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Juvenile Solitary Confinement and the Eighth Amendment

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JUVENILE SOLITARY CONFINEMENT AND THE EIGHTH AMENDMENT

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ABSTRACT

Juvenile Solitary Confinement and the Eighth Amendment

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This literature review examines the practice of juvenile solitary confinement, applies the United States Supreme Court's Eighth Amendment jurisprudence, argues that the practice should be declared unconstitutional as a violation of the Eighth Amendment, and calls for a categorical ban. The Cruel and Unusual Punishment Clause of the Eighth Amendment states, "nor [shall] cruel and unusual punishments [be] inflicted." *U.S. Const. amend. VIII*. Juvenile solitary confinement is cruel and unusual, in violation of the Eighth Amendment, because juveniles are different. The United States Supreme Court has long recognized that juveniles should not be held to the same standards of accountability or degrees of punishment as adults. Additionally, the practice of juvenile solitary confinement itself is different and, consequently, cruel and unusual. Solitary confinement imposes severe psychological, physical, social, and developmental harm. When imposed on juveniles, these effects are conceivably permanent. An application of the Supreme Court's jurisprudence to juveniles' solitary confinement clearly illustrates that the Supreme Court should declare the practice unconstitutional as a violation of the Eighth Amendment. Therefore, following Supreme Court precedent, a categorical ban against juvenile solitary confinement is the appropriate remedy for this constitutional violation.

KEYWORDS: juvenile, solitary confinement, eighth amendment, cruel, unusual, punishment

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CHAPTER 1

INTRODUCTION

Historical Analysis of the Eighth Amendment

The Eighth Amendment of the United States Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[1] In the case of *Robinson v. California,* this amendment was made applicable to the States through the Fourteenth Amendment,[2] which prohibits states from making or enforcing, "any law which shall abridge the privileges and immunities of citizens of the United States," and from depriving, "any person of life, liberty, or property without due process of law."[3]

The inclusion of the Eighth Amendment received little debate in Congress during the constitutional conventions of 1776.[4] George Mason, a delegate of the Virginia Constitutional Convention, proposed a Bill of Rights on June 12, which included the modern day Eighth Amendment.[5] Following the inclusion of this amendment in the Virginia State Constitution, eight other states adopted it into their constitutions, the Federal Government included it in the Northwest Ordinance of 1787, and it finally became the Eighth Amendment of the United States Constitution in 1791.[6] Although there was little debate over this constitutional amendment, the vague language led to difficulty in its interpretation. The Framers were primarily concerned with the infliction

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[1] U.S. Const. amend. VIII.
[2] *Robinson v. California*, 370 U.S. 660, 667 (1962).
[3] U.S. Const. amend. XIV, § 1.
[4] *Weems v. United States*, 217 U.S. 349, 368 (1910).
[5] Anthony F. Granucci, *"Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning,* 57 Calif. L. Rev. 839, 840 (1969).
[6] *Id.*

of torture and other barbarous methods of punishment when they incorporated the Eighth Amendment.[7] This initial view, and the vague language of the amendment itself, led to an evolving interpretation of the clause in United States courts over time.

Judicial Interpretation of the Eighth Amendment

The first courts interpreted the Cruel and Unusual Punishment Clause by considering if a punishment or a similar variant of a punishment had been considered cruel and unusual in 1789, when the United States Constitution was put into effect.[8] However, in 1910, in *Weems v. United States*, the United States Supreme Court considered whether a previously acceptable punishment, in itself, was cruel and unusual.[9] In that case, Weems was convicted of falsifying a public document by entering, as paid out, the amounts of 208 and 408 pesos as wages to certain employees of the Light House Service.[10] Guided by the Penal Code of Spain, Weems was sentenced to *cadena temporal*, and a fine ranging from 1,250 to 12,500 pesetas.[11] The Court examined and gave a graphic description of the minimum possible sentence that could be imposed on Weems for this crime.[12] The minimum punishment that could come from this conviction included

> confinement in a penal institution for twelve years and one day, a chain at the ankle and wrist of the offender, hard and painful labor, no assistance

[7] *Gregg v. Georgia*, 428 U.S. 153, 170 (1976).
[8] *CRUEL AND UNUSUAL PUNISHMENTS,* Cornell Law School § 2, https://www.law.cornell.edu/constitution-conan/amendment-8/cruel-and-unusual-punishments (last visited June 24, 2021).
[9] *Weems,* 217 U.S. 349 at 362.
[10] *Id.* at 363.
[11] *Id.* at 363-364.
[12] *Id.* at 366.

> from friend or relative, no marital authority or parental rights or rights of property, no participation even in the family council.[13]

The Court noted that this punishment would limit one's liberty even after the prison bars and chains had been removed.[14] Additionally, it noted that no circumstance of degradation or cruelty of pain is omitted.[15] Thus, the Court held that the punishment was cruel in its excess of imprisonment and in the penalties that accompany and follow imprisonment.[16] It also held that the punishment was unusual in its character.[17]

Although this punishment was previously deemed acceptable for this crime, and was outlined in the Penal Code of Spain, the Court found that the punishment violated the Eighth Amendment.[18] It stated, "Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which it gave birth."[19] The Court argued that the judiciary must interpret the law to fit new situations, as the Framers of the United States Constitution could not possibly imagine every circumstance that would arise.[20]

In 1958, in the case of *Trop v. Dulles*, the United States Supreme Court considered whether the forfeiture of citizenship for the crime of wartime desertion violated the Eighth Amendment.[21] Although the punishment in question did not involve physical mistreatment or primitive torture, the Court stated that denationalization is "the

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[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.* at 377.
[17] *Id.*
[18] *Id.* at 382.
[19] *Id.* at 373.
[20] *Id.*
[21] *Trop v. Dulles*, 356 U.S. 86, 87 (1958).

total destruction of the individual's status in organized society."[22] This punishment, the Court stated, is offensive to constitutional principles because it subjects the individual to a future of increasing fear and distress.[23] The threat of discriminations that may be established against him, proscriptions that may be directed against him, and termination of existence in his native land makes the punishment obnoxious, the Court added.[24] Thus, it held that the punishment of denaturalization for the crime of wartime desertion violated the Eighth Amendment.[25]

In its reasoning, the Court stated that "the basic concept underlying the Eighth Amendment is nothing less than the dignity of man."[26] It explained that it is the duty of the judiciary to defend the Constitution and to implement the constitutional safeguards that protect individual rights.[27] It also stated, reaffirming the holding of *Weems*, that the provisions of the Constitution "are vital, living principles that authorize and limit governmental powers in our Nation."[28] Rephrasing the *Weems* holding, the *Trop* Court added that "the Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[29] This phrasing and interpretation of the Eighth Amendment's Cruel and Unusual Punishment Clause has followed courts into modern cases.

Weems and *Trop* were significant cases that changed the way courts interpreted the Cruel and Unusual Punishment Clause of the Eighth Amendment. Instead of simply

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[22] *Id.* at 101.
[23] *Id.* at 102.
[24] *Id.*
[25] *Id.* at 104.
[26] *Id.* at 100.
[27] *Id.* at 103.
[28] *Id.*
[29] *Id.* at 100.

considering whether the punishment had been considered cruel and unusual at the time the Constitution was ratified, courts began to consider whether the punishment itself was cruel and unusual in light of an ever-changing society. As the values of society change, courts now make decisions in accordance with those values, and apply the Constitution to issues based on the evolving standards of decency. These two cases expanded the scope of the Eighth Amendment, provided the judiciary with more discretion in its consideration of Eighth Amendment issues, and, therefore, provided individuals with a greater protection of their constitutional right.

A demonstration of the impact of these two cases on the protections provided by the Eighth Amendment can be found in case law considering the death penalty. In 1988, in *Thompson v. Oklahoma,* the Court held that the Eighth and Fourteenth Amendments prohibited the execution of a person who was under the age of sixteen at the time of his or her offense.[30] One year later, in *Penry v. Lynaugh*, it held that the Eighth Amendment did not categorically ban the execution of an offender with a mental disability simply by virtue of his or her disability alone.[31] On that same day, the Court decided *Stanford v. Kentucky* and held that the imposition of capital punishment on an individual for a crime committed at sixteen or seventeen years of age did not constitute cruel and unusual punishment under the Eighth Amendment.[32]

Thirteen years later, in 2002, the Court reconsidered the *Penry* holding.[33] After applying the Eighth Amendment in the light of the evolving standards of decency, it held that the punishment was excessive and that the Constitution restricts the State's power to

[30] *Thompson v. Oklahoma,* 487 U.S. 815, 838 (1988).
[31] *Penry v. Lynaugh,* 492 U.S. 302, 340 (1989).
[32] *Stanford v. Kentucky,* 492 U.S. 361, 380 (1989).
[33] *Atkins v. Virginia,* 536 U.S. 304, 307 (2002).

take the life of an offender with a mental disability.[34] Finally, in 2005, the Court reconsidered the holding of *Stanford* and held that the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of eighteen when their crimes were committed.[35]

As this area of case law illustrates, *Weems* and *Trop* were extremely significant cases in expanding the scope of the rights provided by the Eighth Amendment. As time has passed, the Court has construed and applied the amendment to align with the maturing society. It has greatly expanded the protections provided by the Eighth Amendment through many cases over time by considering issues in light of the evolving standards of decency.

[34] *Id.* at 321.
[35] *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

CHAPTER 2

JUVENILES ARE DIFFERENT

Historical Analysis of Juvenile Justice

The conceptions of childhood have greatly evolved over time, leading to the modern view of juveniles. Before the sixteenth century, children's development was ignored and children were not viewed as potential members of society due to high rates of infant mortality that discouraged parents from becoming emotionally attached to their children.[36] By the sixteenth century, with a decline in infant mortality rates, a rise in Christianity, and increased literacy rates, children began to be recognized as individuals who may come of age to participate in familial and societal affairs.[37] In the seventeenth century, children and adolescents were viewed as malleable beings who needed to be shaped into law-abiding, God-fearing adults through education and other interventions.[38] This evolving view of children and adolescents was one of the factors that informed the creation of separate systems to manage juveniles.[39]

The legal system the American colonists brought from England treated juvenile offenders as adults, and any child over the age of seven was potentially accountable for criminal acts they had committed.[40] In the early 1800s, concerns began to arise about the treatment of juveniles in the adult criminal justice system, and institutions to confine

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[36] Geoff K. Ward, *The Black Child-Savers: Racial Democracy & Juvenile Justice*, 20 (2012).
[37] *Id.*
[38] *Id.* at 20-21.
[39] It is worth noting that this concept of childhood evolution has been largely based upon writings by Philippe Ariès. His works were not uncontroversial, and he has been criticized for his reliance upon printed and pictorial evidence, his chronological vagueness, his present-minded point of view, and his findings being unexplained and unrelated to other historical themes. Adrian Wilson, *The Infancy of the History of Childhood: An Appraisal of Philippe Ariès*, 19 History and Theory 132, 135-136 (1980).
[40] Robert W. Taylor & Eric J. Fritsch, *Juvenile Justice: Policies, Programs, and Practices*, 22 (5th ed. 2020).

juvenile offenders separately from adults were established.[41] This eventually led to the foundation of the first juvenile court in Cook County, Illinois in 1899.[42]

The juvenile justice system was founded on the doctrine of *parens patriae*, translated to "state as parent."[43] The *parens patriae* power is a plenary state power consisting of two principles.[44] The first principle provides that the state holds an inherent authority to intervene in a child's life when it believes it is appropriate to do so.[45] This power originates from English common-law principles that established the King as *parens patriae* over infants, and the concept dates back to at least the seventeenth century.[46] In that time, the King was the "general guardian of all infants, idiots, and lunatics," and by virtue of the privilege which belonged to the Crown as *parens patriae,* English courts of chancery claimed jurisdiction over matters involving children who were in need of protection.[47]

The second principle of the *parens patriae* power provides that once the state steps in, it should act as a super-parent of the child.[48] This principle has the same English common-law roots as the first.[49] In that time, the state, in its *parens patriae* role, was presumed and intended to be gentle, nonpunitive, and therapeutic, while state actors in the juvenile court system were viewed as parent surrogates providing caring discipline

[41] *Id.* at 4.
[42] *Id.*
[43] *Id.*
[44] Esther K. Hong, *ARTICLE: A REEXAMINATION OF THE PARENS PATRIAE POWER*, 88 Tenn. L. Rev. 277, 283 (2021).
[45] *Id.*
[46] *Id.* at 284.
[47] *Id.*
[48] *Id.* at 287.
[49] *Id.*

and treatment.[50] The state was to act in the child's best interests, and the primary goal was rehabilitation.[51]

The first juvenile courts were certainly concerned with a broader range of conduct than acts that would be considered criminal if committed by adults.[52] They exercised jurisdiction over cases of neglect and dependency, and thus handled cases involving improper nutrition, school attendance, and more. The focus on rehabilitation transpired from "a conception of criminal conduct as a symptom of an underlying condition that required treatment, rather than as bad conduct warranting punishment."[53] In juveniles, this underlying condition was caused by poor parental guidance and social harms associated with poverty.[54] This emerging juvenile justice system was an inquisitorial system whose purpose was to determine the cause of juvenile delinquency, diagnose illness, and prescribe treatment to the juvenile.[55]

Critics of the early juvenile justice system argued that the system was ineffective in dealing with the issues of violent crime and repeat offenders.[56] This resulted in a wave of "get tough on crime" legislation that began in the 1970s.[57] By the late 1970s, the goals of juvenile justice legislation had shifted from rehabilitation to punishment, justice, accountability, and public protection.[58] This system assumed that juveniles rationally chose to commit delinquent acts, so the reason a juvenile engaged in delinquency was

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[50] *Id.*
[51] *Id.*
[52] Chase S. Burton, *REVIEW ESSAY: Child Savers and Unlike Youth,* 44 Law & Soc. Inquiry 1251, 1255 (2019).
[53] Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform,* 88 J Crim L & Criminology 137, 141 (2001).
[54] *Id.* at 142.
[55] Taylor, *supra* note 40, at 28.
[56] *Id.* at 32.
[57] *Id.*
[58] *Id.*

secondary to the offense the juvenile actually committed.[59] This shift in the way the juvenile justice system viewed and dealt with juvenile offenders gave rise to a new approach to juvenile law.

In the mid-2000s, nonprofit agencies and advocates funded scientific research that prompted a developmental approach in juvenile justice which, in turn, advanced reforms based on neuroscience and developmental science concerning youths' lessened culpability.[60] These scientific developments led to several landmark Supreme Court decisions that implemented this new outlook.[61] From this approach, courts took the developmental differences in juveniles into consideration for constitutional doctrinal purposes.[62] These decisions caused many jurisdictions to pull back from punitive aims and return to a more rehabilitative-focused approach to juvenile justice.[63] These landmark decisions led to exceptional advances in juvenile justice jurisprudence and a wave of litigation, scholarship, and other advocacy efforts centered around the developmental approach.[64]

Juveniles are Different Jurisprudence

The United States Supreme Court has long recognized that juveniles should not be held to the same standards of accountability or degrees of punishment as adults.[65] In the 1988 Supreme Court case, *Thompson v. Oklahoma*, the Court stated that there are

[59] *Id.* at 36.
[60] Hong, *supra* note 44, at 293-294.
[61] *Id.* at 291-292.
[62] *Id.* at 292.
[63] *Id.* at 293.
[64] *Id.*
[65] Nicole Johnson, *Solitary Confinement of Juvenile Offenders and Pre-Trial Detainees*, 35 Touro L. Rev. 699, 699 (2019).

differences which must be accommodated when determining the rights and duties of children compared with those of adults.[66] It listed several examples demonstrating the legal distinction between children and adults including contracts, torts, criminal law and procedure, criminal sanctions, rehabilitation, the right to vote, and the right to hold office.[67] The Court stated that the reason why juveniles are not trusted with the same privileges and responsibilities explains why their irresponsible conduct is not as blameworthy as that of an adult.[68] It also acknowledged that juvenile crime is not exclusively the fault of the offender, but it instead represents a failure of family, school, and the social system, all of which share responsibility for the development of youth.[69]

In 2005, in the case of *Roper v. Simmons*, the Supreme Court described three general differences between juveniles and adults.[70] First, the Court stated that juveniles have "a lack of maturity and an underdeveloped sense of responsibility," which often results "in impetuous and ill-considered actions and decisions."[71] Second, it stated that "juveniles are more vulnerable or susceptible to negative influences and outside pressures."[72] This is explained, the Court stated, by juveniles having less control over their own environment.[73] The third difference it identified is the character of a juvenile not being as well formed as that of an adult.[74] It explained that a juvenile's personality traits are less fixed.[75] The Court held that "the susceptibility of juveniles to immature and

[66] *Thompson*, 487 U.S. 815 at 823.
[67] *Id.*
[68] *Id.* at 835.
[69] *Id.* at 834.
[70] *Roper*, 543 U.S. 551 at 569.
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.* at 570.
[75] *Id.*

irresponsible behavior means that their irresponsible conduct is not as morally reprehensible as that of an adult."[76]

In 2010, in *Graham v. Florida*, the Supreme Court stated that no recent data had provided reason to reconsider the observations made in *Roper* about the nature of juveniles.[77] It instead found that developments in psychology and brain science continued to show fundamental differences between the minds of juveniles and adults.[78] According to neuroscience research, one of the most significant differences between juvenile and adult brains relates to the prefrontal cortex.[79] One area of the prefrontal cortex in particular, the dorsolateral prefrontal cortex portion of the frontal lobe, is one of the last regions of the brain to reach maturity, and this does not occur until at least age twenty.[80] The prefrontal cortex plays a critical role in high-level mental processing, "such as strategizing, planning, and organizing actions and thoughts."[81] This part of the brain also controls impulses and allows one to prioritize and weigh the consequences of decisions.[82] Psychosocial factors, when combined with these cognitive differences, leaves juveniles with "decision-making skills and abilities that are defined by immaturity, impulsivity, and an under-developed ability to appreciate consequences and resist environmental pressures."[83]

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[76] *Id.*
[77] *Graham v. Florida*, 560 U.S. 48, 68 (2010).
[78] *Id.*
[79] Ian M. Kysel, *Banishing Solitary: Litigating an End to the Solitary Confinement of Children in Jails and Prisons*, 40 N.Y.U. Rev. L. & Soc. Change 675, 687 (2016).
[80] *Id.* at 688.
[81] *Id.* at 687-688.
[82] *Id.* at 688.
[83] Tamar R. Birckhead, *Children in Isolation: The Solitary Confinement of Youth*, 50 Wake Forest L. Rev. 1, 10 (2015).

As illustrated in *Thompson, Roper,* and *Graham,* juveniles are different from adults. Developments in psychology and brain science have shown that juveniles are different in terms of psychosocial factors and cognitive differences. The fact that juveniles are not trusted with the same privileges and responsibilities as adults is further confirmation of the differences between the two. When considering the imposition of solitary confinement on juveniles, it is important to keep in mind that this group is already psychologically compromised when compared to adults.[84]

[84] *Id.* at 13.

CHAPTER 3

THE PUNISHMENT IS DIFFERENT

Historical Analysis of Solitary Confinement

Solitary confinement has been used in penal institutions in the United States since the 1800s.[85] The first solitary confinement cell blocks were authorized by the Pennsylvania legislature in 1790 to house the most dangerous offenders.[86] This innovation took place under the influence of a group largely populated by Quakers who believed in punishment for crimes, but also believed that all people were capable of redemption.[87] Solitary confinement was originally intended to force the prisoner to reflect upon his crime, read the Bible, and repent.[88] However, when prison officials began to see prisoners mentally deteriorating after being placed in isolation, the practice was largely discontinued.[89] With the exception of Pennsylvania, every other state that had implemented solitary confinement into their penal institutions between 1830 and 1880 abandoned the practice within a few years.[90]

In 1983 at the United States Penitentiary in Marion, Illinois, however, a week of inmate rioting occurred, leaving two officers dead.[91] Marion went into a prolonged emergency lockdown, and the use of solitary confinement was revived.[92] Nearly every prison and jail in the United States developed a solitary confinement unit of some kind

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[85] Johnson, *supra* note 65, at 704.
[86] Lauren M. Coler, *Isolated and Forgotten: End the Use and Practice of Solitary Confinement in the Juvenile Justice System,* 45 T. Marshall L. Rev. 93, 99 (2021).
[87] Jean Casella et al., *Hell is a Very Small Place*, 3 (2016).
[88] Johnson, *supra* note 65 at 704.
[89] Lindley A. Bassett, *The Constitutionality of Solitary Confinement: Insights from Maslow's Hierarchy of Needs,* 26 Health Matrix 403, 407 (2016).
[90] *Id.*
[91] *Id.*
[92] *Id.*

and from 1995 to 2000, the number of individuals held in solitary confinement increased by 40%.[93]

Solitary Confinement in Practice

Although solitary confinement use varies by facility, a 2016 juvenile residential facility census report found that 46 percent of facilities confine juveniles at least some of the time.[94] Solitary confinement is the practice of isolating people in closed cells for 22 to 24 hours per day.[95] These cells generally measure from 6x9 to 8x10 feet.[96] Some solitary confinement cells have bars, but most have solid metal doors, and many cells do not have any windows.[97] The cells are usually stripped bare.[98] Some cells have showers, but the individuals in cells without showers are taken in shackles to shower two or three times per week.[99] They may also be escorted to a yard, either walled or fenced in, to exercise for an hour per day on weekdays.[100]

Individuals in solitary confinement have almost no contact with other humans, and they usually only see guards when their meals are delivered on a food tray slipped through a small opening in their cell door.[101] The lights may be kept on for 24 hours per day, making it difficult for individuals in isolation to know what time of day it is.[102] Individuals in isolation are denied access to work and rehabilitative programs and face

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[93] Casella, *supra* note 87 at 6.
[94] Sarah Hockenberry & Anthony Sladky, *Juvenile Residential Facility Census, 2016: Selected Findings*, U.S. Department of Justice, 4 (2018).
[95] Casella, *supra* note 87 at 7.
[96] *Id.*
[97] *Id.*
[98] Johnson, *supra* note 65 at 705.
[99] Casella, *supra* note 87 at 7.
[100] *Id.*
[101] Bassett, *supra* note 89 at 408.
[102] *Id.*

severe restrictions on reading, craft, and hobby materials.[103] According to data collected by the Bureau of Prisons in 2012, the average duration of time spent in solitary confinement, generally, is 223 days or over 7 months.[104]

Effects of Solitary Confinement

Research on the effects of solitary confinement on incarcerated juveniles is limited.[105] However, the existing studies have found that juvenile solitary confinement is correlated with high rates of suicide, Post-Traumatic Stress Disorder (PTSD), depression, and future criminal activity.[106] Additionally, the harmful impact of the practice on adult prisoners has been well established in scholarly literature.[107] It is important to note that although there is a lack of data on incarcerated juveniles, the scope of the problem for constitutional purposes is irrelevant. Whether the practice is imposed on one juvenile or many, the United States Constitution does not allow an Eighth Amendment violation.

Solitary confinement imposes severe psychological effects on incarcerated juveniles. A 2003 meta-analysis concluded that there was not a single published study of solitary confinement lasting for more than ten days that failed to result in negative psychological effects.[108] Inmates who have spent extended time in solitary confinement reported experiencing hypersensitivity to stimuli, confusion, memory loss, irritability, and anger.[109] Many inmates who have spent time in solitary confinement fall victim to

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[103] *Id.* at 409.
[104] *Id.*
[105] Birckhead, *supra* note 83, at 10.
[106] *Id.*
[107] *Id.* at 11.
[108] *Id.* at 11-12.
[109] *Id.* at 12.

Secure Housing Unit (SHU) Syndrome, in which the symptoms include appetite and sleep disturbances, anxiety, panic, rage, loss of control, paranoia, hallucinations, self-mutilation, insomnia, hypersensitivity, ruminations, cognitive dysfunction, irritability, and suicidal ideation and behavior.[110] These symptoms may become irreversible beyond 15 days spent in solitary confinement.[111] The psychological effects caused by long periods of isolation often increase a juvenile's risk of becoming acutely psychotic and acutely suicidal.[112] In fact, more than half of the suicides committed by incarcerated juveniles occurred while the juvenile was in isolation. [113]

In addition to the negative psychological effects imposed on juvenile offenders through the use of solitary confinement, the practice also imposes negative physical effects. Given that juveniles in solitary confinement are typically only allowed one hour per day of exercise, they are deprived of necessary physical activity, which results in a loss of aerobic and anaerobic fitness.[114] Due to the nutritionally inadequate meals served to those in solitary confinement, juveniles also experience chronic hunger, stunted growth, hair loss, and weight loss.[115] Additionally, young females often suffer from amenorrhea, or a loss of menstruation, resulting from the inadequate nutrition as well as stress and trauma.[116]

On top of the negative psychological and physical effects that solitary confinement imposes on juvenile offenders, these youth also experience negative social

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[110] Bassett, s*upra* note 89, at 420.
[111] *Id.*
[112] Coler, s*upra* note 86, at 104.
[113] Brielle Basso, *Solitary Confinement Reform Act: A Blueprint for Restricted Use of Solitary Confinement of Juveniles Across the States*, 48 Seton Hall L. Rev. 1601, 1606 (2018).
[114] Birckhead, *supra* note 83, at 14.
[115] *Id.*
[116] *Id.*

consequences from the practice. Due to the complete lack of control that offenders have over every aspect of their daily lives in solitary confinement, many of these offenders gradually lose their ability to initiate or control their own behavior or to organize their lives.[117] Additionally, juveniles in solitary confinement are denied contact with family members as well as any access to education, vocational training, and other forms of rehabilitation.[118] The denial of these basic needs decreases the chances that they will be able to successfully reintegrate into the community when they are released from detention.[119] This social isolation is also linked to the experience of social pain.[120] Social pain entails the painful feelings that follow social rejection or social loss and can have an adverse impact on a juvenile's physical and mental health and psychological well-being.[121]

It is worth emphasizing that juveniles are already psychologically compromised when compared to adults.[122] Juveniles often enter the juvenile justice system with a prior history of trauma and victimization.[123] Disproportionate numbers of these juvenile offenders also have special needs.[124] Additionally, rates of mental health disorders are higher among this group and the effects of solitary confinement can exacerbate preexisting mental illness and increase the likelihood of subsequent drug abuse.[125] The harm inflicted on juveniles through the use of solitary confinement is very different and

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[117] *Id.* at 12-13.
[118] *Id.* at 16.
[119] *Id.*
[120] Federica Coppola, *The Brain in Solitude: An (Other) Eighth Amendment Challenge to Solitary Confinement*, 7 J. Law Biosci. 184, 196 (2019).
[121] *Id.*
[122] Birckhead, *supra* note 83, at 13.
[123] *Id.* at 15.
[124] *Id.*
[125] *Id.* at 13-14.

more severe than the harm inflicted on adults because of its irreparability.[126] Once the developmental period for a juvenile has passed, the brain cannot go back and redevelop.[127] The effects of solitary confinement on incarcerated youth are conceivably permanent.[128]

[126] Coler, *supra* note 86, at 103.
[127] *Id.*
[128] *Id.*

CHAPTER 4

CONSTITUTIONAL REASONING

In order to determine whether juvenile solitary confinement violates the Eighth Amendment's prohibition against cruel and unusual punishment, the practice can be considered in light of the framework used in *Graham v. Florida.* In that case, decided in 2010, the United States Supreme Court considered whether the Constitution permits a juvenile offender to be sentenced to life in prison without the possibility of parole for a nonhomicide crime.[129] This issue was one the Court had not previously considered: a categorical challenge to a term-of-years sentence, meaning that the sentencing practice itself was at issue as it applied to an entire class of offenders who had committed a range of various crimes.[130] It is important to note that the use of *Graham* in this analysis is not intended to compare different types of punishment. Instead, this case is used as an analytical tool to provide the Court's most recent criteria for considering whether this is a violation of the Eighth Amendment.

The Evolving Standards of Decency

In cases considering the adoption of categorical bans, the Court has taken a two-step approach.[131] First, the Court considers objective indicators of society's standards, as they are demonstrated in legislative enactments and state practice, to determine whether a national consensus against the sentencing practice exists.[132] In this step of the analysis,

[129] *Graham,* 560 U.S. 48 at 52.
[130] *Id.* at 61.
[131] *Graham,* 560 U.S. 48 at 61.
[132] *Id.*

the Court focuses on the evolving standards of decency when considering the punishment in question. National consensus is important, the Court has stated, because "in a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people."[133] A national consensus analysis is very demonstrative of how society feels about a certain punishment being imposed.

In *Graham,* the Court found that six jurisdictions did not allow life without parole sentences for any juvenile offenders and seven jurisdictions only permitted life without parole for juvenile offenders who committed homicide.[134] Additionally, it found that 37 states, as well as the District of Columbia, permitted sentences of life without parole for a juvenile nonhomicide offender only in some circumstances.[135] However, it found that federal law did allow for the possibility of life without parole for offenders as young as thirteen.[136]

Despite this final finding, the *Graham* Court held that a consensus against the sentencing practice existed.[137] It stated that "the evidence of consensus is not undermined by the fact that many jurisdictions do not prohibit life without parole for juvenile nonhomicide offenders."[138] It is instead actual sentencing practices that are a part of the Court's inquiry into consensus.[139] Thus, even if a jurisdiction does not prohibit a certain sentencing practice, it is the frequency of the use of the practice that is important in the Court's inquiry. In *Graham*, the Court found that there were only 109 juvenile offenders

[133] *Furman v. Georgia*, 408 U.S. 238, 383 (1972).
[134] *Graham,* 560 U.S. 48 at 62.
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] *Id.* at 66.
[139] *Id.* at 62.

serving sentences of life without parole for nonhomicide offenses nationwide.[140] Therefore, the Court held that a consensus against the sentence in question existed.[141]

However, it must be noted that this determination was not uncontroversial. In Justice Samuel Alito's dissenting opinion, he stated that "the Framers did not provide for the constitutionality of a particular type of punishment to turn on a 'snapshot of American public opinion' taken at the moment a case is decided."[142] He also believed that the American people would be surprised at the news of this evolution because Congress, the District of Columbia, and 37 states had allowed judges and juries to consider the sentencing practice in juvenile nonhomicide cases, with those judges and juries using the punishment in the very worst cases it encountered.[143]

Although the national consensus inquiry was controversial in *Graham*, this step in the analysis remains binding precedent. Thus, an inquiry into society's standards in regards to the practice of juvenile solitary confinement is necessary. "A nationwide shift toward abolishing solitary confinement for juveniles … began to take shape in 2016 after former President Barack Obama banned the practice in federal prisons."[144] In the months following, Colorado and California both legislatively banned the use of punitive solitary confinement for juveniles for periods longer than four hours.[145] In addition, New York, Alaska, Connecticut, Maine, Nevada, North Carolina, Oklahoma, Texas, and West

[140] *Id.* at 62-63.
[141] *Id.* at 62.
[142] *Id.* at 101.
[143] *Id.* at 97.
[144] Eli Hager, *Ending Solitary for Juveniles: A Goal Grows Closer*, The Marshall Project (August 1, 2017), https://www.themarshallproject.org/2017/08/01/ending-solitary-for-juveniles-a-goal-grows-closer.
[145] *Id.*

Virginia have passed laws that ban or limit solitary confinement for juveniles.[146] Also, Michigan, Mississippi, Nebraska, Tennessee, and Virginia have considered, but not passed, legislation to limit the use of solitary confinement.[147]

In addition to the state legislation prohibiting or restricting solitary confinement, there has also been movement on the federal level. In December of 2018, Congress passed the First Step Act (FSA) and the Juvenile Justice and Delinquency Prevention Act (JJDPA).[148] The First Step Act prohibits federal juvenile facilities from using solitary confinement as punishment, and only permits the use of solitary when youth behavior poses a risk of immediate physical harm and cannot otherwise be deescalated.[149] Under this act, youth must be released as soon as they are calm, and they cannot be held in solitary confinement for more than three hours.[150] The Juvenile Justice and Delinquency Prevention Act requires states to provide data on restraint and isolation.[151] This act also requires states to describe their strategies to reduce isolation and provides federal training to reduce isolation.[152] Additionally, since October of 2015, several bills have been proposed to Congress to reform juvenile solitary confinement standards.[153]

If the *Graham* Court held that a consensus against life without parole sentences for juvenile nonhomicide offenders existed, a consensus against juvenile solitary confinement must also exist. Not only are the number of states who have limited or

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[146] Teresa Wiltz, *Is Solitary Confinement on the Way Out?*, PEW (November 21, 2016), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/11/21/is-solitary-confinement-on-the-way-out.
[147] *Id.*
[148] *Federal Legislation Limiting Solitary,* Stop Solitary for Kids (2019), https://www.stopsolitaryforkids.org/proposed-federal-legislation/.
[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*

banned the use of solitary confinement on juvenile offenders similar to the trends displayed in *Graham*, but the former President of the United States banned the practice in federal prisons in 2016. Additionally, there has been legislative movement at the federal level, attempting to place limits on the practice. This federal movement away from the practice, which was not present in *Graham*, as well as the many states' bans or limits on the practice clearly demonstrates that a consensus against the practice of juvenile solitary confinement exists.

At the end of its opinion, the *Graham* Court added that there is support in its conclusion in the fact that the sentencing practice is rejected all over the world.[154] It stated that the judgments of other nations and the international community are not definitive as to the meaning of the Eighth Amendment, but that the attitude of international opinions regarding the acceptability of a particular punishment is not irrelevant.[155] The Court found that only eleven nations authorized life without parole for juvenile offenders under any circumstances, and that only two of them, the United States and Israel, ever imposed the punishment in practice.[156] The State's *amici* stressed that no international legal agreement that was binding on the United States prohibited life without parole for juvenile offenders and urged the Court to ignore the international consensus.[157] However, the Court stated that the question is not whether international law prohibits the United States from imposing the sentence, but whether the sentence is cruel and unusual.[158] The overwhelming weight of international opinion against the sentencing

[154] *Graham,* 560 U.S. 48 at 80.
[155] *Id.*
[156] *Id.*
[157] *Id.* at 81.
[158] *Id.*

practice, the Court stated, "provides respected and significant confirmation for our own conclusions."[159]

Similarly, in regards to juvenile solitary confinement, the international opinion against the practice for all offenders provides confirmation in the conclusion that it violates the Eighth Amendment. First, there is considerable agreement by the international community that confinement can be a form of torture when it results in severe harm, even in relatively short amounts of time.[160] In fact, the United Nations has recommended that solitary confinement be abolished altogether.[161] In 1955, the United Nations implemented international rules for prison operations globally, by adopting the Standard Minimum Rules for the Treatment of Prisoners.[162] While the United States incorporated these rules seven years later, they are not followed to the same degree when compared to the international community.[163] Additionally, in most countries, the practice of solitary confinement for all offenders has been largely discontinued.[164] A notable example of the international rejection of the practice can be found in Ireland, which refused to extradite an individual to the United States in fear that he might be placed in a solitary confinement cell in Colorado, which would violate Irish law.[165]

Like the sentencing practice at issue in *Graham,* solitary confinement has been discontinued in most countries for all offenders, including adults. Additionally, distinguishable from *Graham,* the United States is bound by an international legal

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[159] *Id.*
[160] Andrew L. Hanna, *Series on Solitary Confinement & The Eighth Amendment: Article III of III: Solitary Confinement as Per Se Unconstitutional,* 21 U. Pa. J. Const. L. 1, 5 (May 2019).
[161] *Id.* at 6.
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.* at 7.

agreement, which states that "punishment by placing in a dark cell, and all cruel, inhuman, or degrading punishments shall be completely prohibited as punishments for disciplinary offences."[166] Thus, the overwhelming weight of international opinion against the practice of solitary confinement for all offenders provides significant confirmation in the conclusion that the practice violates the Eighth Amendment when imposed on juveniles.

Proportionality

The *Graham* Court stated that although community consensus is entitled to great weight, it is not itself determinative of whether a punishment is cruel and unusual.[167] Instead, in accordance with the constitutional design, interpreting the Eighth Amendment remains the Court's responsibility.[168] The second step in the Court's two-step inquiry of adopting categorical rules is guided by the standards elaborated by precedent and by the Court's own interpretation of the Eighth Amendment's text, history, meaning, and purpose.[169] This part of the analysis is focused on the proportionality of the punishment in question. In this step of the inquiry, the Court must exercise its own independent judgment to determine whether the punishment in question violates the Constitution.[170] This exercise of independent judgment requires the Court to consider "the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity

[166] Standard Minimum Rules for the Treatment of Prisoners, part I, § 31 (May 13, 1977).
[167] *Graham,* 560 U.S. 48 at 67.
[168] *Id.*
[169] *Id* at 61.
[170] *Id.*

of the punishment in question."[171] Additionally, the Court considers whether the sentencing practice at issue serves legitimate penological goals.[172]

In *Graham,* the Court examined the precedent set in *Roper v. Simmons* in its consideration of the culpability of the offenders.[173] The *Roper* Court established, and the *Graham* Court reaffirmed, that juveniles have lessened culpability due to their lack of maturity, underdeveloped sense of responsibility, vulnerability, susceptibility to negative influences, and malleable characters.[174] In *Miller v. Alabama,* the Court added that youth is more than just a chronological fact.[175] It is also a time of "immaturity, irresponsibility, impetuousness, and recklessness."[176] Youth is, the *Miller* Court stated, "a moment and condition of life when a person may be most susceptible to influence and to psychological damage."[177]

Additionally, the *Graham* Court reaffirmed that these characteristics make it "difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects transient immaturity and the rare juvenile offender whose crime reflects irreparable corruption."[178] The *Graham* Court also found that developments in brain science and psychology continue to show foundational differences between the minds of adults and juveniles.[179] These findings apply to equal force to juveniles in solitary confinement, who only have as much culpability as the juveniles described in *Graham.*

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[171] *Id.* at 67.
[172] *Id.*
[173] *Id.* at 68.
[174] *Id.*
[175] *Miller,* 567 U.S. 460 at 476.
[176] *Id.*
[177] *Id.*
[178] *Graham,* 560 U.S. 48 at 68.
[179] *Id.*

In consideration of the severity of the punishment in question, the *Graham* Court compared a life without parole sentence to a death sentence.[180] It stated that a death sentence is unique due to its severity and irrevocability, but that life without parole sentences share some characteristics with death sentences.[181] The Court stated that a life without parole sentence, like a death sentence, deprives the offender of the most basic liberties without hope of restoration.[182] Additionally, it explained that a life without parole sentence is especially harsh when imposed on a juvenile because a juvenile offender will serve more years than that of an adult.[183] The Court stated that the punishment of life without parole, when simultaneously imposed on an adult and a juvenile, is the same in name only.[184]

Similarly, juveniles in solitary confinement are deprived of basic liberties and needs, leading to permanent physical, psychological, and social consequences. Additionally, the harm inflicted on juveniles in solitary confinement is especially harsh and irreparable because once the developmental period for a juvenile has passed, the brain cannot go back and redevelop. Therefore, like the comparison made in *Graham*, the practice of solitary confinement, when imposed on an adult and a juvenile, is the same in name only.

Regarding penological goals, the *Graham* Court stated that "a sentence lacking any legitimate penological justification is by its nature disproportionate to the offense."[185] The *Miller* Court added that "the distinctive attributes of youth diminish the penological

[180] *Id.* at 69.
[181] *Id.*
[182] *Id.* at 69-70.
[183] *Id.* at 70.
[184] *Id.*
[185] *Id.* at 71.

justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."[186] For this part of the inquiry, the *Graham* Court examined each legitimate penological goal including retribution, deterrence, incapacitation, and rehabilitation, in light of the sentence of life without the possibility of parole.[187] It held that none of these goals of penal sanctions provided an adequate justification for the punishment.[188]

First, the Court examined retribution and stated that it could not justify this sentence because the retribution rationale is directly related to the personal culpability of the criminal offender, and juvenile offenders have diminished moral culpability.[189] Similarly, retribution cannot justify the imposition of juvenile solitary confinement. Although juveniles can be placed in solitary confinement for a variety of reasons, the practice is often imposed for very minor violations. Juveniles can be placed in solitary confinement for as long as 25 days for conduct as minimal as being in someone else's cell, not making their bed, littering, talking back, or wasting food.[190] Additionally, the practice is often imposed for the supposed protection of actual or perceived LGBTQ inmates and mentally-ill or developmentally disabled inmates.[191] As stated in *Graham,* juveniles already have a diminished moral culpability.[192] In addition, solitary confinement imposes long-lasting, and sometimes permanent, physiological, mental, and

[186] *Miller*, 567 U.S. 460 at 472.
[187] *Graham,* 560 U.S. 48 at 71.
[188] *Id.*
[189] *Id.*
[190] Danika Jo Anderson, *NOTE: SOLITARY CONFINEMENT AS ILLEGITAMATELY PROSCRIBED AND DISPROPORTIONAL PUNISHMENT: ANOTHER ANGLE FROM WHICH TO ATTACK THE INHUMANE PRACTICE,* 35 ND J. L. Ethics & Pub Pol'y 301, 308 (2021).
[191] *Id.* at 309.
[192] *Graham,* 560 U.S. 48 at 71.

physical damage on juveniles.[193] There may be cases in which a juvenile is placed in solitary confinement because they are considered to be a risk to themselves or to others. However, the risk of negative effects is still too high to justify the practice. Due to the reasons juveniles are placed in solitary confinement and the serious negative effects imposed by the practice, it is a disproportionate punishment and is therefore not effective in achieving the penological goal of retribution.

The *Graham* Court also stated that incapacitation did not justify the life without parole sentence because that justification would require the sentencer to make a judgment that the juvenile is incorrigible.[194] This, the Court explained, is a questionable judgment because even expert psychologists have difficulty differentiating between the juvenile whose crime reflects immaturity, and "the rare juvenile offender whose crime reflects irreparable corruption."[195] It could be argued that juvenile solitary confinement meets the penological goal of incapacitation, as it completely removes the juvenile from all contact with the general prison population. However, the risk of the negative effects imposed by the practice is too high to use incapacitation as a justification for juvenile solitary confinement. Instead of simply removing the juvenile from the general prison population, this practice is the complete isolation and sensory deprivation of an individual, leading to severe consequences that cannot be justified by the goal of incapacitation.[196]

The *Graham* Court stated that it could not justify the sentence as a form of deterrence because, as stated in *Roper,* "the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to

[193] Coppola, *supra* note 120, at 221.
[194] *Graham,* 560 U.S. 48 at 72-73.
[195] *Id.* at 72.
[196] Casella, *supra* note 87, at 10.

deterrence."[197] The *Graham* Court stated that since juveniles have a "lack of maturity and underdeveloped sense of responsibility," which "often result[s] in impetuous and ill-considered actions and decisions, they are less likely to take a possible punishment into consideration when making decisions."[198] Similarly, juvenile solitary confinement cannot be justified as a form of deterrence because the *Graham* reasoning applies with equal force to this practice. As previously stated, juveniles are already psychologically compromised when entering the juvenile justice system.[199] Disproportionate numbers of juvenile offenders enter the system with a prior history of trauma and victimization and have special needs.[200] Additionally, rates of mental health disorders are higher among this group and the effects of solitary confinement can exacerbate preexisting mental illness and increase the likelihood of subsequent drug abuse.[201] Therefore, not only do the underlying reasons juveniles are placed into solitary confinement make them less susceptible to deterrence, placing them in isolation will only exacerbate those issues.

Additionally, there is evidence that prisoners who were confined in solitary actually fare worse than those in the general prison population.[202] A study conducted by Daniel Mears and William Bales in 2009 compared the recidivism rates of individuals who had been held in solitary confinement to those who had been held in the general prison population.[203] These researchers controlled for the number of times an inmate had previously been imprisoned, the number of prior convictions for violent felony crimes,

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[197] *Roper,* 543 U.S. 551 at 571.
[198] *Graham,* 560 U.S. 48 at 72.
[199] Birckhead, *supra* note 83, at 13.
[200] *Id.* at 15.
[201] *Id.* at 13-14.
[202] *Graham,* 560 U.S. 48 at 72.
[203] Coppola, *supra* note 120, at 222.

the number of disciplinary infractions that resulted from violent acts during the inmate's release commitment, and the number of disciplinary infractions received as a result of defiant behavior.[204] These control variables, which have been found to be important predictors of post-prison offending, were used to increase the researchers' confidence that the estimates of the effects were unbiased and that the results did not reflect inmates who were already prone to recidivism.[205] The results of the study revealed that "solitary confinement was associated with a higher risk that formerly incarcerated individuals would commit a violent crime after being released."[206] The reasons for the increased risk of recidivism originate largely from the brain alterations that occur when an individual is confined in solitary.[207] This evidence confirms that solitary confinement does not satisfy the penological goal of deterrence.

Finally, the *Graham* Court stated that rehabilitation did not justify the sentence because defendants serving life sentences without the possibility of parole are often denied access to rehabilitative services such as vocational training or treatment.[208] Rehabilitation is not an adequate justification for juvenile solitary confinement either. The negative effects of solitary confinement may seriously compromise an individual's social functioning, therefore making their social reintegration into the community more difficult, or even impossible in some cases.[209] Thus, not only does solitary confinement fail to satisfy the penological goal of rehabilitation, the practice actually opposes the

[204] Daniel P. Mears and William D. Bales, *Supermax Incarceration and Recidivism*, 47 CRIMINOLOGY 1131, 1145 (2009).
[205] *Id.* at 1144.
[206] Coppola, *supra* note 120, at 222.
[207] *Id.*
[208] *Graham*, 560 U.S. 48 at 72.
[209] Coppola, *supra* note 120, at 223.

values and aims of the penological goal altogether. Due to a juvenile's malleability and increased capacity for change, rehabilitation is the primary penological goal for youthful offenders. Therefore, the question of whether juvenile solitary confinement has any rehabilitative potential needs to be given heavier weight than any other penological goal.

The *Graham* Court ultimately held that the limited culpability of juvenile nonhomicide offenders, the severity of life without parole sentences, and the determination that penological theory is not adequate to justify the sentence all led to the conclusion that the sentencing practice was cruel and unusual.[210] Additionally, the overwhelming international opinion against the practice significantly confirmed its holding.[211] Similarly, the limited culpability of juveniles, the severity of the practice of juvenile solitary confinement, and the determination that penological theory does not adequately justify the practice all leads to the conclusion that the practice is cruel and unusual, in violation of the Eighth Amendment. The overwhelming international opinion against this practice for offenders of all ages further confirms this determination.

[210] *Graham*, 560 U.S. 48 at 74.
[211] *Id.* at 81.

CHAPTER 5

REMEDY

Roper v. Simmons

Now that it has been established that juvenile solitary confinement violates the Cruel and Unusual Punishment Clause of the Eighth Amendment, a categorical ban must be considered. In *Roper v. Simmons*, the Supreme Court considered whether a categorical ban on the imposition of the death penalty on juvenile offenders under the age of eighteen was necessary to satisfy the Eighth Amendment.[212] It followed the holding of *Thompson v. Oklahoma*, which recognized the implications of the characteristics of juveniles under sixteen and relied on them to categorically ban the imposition of the death penalty on juveniles below that age.[213] The *Thompson* Court recognized that less education, less intelligence, and less experience all leave a juvenile less able to evaluate the consequences of their actions, while also making them more inclined to be motivated by emotion or peer pressure.[214] It also stated, as previously discussed, that the reasons that juveniles are not trusted with the responsibilities and privileges of an adult also explains why their conduct is not as blameworthy as that of an adult.[215]

The *Roper* Court concluded that the same reasoning applied to all juvenile offenders under the age of eighteen.[216] Petitioner and his *amici* in that case asserted that even assuming that the observations the Court made about juveniles' diminished culpability is true, jurors should be allowed to consider mitigating arguments related to

[212] *Roper*, 543 U.S. 551 at 555.
[213] *Id.* at 570-571.
[214] *Thompson*, 487 U.S. 815 at 835.
[215] *Id.*
[216] *Roper*, 543 U.S. 551 at 571.

youth on a case-by-case basis, and, in some cases, impose the death penalty if justified.[217] Petitioner also maintained that it is arbitrary and unnecessary to adopt a categorial rule banning imposition of the death penalty on offenders under eighteen years of age.[218] The Court disagreed and stated that the differences between juveniles and adults are too distinct and well understood to risk allowing a juvenile to receive the death penalty despite their insufficient culpability.[219] It admitted that there may be a rare case in which a juvenile offender has reached sufficient psychological maturity and demonstrates sufficient depravity to justify a sentence of death.[220] However, the age of eighteen, the Court held, is the point where society draws a line between childhood and adulthood for many purposes, and it is the line at which death eligibility also ought to be drawn.[221]

Similarly, the differences between juveniles and adults are too distinct and well understood to risk allowing a juvenile to be placed in solitary confinement despite their insufficient culpability. As the *Roper* Court admitted, there may be a rare case in which placing a juvenile in solitary confinement is justified. However, a line must be drawn to ensure juveniles are not receiving a punishment that they are not sufficiently culpable for. The age of eighteen is where society continues to draw a line between juveniles and adults, so it is the line at which the use of solitary confinement must also be drawn.

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[217] *Id.* at 572.
[218] *Id.*
[219] *Id.*
[220] *Id.*
[221] *Id.* at 574.

Graham v. Florida

Although the *Roper* reasoning clearly demonstrates that a categorical ban is a fitting remedy for this issue, a categorical ban on juvenile solitary confinement can also be considered in light of the reasoning in *Graham.* After reaching its holding that the Eighth Amendment did not allow the sentence of life without parole for a juvenile offender who did not commit homicide, the *Graham* Court also considered a categorical ban.[222] It stated that categorical rules tend to be imperfect, but that one was necessary in that case.[223] A categorical rule, the Court stated, gives all juvenile nonhomicide offenders the opportunity to demonstrate maturity and reform.[224] It reasoned that a juvenile should not be deprived of the chance to "achieve maturity of judgment and self-recognition of human worth and potential."[225] The Court added that the sentence in question "gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, [and] no hope."[226]

Due to the irreversible psychological, physical, and social harm imposed on juveniles who spend time in solitary confinement, they do not have a complete opportunity for fulfillment or reconciliation with society either. As previously stated, the complete lack of control that offenders have over every aspect of their daily lives in solitary confinement leads many of these offenders to gradually lose their ability to initiate or control their own behavior or to organize their lives.[227] This decreases the chances that they will be able to successfully reintegrate into the community when they

[222] *Graham,* 560 U.S. 48 at 74.
[223] *Id.* at 75.
[224] *Id.* at 79.
[225] *Id.*
[226] *Id.*
[227] Birckhead, *supra* note 83, at 12-13.

are released from detention.[228] These consequences do not allow juveniles to achieve maturity of judgment and self-recognition of human worth and potential, all of which the *Graham* Court stated they should not be deprived of. While juveniles who spend time in solitary confinement have an opportunity to demonstrate maturity and reform, unlike the issue in *Graham*, the negative effects make it extremely difficult for them to mature or reform while in isolation.

Additionally, the *Graham* Court stated that, in some prisons, it is the policy to withhold education, counseling, and rehabilitation programs for offenders who are not eligible for parole consideration.[229] Thus, a categorical rule against life without parole for juvenile offenders avoids the contradictory consequence in which the deficient maturity that led to the offender's crime is reinforced by their prison term.[230] The Court held that the State had denied Graham any opportunity "to later demonstrate that he is fit to rejoin society based solely on a nonhomicide crime that he committed when he was a child in the eyes of the law."[231] This, the Court held, is not permitted by the Eighth Amendment.[232]

Like offenders who are not eligible for parole consideration, juveniles in solitary confinement are denied access to education, vocational training, and other forms of rehabilitation.[233] Thus, by adopting a categorical rule against juvenile solitary confinement, the consequence of deficient maturity that led to the offender's crime being reinforced by their prison term can be avoided. Additionally, as previously stated,

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[228] *Id.*
[229] *Graham,* 560 U.S. 48 at 79.
[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] Birckhead, *supra* note 83, at 16.

juveniles who are placed in solitary confinement will be less likely to successfully rejoin society.[234] Denying a juvenile an opportunity to later demonstrate that they are able to successfully reintegrate into the community based on an offense committed when they were a child in the eyes of the law is not permitted by the Eighth Amendment. As the *Graham* Court stated, categorical bans are not perfect, but one is absolutely necessary here.

It is worth noting here that this categorical ban must be applied to all juvenile offenders, no matter the facility they are housed in. It is the differences between juveniles and adults, not the difference between juvenile and adult facilities, that leads to this Eighth Amendment violation. Thus, the categorical ban must be applied by the age of the offender, not the place they are serving time in. Solitary confinement must not be imposed on any juveniles under the age of eighteen, even if they are housed in adult correctional facilities.

[234] *Id.* at 12-13.

CHAPTER 6

COUNTERARGUMENTS

Is Juvenile Solitary Confinement Really Punitive?

It could be argued that the Eighth Amendment does not apply to juvenile solitary confinement because the practice is not punitive. Although the Court has never explicitly ruled on the issue of the use of solitary confinement as punitive versus regulatory, it has implied that the practice is a form of punishment. In the 1890 case of *In Re Medley,* the Supreme Court held that solitary confinement is a separate punishment, in addition to the punishment for the original crime, and is subject to constitutional restraints.[235] In the decades since that decision, however, the Court has seemingly ignored that holding, leaving the question of whether solitary confinement is punitive open.[236] In 2018, in a denial of certiorari of *Apodaca v. Raemisch,* Justice Sonya Sotomayor wrote a statement on this issue.[237] Referring to solitary confinement, she stated that a punishment does not need to "leave physical scars to be cruel and unusual."[238] She also asserted that courts and correctional officials must "remain alert to the clear constitutional problems raised by keeping prisoners in 'near-total' isolation from the living world in what comes perilously close to a penal tomb."[239] Thus, although the Court has not explicitly ruled on the issue of whether solitary confinement is punitive, it seems that it does view the practice as such. Even so, the issue has not been given a clear answer by the Court and requires additional analysis.

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[235] *In Re Medley,* 134 U.S. 160, 171 (1890).
[236] John F. Stinneford, *Is Solitary Confinement a Punishment?,* 115 Nw. U. L. Rev. 9, 9 (2020).
[237] *Apodaca v. Raemisch,* 139 S. Ct. 5, 6 (2018).
[238] *Id.*
[239] *Id.* at 10.

Although the imposition of punishment has a unique legal significance in the United States, the Supreme Court has never provided a precise definition of punishment.[240] However, by examining Supreme Court precedent, it is possible to make observations about how the Court determines what sanctions qualify as punitive.[241] In 2003, in the case of *Smith v. Doe,* the Court considered whether the Alaska Sex Offender Registration Act was punitive.[242] The Court held that if the intention of the legislature is to impose punishment, the sanction is clearly punitive.[243] However, it stated that if the intention is to enact a regulatory scheme that is nonpunitive, it requires further examination to determine whether the scheme is so punitive, either in its effects or purpose, as to negate the government's intention to deem it nonpunitive.[244]

The government generally justifies the use of solitary confinement on two grounds: administrative or regulatory solitary confinement and disciplinary solitary confinement.[245] Administrative solitary confinement is used to manage the safety and security of the facility and may be used when an inmate is waiting to be transferred, must be protected from other inmates,[246] is awaiting a hearing, is under investigation for a violation of a prison regulation, or has been classified as a risk to other inmates or staff.[247] Disciplinary solitary confinement is used in correctional facilities for punitive purposes and may be used as punishment for prohibited conduct.[248]

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[240] Martin Gardner, *Youthful Offenders and the Eighth Amendment Right to Rehabilitation: Limitations on the Punishment of Juveniles*, 83 Tenn. L. Rev. 455, 463 (2016).
[241] *Id.*
[242] *Smith v. Doe*, 538 U.S. 84, 89 (2003).
[243] *Id.* at 92.
[244] *Id.*
[245] Basso, s*upra* note 113, at 1603-1604.
[246] *Id.*
[247] Birckhead, *supra* note 83, at 4-5.
[248] *Id.* at 5.

Thus, according to the holding of *Smith,* disciplinary juvenile solitary confinement is indeed punitive, and falls within the scope of the Eighth Amendment. Administrative or regulatory juvenile solitary confinement, however, requires further examination to determine whether the practice is so punitive that it negates the government's intention to deem it nonpunitive. The first step in this inquiry, according to the *Smith* Court, is to determine whether the sanction was established with the intent of creating a nonpunitive scheme.[249] Administrative or regulatory juvenile solitary confinement was established with the intent to manage the safety and security of the facility and of the offenders. Therefore, this form of the practice was clearly established with the intent of creating a nonpunitive scheme. This finding, however, is not dispositive.

The second step in this inquiry is to analyze the effects of the sanction.[250] For this part of the analysis, the *Smith* Court referred to seven factors noted in *Kennedy v. Mendoza-Martinez* as a framework.[251] Since these factors were designed to apply in a variety of constitutional contexts, the Court stated that they are "neither exhaustive nor dispositive, but are useful guideposts."[252] The factors most relevant to this analysis are whether the sanction has been historically regarded as punishment, whether it involves an affirmative disability or restraint, whether it promotes the traditional aims of punishment, whether the behavior to which it applies is already a crime, whether it has a rational connection to a nonpunitive purpose, and whether it appears excessive in respect to this

[249] *Smith*, 538 U.S. 84 at 93.
[250] *Id.* at 97.
[251] *Id.*
[252] *Id.*

alternative purpose.[253] The remaining factor, whether the sanction comes into play only on a finding of scienter, is of little weight in this inquiry.[254]

A historical analysis can be useful in this inquiry, according to the *Smith* Court, because when deciding to punish an individual, one is likely to select a means of punishment that is deemed punitive in tradition so that the public will recognize it as punishment.[255] It its analysis, the *Smith* Court held that the sanction did not involve traditional means of punishing because "sex offender registration and notification statutes are of fairly recent origin."[256] Distinguishably, solitary confinement has been used in penal institutions in the United States since the 1800s.[257] As previously discussed, solitary confinement was originally intended to force the prisoner to reflect upon his crime, read the Bible, and repent.[258] Thus, unlike the case of *Smith,* juvenile solitary confinement does involve traditional means of punishing.

In considering whether the sanction involves an affirmative disability or restraint, the *Smith* Court inquired how the effects of the Act were felt by those subjected to it.[259] If the disability or restraint is indirect and minor, the Court stated, its effects are unlikely to be punitive.[260] In that case, the Court held that the Act imposed no physical restraint, and thus did not resemble the punishment of imprisonment, which is the standard affirmative disability or restraint.[261] Distinguishably, juvenile solitary confinement does involve an affirmative restraint that entirely resembles the punishment of imprisonment. As

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[253] *Kennedy v. Mendoza-Martinez,* 372 U.S. 144, 168-169 (1963).
[254] *Id.*
[255] *Smith,* 538 U.S. 84 at 97.
[256] *Id.*
[257] Johnson, *supra* note 65, at 704.
[258] Johnson, *supra* note 65 at 704.
[259] *Smith,* 538 U.S. 84 at 99-100.
[260] *Id.* at 100.
[261] *Id.*

previously discussed, solitary confinement is the practice of isolating people in closed cells for 22 to 24 hours per day in cells that generally measure from 6x9 to 8x10 feet.[262] Thus, juvenile solitary confinement, unlike the Act in question in *Smith*, clearly involves an affirmative disability or restraint.

In its inquiry into whether the Act promoted the traditional aims of punishment, the *Smith* Court stated that the Act was not promoting deterrence because that State only conceded that the statute might deter future crime, and any number of governmental programs might deter crime without imposing punishment.[263] Additionally, it stated that the Act was not retributive in nature because the Act was based on the extent of the wrongdoing, not the extent of the risk posed.[264] Similarly, regulatory juvenile solitary confinement is not an attempt to promote deterrence. However, the practice is retributive in nature. Regulatory juvenile solitary confinement is based on the extent of the risk posed, unlike the Act in *Smith.* One of the main purposes of the practice is to isolate an inmate who has been classified as a risk to other inmates or staff. Thus, regulatory juvenile solitary confinement attempts to promote one of the traditional aims of punishment.

The factor considering whether the behavior to which a sanction applies is already a crime did not apply to the *Smith* case, and was therefore not considered.[265] Applying this factor to juvenile solitary confinement, or any cases involving prisoner maltreatment, is an ambiguous task because these cases might well be viewed as sanctions imposed for

[262] *Id.*
[263] *Smith,* 538 U.S. 84 at 102.
[264] *Id.*
[265] *Id.* at 105.

violations of guards' orders instead of legal rules.[266] However, this interpretation is neither necessary nor accurate.[267] These sanctions should be viewed as not only imposed for violations of rules or orders, but as an aspect of the initial sanction imposed for the prisoner's original offense.[268] This interpretation is proper in all respects because when a person is sentenced to prison, they are not sentenced to confinement in the abstract.[269] They are sentenced to confinement that takes place under certain conditions.[270] Thus, juvenile solitary confinement is a sanction imposed as an aspect of the juvenile's initial offense, which was indeed a crime.

In considering whether the Act had a rational connection to a nonpunitive purpose, the *Smith* Court held that it had a legitimate nonpunitive purpose of public safety.[271] Similarly, regulatory juvenile solitary confinement has a legitimate nonpunitive purpose of safety and security of correctional facilities and inmates. In considering whether the Act appeared excessive in respect to this alternative purpose, the *Smith* Court stated that it was not its duty, in this inquiry, to decide whether the legislature had made the best possible choice to address the problem it attempted to remedy.[272] The question in this inquiry, it stated, "is whether the regulatory means chosen are reasonable in light of the nonpunitive objective."[273] The Court held that the Act was reasonable in light of the regulative purpose of public safety because the risk of recidivism that sex offenders pose

[266] Maria Foscarinis, *Towards a Constitutional Definition of Punishment,* 80 Colum. L. Rev. 1667, 1682 (1980).
[267] *Id.*
[268] *Id.*
[269] *Id.*
[270] *Id.*
[271] *Smith,* 538 U.S. 84 at 102-103.
[272] *Id.* at 105.
[273] *Id.*

is frightening and high.[274] Thus, it held that the Act was not excessive in relation to the alternative purpose. Unlike the Act in *Smith,* juvenile solitary confinement is not reasonable in light of the regulatory purpose of facility and inmate safety and security. Isolating inmates in closed cells for 22 to 24 hours per day with virtually no human contact is clearly not a reasonable regulatory means to achieve the purpose of safety and security in correctional facilities.[275] Although the facility has a clear duty to protect other inmates in the facility, as previous discussed, juveniles are often placed into solitary confinement for minor, nonviolent violations. Therefore, although there is a rational alternative purpose for juvenile solitary confinement, the sanction is clearly excessive in relation to the alternative purpose.

The *Smith* Court ultimately held, based on the factors laid out in *Kennedy v. Mendoza-Martinez,* that the Alaska Sex Offender Registration Act was nonpunitive.[276] Thus, regulatory juvenile solitary confinement must be punitive. There are only two similarities between the findings of these two sanctions. First, they both were established with the intent of creating a nonpunitive scheme, which is not dispositive. Second, they both have a legitimate nonpunitive purpose. However, the sanction in question here is excessive in relation to that alternative purpose. Therefore, regulatory juvenile solitary confinement is clearly so punitive, in its effects and purpose, as to negate the government's intention to deem it nonpunitive.

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[274] *Id.* at 103.
[275] It is important to note that regulatory solitary confinement is used as an administrative convenience for correctional officers. Correctional facilities tend to justify the use of the practice by claiming that there are no other strategies available to maintain a safe and secure environment. However, this excuse falls shorts when considering that other facilities managing juveniles, such as mental health facilities, foster homes, and the like, do not use a similar method to achieve safety and security.
[276] *Smith,* 538 U.S. 84 at 105-106.

Do the Qualities of Youth Disappear at Age Eighteen?

It could be argued that a categorical ban on juvenile solitary confinement is not effective because the qualities that distinguish juveniles from adults do not necessarily disappear when one turns eighteen.[277] The *Roper* Court stated that this objection is always raised against categorical rules.[278] However, it responded to this objection by stating that just as some juveniles over the age of eighteen still encompass the qualities of youth, some under the age of eighteen have already reached a level of maturity that some adults never will.[279] As previously stated, the characteristics of youth make it "difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects transient immaturity and the rare juvenile offender whose crime reflects irreparable corruption."[280] A rare case may arise in which a juvenile is sufficiently culpable to cope with the imposition of solitary confinement. However, as previously stated, the differences between juveniles and adults are too distinct and well understood to risk allowing a juvenile to encounter the imposition of solitary confinement despite their insufficient culpability.[281] A line must be drawn, and given that the age of eighteen is the point in which society draws the line between childhood and adulthood for various purposes, it is the age at which the line for solitary confinement eligibility also ought to rest.

[277] *Roper,* 543 U.S. 551 at 574.
[278] *Id.*
[279] *Id.*
[280] *Graham,* 560 U.S. 48 at 68.
[281] *Roper,* 543 U.S. 551 at 572.

CHAPTER 7

CONCLUSION

To sum up, juveniles are different. They are different in their vulnerability, their lack of maturity, and their diminished culpability, and they must be constitutionally treated as such. The punishment is different. Solitary confinement imposes severe psychological, physical, social, and developmental harm. This harm, when inflicted on juveniles, is very different and more severe than the harm inflicted on adults because of its irreparability. When imposed on juveniles, these effects are conceivably permanent.

An application of the Supreme Court's jurisprudence to the imposition of solitary confinement on juvenile offenders clearly illustrates that the Supreme Court should declare the practice unconstitutional as a violation of the Eighth Amendment. The practice fails to satisfy the two-step inquiry in *Graham.* Given that the Eighth Amendment does not allow for the imposition of solitary confinement on juveniles, the appropriate remedy is a categorical ban. An application of the practice to the precedential cases of *Roper* and *Graham* clearly demonstrates the need for a categorical ban on the imposition of solitary confinement for offenders under the age of eighteen.

Recommendations for Future Research

One of the greatest barriers to this research is the lack of available and current data on juveniles in solitary confinement. There is a shortage of data on the prevalence of juvenile solitary confinement use, as well as on the effects the practice imposes on juveniles. Thus, future research should investigate the reasons for the lack of this data.

Additionally, future research should consider ways to initiate and organize this data collection.

REFERENCES

Anderson, Danika Jo, *NOTE: SOLITARY CONFINEMENT AS ILLEGITAMATELY PROSCRIBED AND DISPROPORTIONAL PUNISHMENT: ANOTHER ANGLE FROM WHICH TO ATTACK THE INHUMANE PRACTICE,* 35 ND J. L. Ethics & Pub Pol'y 301, 308-309 (2021).

Apodaca v. Raemisch, 139 S. Ct. 5, 6-10 (2018).

Atkins v. Virginia, 536 U.S. 304, 307-321 (2002).

Bassett, Lindley A., *The Constitutionality of Solitary Confinement: Insights from Maslow's Hierarchy of Needs,* 26 Health Matrix 403, 407-420 (2016).

Basso, Brielle, *Solitary Confinement Reform Act: A Blueprint for Restricted Use of Solitary Confinement of Juveniles Across the States,* 48 Seton Hall L. Rev. 1601, 1603-1606 (2018).

Birckhead, Tamar R., *Children in Isolation: The Solitary Confinement of Youth,* 50 Wake Forest L. Rev. 1, 4-16 (2015).

Burton, Chase S., *REVIEW ESSAY: Child Savers and Unlike Youth,* 44 Law & Soc. Inquiry 1251, 1255 (2019).

Casella, Jean et al., *Hell is a Very Small Place*, 3-10 (2016).

Coler, Lauren M., *Isolated and Forgotten: End the Use and Practice of Solitary Confinement in the Juvenile Justice System*, 45 T. Marshall L. Rev. 93, 99-104 (2021).

Coppola, Federica, *The Brain in Solitude: An (Other) Eighth Amendment Challenge to Solitary Confinement*, 7 J. Law Biosci. 184, 196-223 (2019).

CRUEL AND UNUSUAL PUNISHMENTS, Cornell Law School § 2, https://www.law.cornell.edu/constitution-conan/amendment-8/cruel-and-unusual-punishments.

Federal Legislation Limiting Solitary, Stop Solitary for Kids (2019), https://www.stopsolitaryforkids.org/proposed-federal-legislation/.

Foscarinis, Maria, *Towards a Constitutional Definition of Punishment,* 80 Colum. L. Rev. 1667, 1682 (1980).

Furman v. Georgia, 408 U.S. 238, 383 (1972).

Gardner, Martin, *Youthful Offenders and the Eighth Amendment Right to Rehabilitation: Limitations on the Punishment of Juveniles*, 83 Tenn. L. Rev. 455, 463 (2016).

Graham v. Florida, 560 U.S. 48, 52-101 (2010).

Granucci, Anthony F., *"Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning*, 57 Calif. L. Rev. 839, 840 (1969).

Gregg v. Georgia, 428 U.S. 153, 170 (1976).

Hager, Eli, *Ending Solitary for Juveniles: A Goal Grows Closer*, The Marshall Project (August 1, 2017), https://www.themarshallproject.org/2017/08/01/ending-solitary-for-juveniles-a-goal-grows-closer.

Hanna, Andrew L., *Series on Solitary Confinement & The Eighth Amendment: Article III of III: Solitary Confinement as Per Se Unconstitutional*, 21 U. Pa. J. Const. L. 1, 5-7 (May 2019).

Hockenberry, Sarah, & Anthony Sladky, *Juvenile Residential Facility Census, 2016: Selected Findings*, U.S. Department of Justice, 4 (2018).

Hong, Esther K., *ARTICLE: A REEXAMINATION OF THE PARENS PATRIAE POWER*, 88 Tenn. L. Rev. 277, 283-294 (2021).

In Re Medley, 134 U.S. 160, 171 (1890).

Johnson, Nicole, *Solitary Confinement of Juvenile Offenders and Pre-Trial Detainees*, 35 Touro L. Rev. 699, 699-705 (2019).

Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-169 (1963).

Kysel, Ian M., *Banishing Solitary: Litigating an End to the Solitary Confinement of Children in Jails and Prisons*, 40 N.Y.U. Rev. L. & Soc. Change 675, 687-688 (2016).

Mears, Daniel P. and William D. Bales, *Supermax Incarceration and Recidivism*, 47 CRIMINOLOGY 1131, 1144-1145 (2009).

Miller v. Alabama, 567 U.S. 460, 469-476 (2012).

Penry v. Lynaugh, 492 U.S. 302, 340 (1989).

Robinson v. California, 370 U.S. 660, 667 (1962).

Roper v. Simmons, 543 U.S. 551, 555-578 (2005).

Scott, Elizabeth S. & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform,* 88 J Crim L & Criminology 137, 141-142 (2001).

Smith v. Doe, 538 U.S. 84, 89-106 (2003).

Standard Minimum Rules for the Treatment of Prisoners, part I, § 31 (May 13, 1977).

Stanford v. Kentucky, 492 U.S. 361, 380 (1989).

Stinneford, John F., *Is Solitary Confinement a Punishment?*, 115 Nw. U. L. Rev. 9, 9 (2020).

Taylor, Robert W. & Eric J. Fritsch, *Juvenile Justice: Policies, Programs, and Practices,* 4-36 (5th ed. 2020).

Thompson v. Oklahoma, 487 U.S. 815, 823-838 (1988).

Trop v. Dulles, 356 U.S. 86, 87-104 (1958).

U.S. Const. amend. XIV, § 1.

U.S. Const. amend. VIII.

Ward, Geoff K., *The Black Child-Savers: Racial Democracy & Juvenile Justice,* 20-21 (2012).

Weems v. United States, 217 U.S. 349, 362-382 (1910).

Wilson, Adrian. *The Infancy of the History of Childhood: An Appraisal of Philippe Ariès*, 19 History and Theory 132, 135-136 (1980).

Wiltz, Teresa, *Is Solitary Confinement on the Way Out?*, PEW (November 21, 2016), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/11/21/is-solitary-confinement-on-the-way-out.