INTRODUCTION: A NEW ERA IN JUVENILE JUSTICE

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In the last decade, the Supreme Court has decided four juvenile cases—*Roper v. Simmons*,[1] *Graham v. Florida*,[2] *J.D.B. v. North Carolina*,[3] and *Miller v. Alabama*.[4] These four cases have changed the landscape of juvenile justice in the United States. In October 2012, the *Loyola of Los Angeles Law Review* convened a symposium on Juveniles and the Supreme Court to explore what the future extensions and limitations of these landmark cases may be. The following issue of the *Law Review* continues this exploration.

This Introduction provides a description of the overall trends in juvenile justice in Part I in order to situate the recent cases in a historical context. Part II then briefly describes what happened in each of the four cases.

I. SITUATING *ROPER*, *GRAHAM*, *J.D.B.*, AND *MILLER* IN A HISTORICAL CONTEXT

A retrospective look at some of the recent trends in juvenile justice demonstrates that the Court's recent decisions in *Roper*, *Graham*, *J.D.B.*, and *Miller*, have ushered in a new era in juvenile justice in America. Most notably, science has played a pivotal role to inform the Court's decisions and change the way the law interacts with children in the juvenile justice system.

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1. 543 U.S. 551 (2005).
2. 130 S. Ct. 2011 (2010).
3. 131 S. Ct. 2394 (2011).
4. 132 S. Ct. 2455 (2012).

Historically, courts have struggled with reconciling a juvenile's age and status as a child with the treatment of juvenile offenders who commit crimes. There is tension between two competing notions: (1) how much should juveniles be afforded the same rights as and treated equally to adults, and (2) how much should juveniles receive different—better or worse, more lenient or harsh—treatment than adults?[5]

Scholar Martin Guggenheim has written about three different eras of juvenile justice in America, during which the justice system's treatment of juveniles changed along the lines of the tension between the similarities and differences between children and adults.[6] The first era, roughly from 1900 to 1967, was characterized by the influence of Progressive advocates who strove to create a separate court for juveniles.[7] Those separate courts treated juveniles less formally and focused not on whether a child was culpable, so much as what society could do to intervene and help the child.[8] These separate juvenile courts had the child's "best interests" as their goal.[9]

The second era, from 1967 to 2009, was characterized by an attitude viewing children as the same as adults.[10] This era began in 1967 with the Court's landmark decision *In Re Gault*.[11] In response to the informal courts created by the Progressives, the *Gault* Court recognized a child's rights to procedural fairness.[12] Justice Fortas

5. Juvenile courts throughout the country have been created with a special rehabilitative purpose. Yet not all children have the opportunity to have their cases heard in juvenile court. Some are transferred to adult court and subjected to the same criminal punishments as adults. Most recently, the Supreme Court has recognized differences between children and adults in *Roper*, *Graham*, *J.D.B.*, and *Miller*, as discussed *infra* Part II.

6. *See* Martin Guggenheim, Graham v. Florida *and a Juvenile's Right to Age Appropriate Sentencing*, 47 HARV. C.R.-C.L. L. REV. 457, 457, 464–74, 487 (2012) (summarizing two distinct eras in juvenile justice while arguing that *Graham* ushers in a third).

7. *Id.* at 464–66. For a more complete discussion of the Progressive movement and the drawbacks of the children-are-different approach, see Robin Walker Sterling, *"Children Are Different": Implicit Bias, Rehabilitation, and the "New" Juvenile Jurisprudence*, 46 LOY. L.A. L. REV. 981 (2013).

8. *See* Guggenheim, *supra* note 6, at 465 ("[Progressives] believed that society's role was not to ascertain whether the child was 'guilty' or 'innocent,' but 'What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.'" (quoting Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119–20 (1909))).

9. *In re* Gault, 387 U.S. 1, 15 (1967); *see also* Guggenheim, *supra* note 6, at 464–66 (discussing Progressive views of the juvenile justice system).

10. Guggenheim, *supra* note 6, at 466–74.

11. *In re Gault*, 387 U.S. at 1.

12. *Id.* at 61 (Black, J., concurring).

penned these now-famous words in *Gault* in 1967: "Under our Constitution, the condition of being a boy does not justify a kangaroo court."[13] *Gault* held that juveniles in juvenile courts are entitled to the same due process rights as adults, including the rights to notice of charges, to counsel, to confront witnesses, and to be free from self-incrimination.[14] *Gault* triggered a due process rights revolution, creating a line of cases where children were afforded most of the same rights as adults who are prosecuted in criminal court.[15]

During this era where children were viewed as the same as adults, there were also a number of popular trends which functioned not to protect children but rather to subject them to treatment and punishment that was equivalent to those meted out to adults. In the 1980s and 1990s, the image of the juvenile "superpredator" fueled a popular conception that juvenile crime had become a crisis in America.[16] In the decades that followed, legislative change enabled children to be prosecuted as adults in adult criminal courts more easily, often empowering prosecutors to directly file charges in adult courts without judicial oversight.[17] Children convicted in adult courts, like the child defendants in the cases of *Roper*, *Graham*, *Jackson v. Hobbs*,[18] and *Miller*, were subjected to adult-style punishments—mandatory minimums, the death penalty, and life without the possibility of parole (LWOP). Although *Roper* laid the groundwork for the present-day developments in juvenile justice,

13. *Id.* at 28 (majority opinion).

14. *Id.* at 12–58.

15. Except for the right to have a jury trial, which the Court denied children in *McKeiver v. Pennsylvania*, 403 U.S. 528, 528 (1971), the due process cases that followed *Gault* gave children the same rights as adults. For instance, *In re Winship*, 397 U.S. 358, 360 (1970), affords children the right to have the charges brought against them by the State proven beyond a reasonable doubt.

16. *See* Samantha Buckingham, *Reducing Incarceration for Youthful Offenders with a Developmental Approach to Sentencing*, 46 LOY. L.A. L. REV. 801 (2013).

17. *See* MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS? 252–54 (2005); *see also* Guggenheim, *supra* note 6, at 472–74 ("[L]egislatures in nearly every state . . . broaden[ed] juvenile transfer to adult court, by lowering age or offense thresholds, moving away from individual and toward categorical handling, and shifting authority from judges to prosecutors.").

18. 132 S. Ct. 548 (2011). *Jackson v. Hobbs* is the companion case to *Miller*. The Supreme Court consolidated the two cases together when it issued its decision in *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012). For further discussion of this case, see *infra* Part II.

because *Roper* was a death penalty case, the *Roper* Court maintained the mantra that "death is different."[19]

It was not until *Graham* was decided, and the Court announced that children are different outside the context of the death penalty,[20] that the third era of juvenile justice began. Informed by both science and common sense, the Court has repeatedly characterized children as different from adults throughout this third era. Beyond merely recognizing the differences, the Court has held that children are thus entitled to greater protections than adults. For example, children are entitled to a higher standard in assessing custody in the context of *Miranda*.[21] Unlike adults, children also cannot be subjected to mandatory sentences of LWOP and must receive some individualized sentencing processes that account for the mitigating factor of youth.[22]

Science—both developmental psychology and neuroscience—served as the catalyst to move the Court and usher in this third and current era of juvenile justice.[23]

19. Roper v. Simmons, 543 U.S. 551, 568 (2005) (recognizing that the death penalty is the most severe punishment, only appropriate for the extremely culpable offenders who commit the most serious crimes).

20. Graham v. Florida, 130 S. Ct. 2011, 2032–33 (2010) (reiterating the three general differences the Court described in *Roper* between juveniles and adults that make juvenile offenders less culpable).

21. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2402–06 (2011).

22. *See Miller*, 132 S. Ct. at 2463; *Graham*, 130 S. Ct. 2011 at 2026, 2034.

23. At the symposium event at Loyola Law School Los Angeles in October, scholar, Professor, and Dean Randy Hertz explained that the "saga" of how the Court came to view children as different, and thus entitled to greater protection under the law than adults in *Graham*, *J.D.B.*, and *Miller*, can be understood by the influence of science. Randy Hertz, Panel Discussion at Loyola Law School Los Angeles Symposium: Juveniles & the Supreme Court (Oct. 12, 2012). The science to which I am referring is discussed in *Miller*, 132 S. Ct. at 2464–65, which granted the petition for writ of certiorari to the Supreme Court of Arkansas, as well as in *Graham*, 130 S. Ct. at 2026–27; Brief for the Am. Medical Ass'n & the Am. Acad. of Child and Adolescent Psychiatry as Amici Curiae in Support of Neither Party, *Miller*, 132 S. Ct. 2455 (Nos. 10-9646, 10-9647), 2012 WL 121237; Brief for the Am. Medical Ass'n & the Am. Acad. of Child and Adolescent Psychiatry as Amici Curiae in Support of Neither Party, *Graham*, 130 S. Ct. 2011 (Nos. 08-7412, 08-7621), 2009 WL 2247127; Brief for the Am. Psychological Ass'n, Am. Psychiatric Ass'n, National Ass'n of Soc. Workers, and Mental Health Am. as Amici Curiae Supporting Petitioners, *Graham*, 130 S. Ct. 2011 (Nos. 08-7412, 08-7621), 2009 WL 2236778. For an overview of developmental psychology and neuroscience, see Buckingham, *supra* note 16, at 837–842, and for a discussion of the future implications of the science, see Francis X. Shen, *Neurolegislation & Juvenile Justice*, 46 LOY. L.A. L. REV. 981 (2013), both in this issue.

II. OVERVIEW OF EACH SUPREME COURT DECISION

In 2005, the *Roper* Court outlawed the death penalty for juveniles (offenders under the age of eighteen).[24] At the time, the United States was one of only eight countries in the world to execute offenders for crimes committed when they were children.[25] In deciding *Roper*, the Court looked to international norms to inform its decision that execution of children is cruel and unusual punishment under the Eighth Amendment.[26] The Court determined that "evolving standards of decency" required excluding children as a category of offenders from the death penalty.[27] The Court thus announced that children are different from adults.[28] Writing for the majority, Justice Kennedy based *Roper*'s rationale on new scientific findings in the area of social science and neuroscience. The *Roper* Court recognized three differences between children and adults, which necessitate a different punishment scheme when imposing the death penalty. First, children are less culpable because they do not think through their behavior before acting.[29] Second, children are more susceptible to outside influence, including peer pressure.[30] Third, children have greater potential for change and growth.[31] The American Medical Association (AMA), American Psychological Association (APA), and American Bar Association (ABA) all filed briefs advancing the position that children are different from adults in critical ways that decrease their culpability and increase their potential for change. Much of the science relied upon in those briefs was cited by the *Roper* Court.[32]

24. *Roper*, 543 U.S. at 559.

25. The other seven countries were Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and China. *Id.* at 577 (citing Brief for Respondent at 49–50, *Roper*, 543 U.S. 551 (No. 03-633), 2004 WL 1947812, at *49).

26. *See* Samuel H. Pillsbury, *Talking About Cruelty: The Eighth Amendment and Juvenile Offenders After* Miller v. Alabama, 46 LOY. L.A. L. REV. 885 (2013). Pillsbury has explored the moral implications of cruelty in punishing juvenile offenders. In apportioning punishment for juvenile offenders who have committed serious violent crimes, Pillsbury asks, "How we can properly punish the cruelest of crimes without ourselves resorting to cruelty?" *Id.* at 888.

27. *See Roper*, 543 U.S. at 551.

28. *Id.* at 569.

29. *Id.*

30. *Id.*

31. *Id.* at 570.

32. *See* ELIZABETH S. SCOTT & LAURENCE D. STEINBERG, RETHINKING JUVENILE JUSTICE 44–49 (Library of Congress Cataloging-in-Publication Data, 2010). Laurence Steinberg is a pre-eminent psychologist who is often cited by the AMA, APA, ABA, and the Court. For a greater

Following *Roper*, the Court went on in 2010 to decide *Graham*, another Eighth Amendment case addressing the sentencing of juvenile offenders. In *Graham*, the Court outlawed the imposition of a sentence of LWOP for juveniles convicted of nonhomicide offenses.[33] This landmark marked the first time the Eighth Amendment's proportionality analysis was applied to limit harsh sentencing practices *beyond the context of the death penalty*. Writing for the Court, Justice Kennedy said that "evolving standards of decency" required reserving LWOP for the most culpable offenders.[34] Again, the Court relied heavily on social science and neuroscience. In between its decisions in *Roper* in 2005 and *Graham* in 2010, the body of scientific knowledge grew, and the *Graham* Court acknowledged the additional scientific findings.[35] The Court also recognized that penological justifications for punishment applied with lesser force to juveniles subjected to LWOP sentences.[36]

Next, in 2011, the Court decided *J.D.B. v. North Carolina*.[37] Of these four cases, *J.D.B.* is the only case that involved a juvenile charged in juvenile delinquency court.[38] Thirteen-year-old J.D.B. was arrested and interrogated at school.[39] In *J.D.B.*, the Court held that age is a factor in a Fifth Amendment *Miranda* custody analysis.[40] Prior to the decision in *J.D.B.*, the last case to deal with the issue of age in the custody analysis was *Yarborough v. Alvarado*.[41] In *Yarborough*, the Court said that the seventeen-year-old, who was brought to the police station by his parents and interrogated, was not in custody for purposes of *Miranda*.[42] The Court also indicated that his age was not a factor in the Court's

explanation of the science relied upon by the Court in *Roper*, *Graham*, and *Miller*, see Buckingham, *supra* note 16, at 837–846. For an exploration of scientific implications, see Shen, *supra* note 23, at 992–1002.

33. Graham v. Florida, 130 S. Ct. 2011, 2030 (2010).

34. *Id.*

35. During this time, popular articles on the teenage brain also served to inform the American public about the differences in the way teenagers think and behave.

36. *See* Buckingham, *supra* note 16, at 847–50.

37. *See* 131 S. Ct. 2394 (2011).

38. *Id*. at 2400.

39. *Id.* at 2399–400.

40. *Id.* at 2404–08.

41. 541 U.S. 652, 652 (2004).

42. *Id.* at 663–66.

objective analysis of custody.[43] In *J.D.B.* however, Justice Sotomayor relied upon common sense, rather than science, in explaining the Court's rationale for determining that children are different and that age matters in a *Miranda* custody analysis.[44] With *J.D.B.*, the Court extended a rationale requiring different rules for children to an area of law *beyond* the sentencing context for the first time.[45]

In 2012, the Court in *Miller* held that the Eighth Amendment prohibits juvenile homicide offenders from receiving mandatory sentences of LWOP.[46] In its Spring 2012 Term, the Supreme Court heard two cases challenging the imposition of mandatory LWOP sentences on fourteen-year-old juveniles. Those two cases involved Evan Miller and Kuntrell Jackson; the Court combined both cases in its *Miller* decision. Evan Miller was charged with murder in the course of arson and Kuntrell Jackson with felony-murder.[47] Miller, along with an older teenager, set fire to a trailer and killed an older man.[48] Jackson participated in a robbery in which his codefendant shot a store clerk.[49] The Court's decision in *Miller* again relied upon science in holding that juveniles could not be subject to mandatory terms of LWOP, even for homicide offenses.[50] Writing for the Court, Justice Kagan said, "if . . . 'death is different,' children are different too."[51] Except to comment that a juvenile sentence of LWOP should be "uncommon," the decision was vague about the circumstances where a juvenile LWOP sentence would be constitutional.[52] The Court did hold that juveniles who are entitled to LWOP are entitled

43. *Id.* at 666. Indeed Justice O'Connor's opinion may have foreshadowed the result in *J.D.B.* when she said that "[t]here may be cases in which a suspect's age will be relevant to the 'custody' inquiry under *Miranda v. Arizona*. In this case, however, Alvarado was almost 18 years old at the time of his interview." *Id.* at 669 (O'Connor, J., concurring) (citation omitted).

44. *J.D.B.*, 131 S. Ct. at 2403.

45. For a discussion of how *J.D.B.* applies in the school context, and more specifically, a discussion on whether and how the "age matters" Supreme Court cases apply to school safety and discipline policies and practices, see Barbara Fedders & Jason Langerg, *School Discipline Reform: Incorporating the Supreme Court's "Age Matters" Jurisprudence*, 46 LOY. L.A. L. REV. 931 (2013).

46. Miller v. Alabama, 132 S. Ct. 2455, 2457–58 (2012).

47. *Id.* at 2457–63.

48. *Id.* at 2462–63.

49. *Id.* at 2461.

50. *See id.* at 2464–65 (noting the importance of developmental psychology and "brain science" in the Court's juvenile LWOP jurisprudence).

51. *Id.* at 2470.

52. *See id.* at 2469.

to a "meaningful opportunity" for review of those sentences.[53] The Court also stated that juveniles are entitled to individualized sentencing procedures that weigh youth as a mitigating factor.[54]

Set against this backdrop, the following *Law Review* Issue launches a noteworthy exploration of the themes and the ramifications of the role of science in the present era of juvenile justice.

53. *See id.* ("'A State is not required to guarantee eventual freedom,' but must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" (quoting Graham v. Florida, 130 S. Ct. 2011, 2030 (2010))).

54. *Id.* at 2471 (citing *Roper* and *Graham* for the proposition that youth offenders are entitled to a judicial process that takes their age and other attendant factors into account).