
A STEP BACK FOR JUVENILE JUSTICE: WHY *JONES V. MISSISSIPPI* GETS IT ALL WRONG

By Noah Zelkin¹
Edited by Julia Rose

This Note examines the Supreme Court's recent decision in Jones v. Mississippi (2021) and argues that the ruling represents an unfortunate departure from established principles in juvenile justice. The central contention is that the Court erred in holding that a sentencer is not required to make a separate factual finding of permanent incorrigibility before sentencing a murderer under the age of 18 to life without parole. This Note's second section traces the evolution of juvenile-rights jurisprudence from Roper v. Simmons (2005) to Montgomery v. Louisiana (2016). This historical overview highlights a discernible trend towards increasing restrictions on the imposition of juvenile life without parole (JLWOP) sentences, reflecting a growing recognition of the distinct characteristics of youth and their implications for criminal culpability. Following this examination of precedent, the Note turns its focus to Jones v. Mississippi (2021). It argues that the Jones decision not only contradicts established precedent but also demonstrates a fundamental misunderstanding of the nuanced considerations that must inform juvenile jurisprudence. It can then be concluded that by eliminating the requirement for a factual finding of incorrigibility in JLWOP cases, the Court's ruling in Jones threatens to erode the Eighth Amendment rights of children across the United States.

I.	INTRODUCTION.....	2
II.	AN EVOLUTION, FROM ROPER TO MONTGOMERY.....	2
	A. Roper v. Simmons (2005).....	2
	B. Graham v. Florida (2010).....	3
	C. Miller v. Alabama (2012).....	5
	D. Montgomery v. Louisiana (2016).....	6
III.	WHY JONES GETS IT WRONG.....	7
	A. Background & Anticipation.....	7
	B. The Decision.....	8
	C. Informed Evaluation.....	8

¹ B.A. Candidate for Political Economy (major) and Philosophy (major), Strategy, Leadership, and Analytics Minor (SLAM) (minor), Tulane University School of Liberal Arts, Class of 2026. Special thanks should also be given to Julia Rose, for editing and refining this Note. Patrick and Anita Flood should also be thanked alongside Marvin and Kay Zelkin, whose positive influences are the reason this note is being written in the first place.

IV. CONCLUSION.....10

I. Introduction

Over the past half-century, the Supreme Court has been at the helm of a clear and consistent trend towards restrictions on juvenile life without parole (JLWOP) sentences, with decisions in *Roper v. Simmons* (2005),² *Graham v. Florida* (2010),³ *Miller v. Alabama* (2012),⁴ and *Montgomery v. Louisiana* (2016),⁵ imposing new Eighth Amendment⁶ proportionality limitations⁷ on both capital and noncapital juvenile punishments. But in 2021, the Court’s decision in *Jones v. Mississippi* (2021)⁸ seemingly reversed the current of JLWOP away from the above axiom, holding that a factual finding of permanent incorrigibility would no longer be necessary to impose LWOP sentences on juveniles.⁹ This Note will first discuss the evolution of juvenile-rights jurisprudence from *Roper* to *Montgomery*, where an unambiguous movement towards restrictions on the scope and severity of juvenile sentencing practices is evident. Then, after taking a careful look at the Court’s opinion in *Jones*, this Note will argue that by eliminating the requirement for a factual finding of incorrigibility in JLWOP cases, the Supreme Court’s decision wholly misunderstands the special considerations juvenile jurisprudence demands, thereby threatening the Eighth Amendment rights of children across the United States.

II. An Evolution, From *Roper* To *Montgomery*

A. *Roper v. Simmons* (2005)

An overview of precedent relevant to *Jones* will start outside the realm of noncapital punishment, namely with the Court’s categorical restriction on the juvenile death penalty in *Roper*.¹⁰ The Court’s opinion held that despite the “chilling, callous”¹¹ nature of the seventeen-year-old’s crime, in which Christopher Simmons clearly and confidently outlined—and then acted upon—how he would murder Shirley Crook,¹² the State of Missouri could not “extinguish his life and his potential to attain a mature understanding of his own

² *Roper v. Simmons*, 543 U.S. 551 (2005).

³ *Graham v. Florida*, 560 U.S. 48 (2010).

⁴ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁵ *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

⁶ U.S. Const. Amend. VIII.

⁷ Alice Ristroph, Proportionality as a Principle of Limited Government, 55 Duke Law Journal 263-331 (2005): 292 <https://scholarship.law.duke.edu/dlj/vol55/iss2/2/>.

⁸ *Jones v. Mississippi*, 593 U.S. 98 (2021).

⁹ *Id.*, at 1313.

¹⁰ 543 U.S. 551 (2005).

¹¹ *Id.*, at 556.

¹² *Id.*

humanity.”¹³ In holding the execution of juveniles as unconstitutional under the Eighth Amendment’s prohibition of “cruel and unusual punishment”,¹⁴ the Court referred both to “evolving standards of decency”¹⁵ as well as relevant psychological research conducted by the American Psychological Association (APA) in an *amicus curiae* brief filed alongside the Missouri Psychological Association.¹⁶ This research informed the Court’s conclusion that “juvenile offenders cannot with reliability be classified among the worst offenders”¹⁷ as would be necessary for imposition of the death penalty.¹⁸

But beyond a categorical ban on juvenile execution, *Roper* represents an acknowledgment of the specific characteristics that separate juvenile jurisprudence from its adult counterpart. Drawing from the *amici* brief, the Court outlined three features juveniles possess that make decisions regarding their punishment particularly unique: the first being “[a] lack of maturity and an underdeveloped sense of responsibility,” which “often result in impetuous and ill-considered actions and decisions.”¹⁹ Second, “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure,” and oftentimes, as a result, cannot extricate themselves from criminogenic settings.²⁰ Third, the Court acknowledged that “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.”²¹ These three juvenile-specific characteristics the Court acknowledged are paramount in understanding the special consideration that individuals under eighteen have been afforded since *Roper*; a paradigm neatly summed up about halfway through the Court’s opinion: “It is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”²² *Roper* established that criminal culpability is diminished solely due to the veritable facets of juvenile psychology, a principle which underlines all relevant judicial review preceding *Jones*.

B. *Graham v. Florida* (2010)

The Supreme Court’s decision in *Graham v. Florida* is the first instance of a categorical proscription in a noncapital case, holding that juveniles cannot be sentenced to life without parole for non-homicide crimes;²³ the judgment a then seventeen-year-old Terrance Graham was

¹³ *Id.*, at 574.

¹⁴ U.S. Const. Amend. VIII.

¹⁵ 543 U.S. at 561 (2005).

¹⁶ Brief for the American Psychological Association, and the Missouri Psychological Association as Amici Curiae, *Roper v. Simmons*, 543 U.S. <https://www.apa.org/about/offices/ogc/amicus/roper>.

¹⁷ 543 U.S. at 569 (2005).

¹⁸ *Id.*, at 568.

¹⁹ *Id.*, at 569.

²⁰ *Id.*

²¹ *Id.* at 570.

²² *Id.*

²³ 560 U.S. 48 (2010).

facing due to Florida's *de jure* abolishment of the parole system.²⁴ Graham had been convicted of armed robbery.

Graham, similarly to *Roper*, challenged nonhomicide LWOP as an Eighth Amendment violation, holding that LWOP's function as "the second most severe penalty permitted by law"²⁵ is categorically disproportional to juvenile offenses outside of homicide.²⁶ In the majority opinion, Justice Kennedy proclaimed that "A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense",²⁷ forming a pseudo test for proportionality which is mentioned in *Miller*, *Montgomery*, and *Jones*. Justice Kennedy specified that JLWOP in nonhomicide cases does not sufficiently accomplish any of the legitimate penal justifications provided in *Ewing v. California* (2003),²⁸ namely "retribution, deterrence, incapacitation, and rehabilitation".²⁹ Retribution was excessive given the juveniles' reduced culpability, as outlined in *Roper*.³⁰ Deterrence was ineffective since juveniles are, according to all peer-reviewed psychology, more impulsive than [adults or some sort of similar subgroup].³¹ Incapacitation is misplaced and would require sentencers to make potentially impossible decisions "inconsistent with youth",³² while the nature of LWOP forecloses conversations about rehabilitation altogether.

Graham is also one of the first decisions to specifically use the phrase "incorrigible"³³ in relation to JLWOP considerations, a diction which will prove relevant to the majority opinion in *Jones*. Kennedy writes that justifying JLWOP specifically in accordance with imminent danger principles "requires the sentencer to make a judgment that the juvenile is incorrigible,"³⁴ the exact principle annulled in *Jones*. *Montgomery* later set a clearer requirement for incorrigibility, but the postulate's mention over a decade prior to *Jones* is nonetheless significant. *Roper* and *Graham* also reference the difficulty in making judgments about a juvenile's relative inability to change.³⁵

In *Graham*, Justice Kennedy explained that it is 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,³⁶ drawing a clear line between the vast majority of children whose culpability is at least partially mitigated by juvenile deficiencies, and those rare instances where judiciaries can sufficiently conclude that a juvenile

²⁴ Fla. Stat. § 947.165.

²⁵ 560 U.S. 48 at 69 (2010).

²⁶ *Id.*, at 71.

²⁷ *Id.*

²⁸ *Ewing v. California*, 538 U.S. 11 (2003).

²⁹ *Id.*, at 25.

³⁰ 560 U.S. 48 at 72 (2010).

³¹ *Id.*

³² *Id.*, at 73.

³³ *Id.*

³⁴ *Id.*, at 75.

³⁵ *Id.*, at 72, 73, 75.

³⁶ *Id.*, at 73.

is beyond amelioration. *Graham* is the second sequential categorical barrier in juvenile jurisprudence, a clear marker of the Court's willingness to depart from the deference which typified noncapital review pre-*Roper*.³⁷

C. *Miller v. Alabama* (2012)

Just two years after the Court's decision in *Graham*, they were again asked to consider the particularities of JLWOP, this time within the context of a consolidated case concerning murders committed by two different fourteen-year-old children.³⁸ In both instances, State judiciaries were required to impose JLWOP terms, with no alternative punishment permitted under Arkansas and Alabama law.³⁹

The titular petitioner Evan Miller had by fourteen attempted suicide four times, been in and out of foster care on numerous occasions, and regularly abused drugs and alcohol, all the while living with an abusive stepfather and a mother who suffered from alcoholism and drug addiction.⁴⁰ In 2003, Miller and a friend were at his trailer home when Cole Cannon, the eventual victim, arrived to sell Miller's mother drugs. After the transaction, the two children followed the fifty-two-year-old man back to his trailer, where the three smoked marijuana and played drinking games.⁴¹ Eventually, Cannon passed out, and upon realizing Miller had stolen his wallet, an altercation involving a baseball bat ensued, resulting in Miller striking the older man over the head numerous times. After initially fleeing, the two boys returned to Cannon's trailer and set a series of fires that would asphyxiate and eventually kill him.⁴²

Evan Miller was tried and convicted as an adult for murder in the course of arson, a crime which, in Alabama, carried with it a mandatory sentence of life without parole. The primary question the Court evaluated in *Miller* was whether or not the mandatory nature of Alabama and Arkansas' JLWOP sentencing schemes was constitutional, especially given the decisions in *Roper* and *Graham*.⁴³ In a split decision, the Court reversed the Alabama Appellate Court's holding,⁴⁴ deciding that while Miller undoubtedly deserved punishment for his crime, the fact that the sentencer was unable to exercise any discretion regarding any and all mitigating factors Miller's youth may have presented was wholly unconstitutional.⁴⁵ The logic is quite straightforward: *Graham* made fundamental the fact that "youth are different" when it comes to

³⁷ Steiker, Carol S., and Jordan M. Steiker. "Graham Lets the Sun Shine In: The Supreme Court Opens a Window Between Two Formerly Walled-Off Approaches to Eighth Amendment Proportionality Challenges." *Federal Sentencing Reporter*, vol. 23, no. 1, 2010, pp. 79–86. JSTOR, <https://doi.org/10.1525/fsr.2010.23.1.79>. Accessed 24 Apr. 2025.

³⁸ 567 U.S. 460 at 465 (2012).

³⁹ *Id.*, at 469.

⁴⁰ *Id.*, at 467.

⁴¹ *Id.*, at 468.

⁴² *Id.*

⁴³ *Id.*, at 474.

⁴⁴ *Id.*, at 479.

⁴⁵ *Id.*

Eighth Amendment proportionality jurisprudence, and that because of this, it is impossible to treat children the same way as adults, especially given the penal magnitude of JLWOP.⁴⁶ It then follows that Alabama and Arkansas' mandatory LWOP sentences simply prevented the judiciary from being able to exercise the discretion that is inherently required when evaluating juvenile decision-making.⁴⁷ Such a scheme "poses too great a risk" of the kinds of disproportionate punishment the Eighth Amendment is specifically designed to protect against.⁴⁸

Miller introduces the standard that, at the very least, judges *must* be allowed to holistically evaluate the upbringing, psychological adequacy, and juvenile-specific mitigating factors when imposing JLWOP. The next case this Note will examine, *Montgomery*, expands upon *Miller*'s procedural and substantive boundaries, but first, some attention should be paid to the last paragraph of Section II of Justice Kagan's majority opinion.

After holding that mandatory LWOP is unconstitutional, Kagan writes that proving a child to be "irreparably corrupt" (a phrase which is synonymous with "permanently incorrigible") is difficult and will be uncommon.⁴⁹ In the next line, the opinion states that "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different".⁵⁰ A fairly natural interpretation of the Court's language would suggest the precipice of an incorrigibility requirement, a finding important to keep in mind when analyzing the majority opinion in *Jones*.

D. Montgomery v. Louisiana

In November 1963, 17-year-old Henry Montgomery, a Black teenager in East Baton Rouge Parish, Louisiana, skipped school and encountered Charles Hurt, a plainclothes officer with the East Baton Rouge Parish Sheriff's Office.⁵¹ Hurt attempted to detain the teenager for truancy (skipping class) but was shot. Following his arrest, Montgomery was tried and convicted of first-degree murder. The conviction was initially reversed due to public pressure influencing the jury pool, but he was retried and again found guilty in 1969, this time receiving a mandatory sentence of life without the possibility of parole (LWOP), the only punishment then available for first-degree murder under Louisiana law. For the next several decades, Montgomery remained incarcerated at the Louisiana State Penitentiary, commonly known as Angola, one of the largest and most notorious maximum-security prisons in the United States. Following *Miller*, Montgomery sought resentencing. The Louisiana Supreme Court ruled that *Miller* was not retroactive, barring him from relief; Montgomery appealed. In 2016, the Court granted *certiorari* to determine whether *Miller* applied to cases finalized before its ruling.

⁴⁶ *Id.*, at 471.

⁴⁷ *Id.*, at 489.

⁴⁸ *Id.*, at 479.

⁴⁹ *Id.*

⁵⁰ *Id.*, at 480.

⁵¹ 577 U.S. 190 at 194 (2016).

In a 6-3 decision, the Court held that *Miller* was not merely procedural but substantive, meaning Louisiana's refusal to grant *habeas corpus* was unconstitutional,⁵² according to *Ex parte Siebold* (1879)⁵³ and *Teague v. Lane* (1989).⁵⁴ This ruling effectively mandated that sentencing courts determine whether a juvenile is permanently incorrigible before imposing LWOP. The Court once again reasoned that most juvenile offenses stem from "transient immaturity" rather than irredeemable depravity, making LWOP inappropriate in the vast majority of cases.⁵⁵ *Montgomery* thus established a crucial safeguard, directly holding over seven times across the decision that sentencing a juvenile to LWOP without a specific finding of incorrigibility would violate the Eighth Amendment.⁵⁶ In doing so, the Court established a substantive prescription, making clear what exactly *Miller* finds and deems valuable for review.

The Court did not specify *how* judges should make findings of incorrigibility or what evidence should suffice within the sentencer's reasoning on the record. This ambiguity left room for states to apply *Miller* inconsistently over the next few years. A gap that would later prove pivotal when the Court, in *Jones*, abandoned *Montgomery*'s most critical safeguard.⁵⁷

III. Why *Jones* Gets It Wrong

A. Background & Anticipation

On April 22nd, 2021, the Court released its decision in *Jones v. Mississippi* (2021), its most recent and relevant decision surrounding JLWOP. The case involves Brett Jones' stabbing and subsequent murder of his grandfather, which he carried out at the age of fifteen. The killing was prompted after Jones' grandfather discovered Brett's girlfriend in his room and forced her to leave.⁵⁸ This incident upset Brett, and later that day, he and his grandfather got into a physical altercation, which resulted in the homicide, and Jones' eventual apprehension and confession at a nearby gas station.⁵⁹ Subsequently, Jones was sentenced to LWOP, but in the wake of *Miller* and *Montgomery*, Jones contended that the Mississippi judiciary must make a separate factual finding of permanent incorrigibility before imposing a JLWOP sentence.⁶⁰ After the Mississippi Court of Appeals rejected Jones' argument, the case was appealed and accepted for review by the Supreme Court. Given the clear and consistent trajectory the Court had been on since *Roper* in 2005, and that only five years had passed since *Miller*, it would have been reasonable to anticipate that *stare decisis* interests would prevail and *Jones* would simply apply its stance

⁵² *Id.*, at 212.

⁵³ *Ex parte Siebold*, 100 U.S. 371 (1879).

⁵⁴ *Teague v. Lane*, 489 U.S. 288 (1989).

⁵⁵ 577 U.S. 190 at 209 (2016).

⁵⁶ 593 U.S. 98 at 131, 134, 135, Sotomayor dissenting (2021)

⁵⁷ *Id.*, at 118.

⁵⁸ *Id.*, at 102.

⁵⁹ *Id.*

⁶⁰ *Id.*, at 104.

regarding incorrigibility retroactively per *Montgomery*. But, in a 6-3 decision, those prior sentiments were entirely subverted.

B. *The Decision*

In a clear separation from both *Miller* and *Montgomery*, the Court held that a sentencer need not make a separate factual finding of permanent incorrigibility before sentencing a murderer under 18 to life without parole, effectively gutting both *Miller* and *Montgomery*.⁶¹ Writing for the majority, Justice Kavanaugh explained that the Court viewed the issue to be already decided by language (or a lack thereof) in both *Miller* and *Montgomery*.⁶² According to the majority interpretation, *Miller* only mandated that a sentencer “consider” an offender’s youth and “attendant characteristics” before imposing an LWOP sentence.⁶³ While *Montgomery* affirmed that there was no “formal fact finding requirement,” so “a finding of fact regarding a child’s incorrigibility... is not required.”⁶⁴ Mississippi’s discretionary sentencing scheme was therefore “constitutionally necessary and constitutionally sufficient.”⁶⁵ Despite their otherwise apprehensive attitude regarding their own precedent, the Court did echo *Miller*’s sentiment that determining whether or not a juvenile is incorrigible is extremely difficult, but instead of choosing to lean into that objective truth as in *Miller*, Kavanaugh and the majority decided to abandon the principle altogether. In the decision, the Court adopted a particularly narrow understanding of both *Miller* and *Montgomery*, justifying what appears to be a break from precedent as simply an explicit reading of both cases.⁶⁶

The decision in *Jones* suggests that the Court is reconsidering its prior extensive review of noncapital cases: At the end of the opinion, Kavanaugh noted that “determining the proper sentence raises profound questions of morality and social policy.”⁶⁷ These questions are, according to Kavanaugh, first to be answered by “states, not the federal courts.”⁶⁸

C. *Informed Evaluation*

The basis for this Note’s criticism is twofold: First, the Court is contradicting clear precedent without the “special justification” required to do so. In doing so, the majority’s readings of *Miller* and *Montgomery* are, at best, overly narrow, but could also be plainly inaccurate. Second, this Note will contend that disregarding incorrigibility requirements is fundamentally incompatible with the facets of juvenile being, as such a principle constitutes both

⁶¹ *Id.*, at 118.

⁶² *Id.*

⁶³ *Id.*, at 101.

⁶⁴ *Id.*

⁶⁵ *Id.*, at 105.

⁶⁶ *Id.*, at 106.

⁶⁷ *Id.*, at 119.

⁶⁸ *Id.*, at 120.

the *only* definitive penological justification and, contrary to the Court's opinion, is sufficiently discretionary.

Firstly, the lack of justification behind the opinion's break from *stare decisis* principles. According to *Ramos v. Louisiana* (2020),⁶⁹ the Court *must* have "special justification" in order to substantiate an abrupt break from precedent.⁷⁰ Two questions then arise: Is *Jones* an abrupt break from precedent? And if it is, is there a sufficiently "special" justification for doing so? The majority opinion doesn't even arrive at the second inquiry, believing—or at the very least putting on record—that their decision in *Jones* "carefully follows both *Miller* and *Montgomery*."⁷¹ The validity of this affirmation is questionable at best, but such a holding clearly circumvents *Ramos* entirely and avoids answering for what is undoubtedly an important decision in the scope of JLWOP. If the Court wants to depart from its trajectory as drawn by *Roper*, *Graham*, *Miller*, and *Montgomery*, they have access to legitimate avenues that could grant them the power to do so, but the majority instead assert with minimal justification⁷² that *Jones* falls neatly into the narrative Parts I and II have drawn. Not even a concurring member of the Court's opinion is persuaded by Kavanaugh's writing, Justice Thomas writes that the majority "adopts a strained reading of *Montgomery v. Louisiana* instead of outright admitting that it [*Montgomery*] is irreconcilable with *Miller v. Alabama*."⁷³ Even Thomas, although he agrees with the eventual decision in *Jones*, is entirely hesitant to align himself with an opinion which is so clearly avoiding the argumentative work which must be done to justify its conclusion.

The Court's "adherence" to *Montgomery* is "justified" from a few footnotes in the original opinion, but within the main text of the same opinion is the affirmation that "Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity."⁷⁴ The sentiment could not be much clearer. Basic rules of logic, as well as specific text within *Graham* (see II.B), tell judiciaries that the above statement essentially reads as: Even if a sentencer demonstrates an understanding of youth, to impose a JLWOP sentence for children *not* irreparably corrupt (they are instead transiently immature) is unconstitutional. Justice Thomas agrees with this interpretation, writing that "*Montgomery* could not have been clearer" that its ruling was substantive.⁷⁵ So, it then follows that the *only* way judges can sentence children to LWOP is if their actions are not transiently immature, i.e., demonstrative of incorrigibility. This line of thinking is entirely disregarded by the majority opinion (except for Justice Thomas), and instead, their review contends that undergoing the basic critical analysis of

⁶⁹ *Ramos v. Louisiana*, 590 U.S. 83 (2020).

⁷⁰ *Id.*, at 120.

⁷¹ 593 U.S. 98 at 118 (2021).

⁷² *Id.*, at 134, Sotomayor dissenting.

⁷³ *Id.*, at 121, Thomas concurring.

⁷⁴ *Id.*, at 125, Thomas concurring

⁷⁵ *Id.*

Montgomery (seen above) is not within the capability of the highest court in the United States. Echoing the dissent of Justice Sotomayor, “The Court is fooling no one.”⁷⁶

The second contention revolves around permanent incorrigibility as a principle. It can be, and has been, argued that incorrigibility is a principle entirely incompatible with youth sentencing and that another standard should be sought altogether.⁷⁷ This Note does align itself with that proposition. It is glaringly obvious that without a substantive rule guiding JLWOP judgment, there will be inconsistent and contradictory judgments between state judiciaries. This “confusion” was the reason *Montgomery* and *Jones* were heard in the first place. As much is explained by Jones’ counsel in the oral argument.⁷⁸ So, what should such a rule revolve around, especially considering that decades of psychological research,⁷⁹ penological evidence,⁸⁰ and the Court’s own writing in *Roper* and *Graham* all point towards ‘permanent incorrigibility’ as this rule. If juveniles who are *not* permanently incorrigible are eligible to live out the entirety of their life in prison, the penological justification for their imprisonment falls apart the moment said juvenile achieves full reformation in prison, as is commonplace in JLWOP situations.⁸¹ Even if a judiciary was able to determine that a juvenile’s actions were fully conscious, premeditated and depraved, an absence of an incorrigibility requirement would allow such a child to be sentenced to life in prison without parole; a fate time and time again proved disproportionate despite the presence of any aggravating factors, *except* incorrigibility. If a child is really and truly incapable of reparation, JLWOP is proportionate, but without such a finding, the Court risks serious constitutional infringements. Permanent incorrigibility is a concrete, proven standard in an area of jurisprudence that is almost impossibly discretionary; it should be appreciated as such.

IV. Conclusion

This Note has now effectively examined the Supreme Court’s decision in *Jones v. Mississippi* and situated it within the broader context of Eighth Amendment jurisprudence as it relates to juvenile sentencing. This was evident in Section II, which provided a doctrinal overview beginning with *Roper*, where the Court categorically banned the juvenile death penalty

⁷⁶ *Id.*, at 130, Sotomayor dissenting.

⁷⁷ Juliet Liu, “Closing the Door on Permanent Incorrigibility: Juvenile Life Without Parole After *Jones v. Mississippi*”, *Fordham Law Review* (Dec 2022), <https://fordhamlawreview.org/issues/closing-the-door-on-permanent-incorrigibility-jvenile-life-without-parole-after-jones-v-mississippi/>

⁷⁸ Transcript of Oral Argument at 6–7, *Jones v. Mississippi*, 593 U.S. ___, 141 S. Ct. 1307 (2021) (No. 18-1259), available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2020/18-1259_8njq.pdf.

⁷⁹ Laurence Steinberg et al., Are Adolescents Less Mature Than Adults?: Minors’ Access to Abortion, the Juvenile Death Penalty, and the Alleged APA “Flip-Flop”, 64 *American Psychologist* 583 (2009); Brief for the American Psychological Association et al. as Amici Curiae Supporting Petitioners at 6–7, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646, 10-9647).

⁸⁰ Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* (Harvard University Press 2008).

⁸¹ Ashley Nellis, *The Lives of Juvenile Lifers: Findings from a National Survey*, The Sentencing Project (2012), <https://www.sentencingproject.org/publications/the-lives-of-jvenile-lifers/>.

and articulated the foundational principle that diminished culpability is intrinsic to youth. It then examined *Graham v. Florida*, which extended these protections by prohibiting JLWOP for non-homicide offenses, and *Miller v. Alabama*, which barred mandatory JLWOP in all cases, requiring sentencers to consider youth-related mitigating factors. Finally, this Note analyzed *Montgomery v. Louisiana*, where the Court clarified that *Miller* was not merely procedural but substantive in nature, requiring a determination of permanent incorrigibility before JLWOP could be constitutionally imposed. Section III turned to *Jones v. Mississippi* itself, first outlining the case's factual and procedural background before analyzing the majority opinion. It then offered a twofold critique: first, that the Court's decision constitutes an unjustified departure from binding precedent—particularly *Montgomery* and *Miller*—in violation of its own *stare decisis* principles; and second, that the elimination of an incorrigibility requirement leaves sentencing in JLWOP cases dangerously unmoored from the constitutional logic that has governed juvenile justice for nearly two decades.

Together, these sections support this Note's central claim: that *Jones* represents a sharp and troubling reversal in the Supreme Court's treatment of juvenile defendants. By abandoning the requirement of a finding of permanent incorrigibility, the Court undermines the very safeguards that made JLWOP compatible with the Eighth Amendment in the first place. In doing so, it exposes reformable children to irrevocable punishment, betraying both the Court's prior commitments and the developmental truths upon which they were based. If the constitutional promise of proportionality is to remain meaningful for juvenile offenders, *Jones* must be understood as a violation of not just Eighth Amendment protections, but the very fabric of the flexible discretion American children should be afforded in the 21st century.