2005) (discussing prosecutor's argument to jury that it should consider Simmons's young age as aggravating evidence); *see also* Graham v. Florida, 560 U.S 48, 76–77 (2015) (finding a categorical bar necessary in part because of the risk that the facts of the crime would inflame sentencers to impose an undeservedly harsh sentence).

268. *Simmons*, 543 U.S. at 558, 573.

269. *See supra* notes 119–20.

opportunity for that litigation to be fruitful. Second, the increased administrative burden is one well worth suffering. The imposition of a life sentence is a legal determination that an individual human is beyond redemption.[270] Such determinations should not be reflexive or even cursory. If courts lack the administrative capacity to make these determinations, then they may simply impose shorter sentences.

Others may question the political feasibility of enacting individualized sentencing for anyone facing a sentence of death by incarceration. Indeed, political feasibility is likely to vary by jurisdiction. But although there is an obvious role for state legislatures in enacting prospective sentencing reform and/or second-look sentencing statutes, state courts currently have the power to bring about individualized sentencing by simply refraining from interpreting their procedural bars so sharply. Recall that following *Graham* and *Miller*, Rell and others in his position filed postconviction petitions asking state courts to revisit their extreme sentence in light of the new rulings. These petitioners had to explain why they should be excused from filing deadlines that required postconviction claims to be raised within a short time of their conviction. New constitutional rulings count as grounds to restart the filing clock, but the petitioner can only benefit from the new deadline if they can demonstrate that the new constitutional ruling clearly applies to them.[271] Rather than interpret *Graham* and *Miller* narrowly to apply only to those under eighteen, these courts had the power to come to the same simple conclusion to which Rell once came based on *Miller*'s reasoning: that the new discoveries on brain development that the Court relied on in these cases clearly applied to him and others like him. Even this slightly more flexible application of *Miller* and *Graham* vis-à-vis state procedural bars would have permitted individualized sentencing for those who could demonstrate their shared characteristics of impulsivity, vulnerability, and changeability.

Finally, others might worry that a movement away from age eighteen as a clear marker of adulthood in the criminal context would imperil age of majority statutes in other contexts. But this need not be the case. As we have demonstrated, the age of adulthood has fluctuated over time based on changing government needs, social norms, and scientific understanding. It is likely to continue to do so. Aspects of contemporary American society, including declining needs for soldiers as warfare becomes more dependent on technology, changing scientific understandings of maturation and brain development, delayed parenthood, and the growing difficulty that young people have securing employment and purchasing homes may all play a part in shifting conceptions of adulthood upward. Changes in criminal law are merely one data point and one that has historically lagged behind changes in civil law.

270. *See* Carter et al., *supra* note 219, at 318.

271. *See, e.g.*, 42 PA. STAT. AND CONS. STAT. ANN. § 9545(b)(1)(iii) (West 2018).

CONCLUSION

We have focused on the *Graham*/*Miller* age-based categorical bar, although we recognize that many other bright lines exist in the law. Our hope is that this Essay raises questions about the efficacy of these lines and pushes judges, legislators, and scholars to think critically about their human costs. Despite Pennsylvania courts repeatedly dismissing his *Miller* claims, Rell was able to secure his freedom through executive clemency; after years of self-advocacy and the support of Drexel University Thomas R. Kline School of Law and the Abolitionist Law Center, his sentence of life without parole was commuted in 2022. But many others—including Sammy Maldonado and Marie Scott—have not had Rell's success and continue to serve reflexively-imposed, arbitrary sentences of death by incarceration.