Note

Rehabilitating Juvenile Life Without Parole: An Analysis of *Miller v. Alabama*

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INTRODUCTION

America’s justice system often treats minors as adults due to the nature of their crimes, even if they committed these crimes as children. While some sentencing judges are able to take an offender’s youth into consideration, considering their limited ability to weigh risks and their unique capacity for reform, until recently others were bound by laws that required people convicted of certain crimes in adult court be sentenced to life in prison without the possibility of parole, regardless of their age.\(^1\) Because of this, as of 2012, roughly 2,570 people were serving sentences of life without the possibility of parole for crimes they committed before their eighteenth birthday.\(^2\)

In *Miller v. Alabama*, the Supreme Court sought to remedy this injustice, striking down sentencing schemes that mandate life without parole for juvenile offenders.\(^3\) Concluding that a sentencer must be given the opportunity to take

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\(^2\) *Id.*

the mitigating circumstance of youth into consideration, the Justices cited key differences between youth and adult criminals and noted the importance of individualized sentencing for the imposition of the most severe punishments. In doing so, the Justices added to a line of precedent that recognizes both the unique nature of juvenile offenders and the devastating effects of life without parole sentences for these youths.

This Case Note argues that although the Miller decision is consistent with existing precedent and public policy, the Court should have done more to heed policy concerns relating to youths' unique vulnerability and their capacity for reform by barring juvenile life without parole sentences altogether. Because juveniles are more apt to engage in risky behavior than are adults, and because of their ability to respond positively to rehabilitative services, juvenile delinquency is a poor predictor of adult criminality, and juvenile life without parole sentences fail to achieve the penological goals they seek to advance. Furthermore, juvenile offenders' particular need for rehabilitative services is at odds with the juvenile life without parole sentencing system, which often denies inmates the opportunity to access these services. For these reasons, I argue that juvenile offenders and the general public are best served by a categorical ban on juvenile life without parole sentencing.

I. THE CASE

In 2003, fourteen-year-old Evan Miller was arrested in connection with the death of his neighbor, Cole Cannon. After Miller, Cannon, and one of Miller's friends spent an evening drinking and smoking marijuana, Miller and Cannon allegedly got into an altercation. Miller and his friend beat Cannon unconscious, then attempted to cover up the evidence by starting a fire, which ultimately killed Cannon. While Alabama law required that Miller be initially charged as a juvenile, the District Attorney successfully petitioned for his removal to adult court. He was found guilty of the crime of murder in the course of arson, and in accordance with Alabama law, the court imposed the

4. Id. at 2475.
5. Id. at 2464-66.
6. Id. at 2467.
7. See infra Part III.A.
10. Id. This was not Miller's first encounter with drug use; his mother abused drugs and was an alcoholic, as was his father, who beat and psychologically abused Miller. Brief of Former Juvenile Court Judges as Amici Curiae in Support of Petitioners at 9-10, Miller v. Alabama, 132 S. Ct. 2455 (2012) [hereinafter Juvenile Court Judges Brief]. From a young age, Miller emulated his parents' behavior. Id. at 10.
12. Id.
mandatory penalty of life without the possibility of parole.\textsuperscript{13} The Alabama Court of Criminal Appeals affirmed, and the Alabama Supreme Court denied review.\textsuperscript{14}

Kuntrell Jackson was also fourteen when he committed the crime that resulted in his sentence of life without the possibility of parole, acting as a lookout during a robbery that resulted in the killing of a video store clerk.\textsuperscript{15} Jackson was charged as an adult with capital felony murder and aggravated robbery, despite his unsuccessful attempts to have his case transferred to juvenile court.\textsuperscript{16} A jury found him guilty, and he was sentenced to life without the possibility of parole.\textsuperscript{17} Following the U.S. Supreme Court’s 2005 holding that death sentences for juvenile offenders violated the Eighth Amendment,\textsuperscript{18} Jackson filed a petition for habeas corpus, arguing that his sentence was unconstitutional.\textsuperscript{19} While an appeal of a dismissal of his petition was pending, the Court struck down life without parole sentences for juvenile nonhomicide offenders.\textsuperscript{20} Nonetheless, the Arkansas Supreme Court affirmed the dismissal of Jackson’s habeas petition.\textsuperscript{21}

The Supreme Court granted certiorari in Miller and Jackson’s cases, joining the two for oral argument.\textsuperscript{22}

\textbf{A. Majority Opinion}

The Court’s decision, authored by Justice Kagan, held all mandatory life without parole sentences imposed upon juvenile offenders unconstitutional.\textsuperscript{23} In concluding that a sentencer must be given the opportunity to consider mitigating circumstances before condemning a youth to life in prison without the possibility of parole, the Court relied on two lines of precedent.\textsuperscript{24}

First, the Court looked to a set of cases holding that youths are categorically different from adults for the purposes of sentencing, emphasizing children’s diminished culpability and their potential for reform.\textsuperscript{25} These cases noted that youths lack maturity and a fully developed sense of responsibility, they are particularly vulnerable to negative influences, and their criminal actions are less likely than those of adults to evince incorrigibility.\textsuperscript{26} Based

\begin{itemize}
\item \textsuperscript{13} Id. at 2462-63.
\item \textsuperscript{14} Id.
\item \textsuperscript{15} Id. at 2461. Despite Jackson’s young age, he had repeatedly been exposed to violence throughout his short life. Juvenile Court Judges Brief, supra note 10, at 12.
\item \textsuperscript{16} Miller, 132 S. Ct. at 2461.
\item \textsuperscript{17} Id.
\item \textsuperscript{18} Roper v. Simmons, 543 U.S. 551 (2005).
\item \textsuperscript{19} Miller, 132 S. Ct. at 2461.
\item \textsuperscript{20} Id.; see also Graham v. Florida, 130 S. Ct. 2011, 2026 (2010).
\item \textsuperscript{21} Miller, 132 S. Ct. at 2461.
\item \textsuperscript{22} 132 S. Ct. 548 (U.S. Nov. 7, 2011) (No. 10-9646).
\item \textsuperscript{23} Miller, 132 S. Ct. at 2464.
\item \textsuperscript{24} Id. at 2464, 2467.
\item \textsuperscript{25} Id. at 2464 (quoting Graham, 130 S. Ct. at 2026).
\item \textsuperscript{26} Id. at 2464 (citing Roper v. Simmons, 543 U.S. 551, 569-70 (2005)).
\end{itemize}
upon these cases, the Court cited the lack of penological justification for mandatory juvenile life without parole.\textsuperscript{27} Ultimately, the Justices concluded precedent dictated that age and other mitigating factors must be taken into account in sentencing—a requirement at odds with the lower courts’ holdings.\textsuperscript{28}

In emphasizing the importance of situation-specific sentencing judgments, the Court drew upon a second line of cases: those requiring decision-makers to conduct a fact-specific analysis before sentencing a defendant to death.\textsuperscript{29} In light of those earlier decisions, the \textit{Miller} Court similarly concluded that the mitigating circumstances in Miller and Jackson’s cases illustrated the need for individualized sentencing.\textsuperscript{30}

The Court also rejected a series of arguments made by the States. In response to the assertion that a holding in favor of the petitioners would conflict with Eighth Amendment precedent, the majority noted that this precedent does not address juvenile sentencing.\textsuperscript{31} The Court likewise rejected the States’ emphasis on the widespread use of juvenile life without parole sentencing, pointing out that the ruling did not bar states from imposing these sentences, but instead simply required sentencing courts to employ certain safeguards before doing so.\textsuperscript{32} Finally, in response to the claim that courts already consider mitigating factors when deciding whether to try a juvenile offender as an adult, the Court noted that many states use mandatory transfer systems, and that even in those that do not, the decision-maker transferring the case often has little information about the offender.\textsuperscript{33}

\section*{B. Dissenting Opinions}

Four Justices dissented. Chief Justice Roberts argued that the Court’s reasoning was at odds with constitutional jurisprudence because it overlooked social standards, state practice, and legislative intent.\textsuperscript{34} The Chief Justice also pointed to the \textit{Graham} v. Florida and \textit{Roper} v. Simmons Courts’ identification of lines between homicide and nonhomicide offenses and between the death penalty and life without parole, arguing that these distinctions should preclude the majority from relying on those cases.\textsuperscript{35} Justice Thomas argued that the precedent relied upon by the Court was inconsistent with the original understanding of the Eighth Amendment,\textsuperscript{36} while Justice Alito called the

\begin{itemize}
  \item \textsuperscript{27} Id. at 2465 (citing Graham, 130 S. Ct. at 2028-29).
  \item \textsuperscript{28} Id. at 2465-66.
  \item \textsuperscript{29} Id. at 2467; see also Woodson v. North Carolina, 428 U.S. 280 (1976); Johnson v. Texas, 509 U.S. 350, 367 (1993).
  \item \textsuperscript{30} Miller, 132 S. Ct. at 2468-69.
  \item \textsuperscript{31} Id. at 2470.
  \item \textsuperscript{32} Id. at 2471.
  \item \textsuperscript{33} Id. at 2474.
  \item \textsuperscript{34} Id. at 2477 (Roberts, C.J., dissenting).
  \item \textsuperscript{35} Id. at 2480-81.
  \item \textsuperscript{36} Id. at 2482 (Thomas, J., dissenting).
\end{itemize}
holding an “arrogation of legislative authority” with no Constitutional basis and warned that it would lead to the elimination of life without parole sentences for juvenile offenders altogether.37

II.
LEGAL BACKGROUND AND EXISTING LAW

Miller adds to a line of juvenile-sentencing opinions, many of which emphasize youths’ capacity for rehabilitation and reform. One of the most significant of these is the Court’s 2005 holding in Roper v. Simmons.38 There, the Justices rejected death sentences for those who were under 18 when they committed their crimes,39 stressing that the personality traits of youths are “more transitory” than those of an adult, and therefore less likely to be evidence of an inability to change.40 That youths are in the process of defining their identities, the Roper Court reasoned, “means it is less supportable to conclude that even a heinous crime committed by [the] juvenile is evidence of irretrievably depraved character.”41 Even experts, the Justices noted, are seldom able to predict whether a juvenile’s conduct represents “unfortunate yet transient immaturity” or “irreparable corruption.”42 The Roper Court was therefore unwilling to execute these offenders.

Five years later, the Court applied a similar analysis in Graham v. Florida, barring the sentencing of juvenile nonhomicide offenders to life without parole.43 The fact that Graham violated the conditions of his parole after promising to “turn [his] life around” convinced the sentencing judge there was nothing the court could do for him.44 Nonetheless, the Justices once again stressed the differences between juvenile and adult offenders, including the often-transient nature of juvenile delinquency and the difficulty in predicting whether such conduct could predict future criminality.45 The Court also argued that juvenile life without parole sentences lack proportionality (and therefore constitutionality) because they fail to satisfy any legitimate penological purpose.46 Most importantly, the Graham Court pointed out, a life sentence for a minor represents a societal determination that the minor is beyond moral redemption.47

Miller is consistent with the Court’s belief in the juvenile offender’s potential for reform. The Miller Court stressed that mandatory juvenile life

37. Id. at 2487, 2489 (Alito, J., dissenting).
39. Id. at 578-79.
40. Id. at 570.
41. Id.
42. Id. at 573.
43. 130 S. Ct. 2011, 2034 (2010).
44. Id. at 2018, 2020.
45. Id. at 2026.
46. Id. at 2030.
47. Id. at 2027 (quoting Naovarath v. State, 105 Nev. 525, 526 (1989)).
without parole sentences are at odds with the idea that youths’ characters are subject to change, noting that such punishments “foreswear[] altogether the rehabilitative ideal.” More importantly, the Miller Court noted, mandatory life without parole schemes prevent decision makers from making individualized sentencing decisions. The Court was right to conclude that these sentencing schemes were inconsistent with existing precedent, but as the following Section demonstrates, the Justices could have issued an opinion that relied more heavily on these public policy concerns.

III. CASE ANALYSIS

A. Miller Is Consistent with Public Policy, But Is Only a Partial Step Towards Necessary Sentencing Reform.

Miller echoes the opinions of psychologists and juvenile-welfare professionals who assert that the adolescent brain is in transition; that adolescents are capable of reform; and that it is critical that they be afforded the opportunity for rehabilitation. By reducing the number of juvenile life without parole sentences, the Miller Court heeds these public policy concerns, allowing sentencers to take into consideration mitigating factors, like youth, that might cut against a determination that a juvenile offender is beyond redemption and therefore worthy of a life without parole sentence. Because juvenile risk-taking behavior is a poor predictor of adult criminality, the Justices were correct to give sentencers the opportunity to take a young defendant’s age and background, as well as his criminal record, into consideration. However, the Court should have done more to serve vulnerable juvenile populations by eliminating juvenile life without parole sentences altogether.

B. Public Policy Reasons to Eliminate Juvenile Life Sentences Without Parole

1. Juveniles’ personalities are in transition.

The inchoate nature of children’s and teenagers’ personalities is “the defining quality of adolescence.” Although youths often engage in risk-taking behavior because they have not yet developed a fully-formed sense of self, such

49. Id. at 2466.
52. See, e.g., Juvenile Correctional Administrators Brief, supra note 51, at 18-21.
53. Graham APA Brief, supra note 50, at 19.
behavior rarely persists into adulthood. Because children in their middle and late teens are undergoing such drastic personality change, it is not surprising that many juvenile offenders serving life sentences describe themselves as radically different from who they were as adolescents.

Psychological research demonstrates that youths undergo striking personality changes as they mature. Studies demonstrate that children’s personality traits are still in transition during the late teenage years, but that few youths who engage in criminal conduct develop patterns of criminality in their adulthood. This is because youths, unlike adults, lack a fully developed frontal lobe, which governs the brain’s capacity to plan and organize thoughts and actions. The dorsolateral prefrontal cortex, a critical part of the brain for impulse control and the ability to weigh consequences, does not fully develop until an individual reaches his twenties. A child’s antisocial and risk-taking behavior thus peaks at around age 17, and declines steeply until he reaches age 30.

Because so many people engage in risk-taking and antisocial behavior during late adolescence, it is particularly difficult to predict a juvenile’s likelihood of future criminality based on his conduct as a teenager. Advanced studies attempting to predict criminality have yielded false positives at rates of up to 87 percent. Furthermore, the Supreme Court has cited studies estimating that projections of future criminality fail at a rate of roughly 66 percent. In an amicus brief filed in support of the plaintiffs in Miller and Jackson, a group of former juvenile court judges stressed the difficulty of predicting a juvenile offender’s future criminality, noting that the best time to evaluate whether someone has the capacity for reform is “after they have had time to mature, not

57. Id. at 21; Graham APA Brief, supra note 50, at 20.
58. AGAINST ALL ODDS, supra note 1, at 11.
59. Id.
60. Terrie E. Moffitt, Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy, 100 PSYCH. REV. 674, 675 (1993); see also Elizabeth Cauffman & Laurence Steinberg, (Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable than Adults, 18 BEHAV. SCI. & LAW 741, 756 (2000) (identifying a precipitous increase in responsible decision-making between the ages of sixteen and nineteen).
61. APA Brief, supra note 56, at 22 (citing ROLF LOEBER & DAVID FARRINGTON, YOUNG HOMICIDE OFFENDERS AND VICTIMS: RISK FACTORS, PREDICTION, AND PREVENTION FROM CHILDHOOD 75 (2011)).
when they are initially sentenced. The Miller Court was therefore wise to reduce the number of juveniles sentenced to life without parole. However, because predictions of future criminality are nearly impossible, a categorical ban on juvenile life without parole would create even more opportunities for those capable of rehabilitating themselves to do so.

2. Juvenile Offenders Are Uniquely Capable of Reform.

Because adolescents do not develop a fully formed sense of self until they reach their twenties, those who engage in criminal conduct during their teenage years are often capable of rehabilitation and reform. Professionals who work with juvenile offenders attest to their “remarkable resilience,” and report notable success in rehabilitating these offenders. Many former juvenile offenders say the same: as one inmate serving a life sentence stated, “as you get older, your conscience and insight develop. I’m not the same person.” By allowing sentencing judges to take into consideration the possibility that a juvenile offender will reform, the Miller Court acknowledges these policy considerations. However, because so many offenders are ultimately rehabilitated, and because many of them seek out opportunities for personal growth while in prison (even when they have no chance of parole), the Court could have gone further, by banning juvenile life without parole sentences in order to allow for this possibility.

3. Juvenile Offenders Need Opportunities for Rehabilitation.

Because of juvenile offenders’ unique capacity to reform as they reach adulthood, it is critically important that they be afforded opportunities to do so. Vocational and self-help programs play a valuable role in the rehabilitation of young people in prison, and can make an especially significant change for those convicted of the most heinous crimes. Despite this, opportunities for participation in such programs are extremely limited for juvenile offenders serving life without parole sentences. These offenders are often placed at the bottom of the waiting list for services, due both to financial constraints and to a belief that their use of these programs would be a waste of resources. Indeed, this lack of programming for juvenile offenders serving life without parole sentences is often justified on the basis that inmates will not benefit from such
training unless they are likely to be released from prison. The U.S. Government, for example, now funds certain educational programs only for “incarcerated youth under the age of twenty-five and within five years of release.” People sentenced to life without parole will, by definition, never fall into this category.

Life without parole sentences, and the accompanying lack of resources, signal to juvenile offenders that they have been “written off” by society, which discourages them and eliminates their incentive to change. Under a life without parole sentence, according to one juvenile offender interviewed by Human Rights Watch, “you are given absolutely no incentive to improve yourself as a person. It’s hopeless.” In another Human Rights Watch interview, a juvenile offender echoed this discouragement, asking: “What am I supposed to hope for except for dying tomorrow maybe?”

When fewer youths are sentenced to life without parole, there will be less risk for them to become cut off from the resources that can best help them realize their capacity for reform. In striking down mandatory life without parole sentences, the Court allows judges to take juveniles’ pressing need for these services into consideration. However, had the Court gone further and barred juvenile life without parole altogether, youth offenders might have even greater access to the critical programming that can facilitate their reintegration into society.

**CONCLUSION**

The ruling has profound implications for juvenile offenders serving life without parole sentences, many of whom may be able to have their sentences revisited in light of the decision. However, may prove to be a double-edged sword, as judges and juries will still be able to impose life without parole sentences when they believe such punishments appropriate. This scheme neglects not only the capacity of many juvenile offenders to be rehabilitated, but also the near-impossibility of predicting a juvenile offender’s future criminality. The Justices would have been wise to consider the Court’s earlier warning that “incorrigibility is inconsistent with youth” by imposing a categorical ban upon juvenile life without parole.

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71. AGAINST ALL ODDS, supra note 1, at 27.
73. Id.
75. Id. at 22 (citing WHEN I DIE, THEY’LL SEND ME HOME, supra note 55, at 60).
76. THE REST OF THEIR LIVES, supra note 72, at 63.