CONTEMPORARY THEORY ON CUSTOMARY INTERNATIONAL LAW AND HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES: LANGUISHING BEHIND BARS—JUVENILES SENTENCED TO LIFE WITHOUT PAROLE

Chelsea Padilla-Frankel*

TABLE OF CONTENTS

THESIS

The United States violates international human rights law every time one of its courts sentences a juvenile to life in prison without the possibility of parole (LWOP). Even if US courts were to stop sentencing juveniles to LWOP, merely retaining the option to impose the sentence still violates international human rights

law. Accordingly, the United States is vulnerable to sanctions from the International Court of Justice (ICJ).

The ban on LWOP sentences for juveniles is provided for in the Convention on the Rights of the Child (Convention), and is solidified by customary international law. Under contemporary theory, prevalent and representative participation in the ratification process creates binding customary law on all nations—meaning it also binds nations that have not ratified.

Contemporary theory on customary law provides the necessary legal standing to all nations against one another for failing to satisfy obligations *erga omnes*.[1] Furthermore, the US has not effectively withdrawn from the Vienna Convention on Diplomatic Intercourse[2] and has therefore not removed itself from ICJ jurisdiction. Consequently, the United States is exposed to international legal action being initiated against it.

Furthermore, LWOP sentences for juveniles contradict US criminal justice values, which put an emphasis on rehabilitation not retribution. To align itself with Convention policy, terminate legal exposure, and adhere to US jurisprudential values, the United States must end LWOP sentences for juvenile defendants. If such measures are not taken, the United States leaves itself exposed to the international community alleging human rights violations and filing suit in the ICJ.

I. INTRODUCTION

On October 7, 2004, a 14 year-old boy stood in a courtroom, somberly awaiting a decision that would forever change his life.[3] There were gasps in the galley behind him, his family shocked by the outcome—shocked that so young a life was effectively over. The sentence handed down sealed his fate to spend the remainder of his life in prison.[4] At just 14 years old, Kuntrell O'Bryan Jackson was sentenced to mandatory LWOP.[5] The same severe sentence, cementing a fate

---

* 2017 J.D. Candidate, James E. Rogers College of Law at the University of Arizona. To Storm and my amazing family, thank you for your continuous support. I would also like to thank all of the editors, and Supervising Professor Jason Kreag for the guidance and feedback.

1 An obligation *erga omne* is a legal obligation one nation owes to all other nations. A more detailed explanation of *erga omnes* and how it fits into international law is discussed in Section IV(a). *See also* DAVID J. BEDERMAN, INTERNATIONAL LAW FRAMEWORKS 23 (2001).

2 *See generally* United Nations Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95 [hereinafter U.N. Convention on Diplomatic Relations].

3 Michael Daily, *Families Decry Supreme Court Decision on Juvenile Life Without Parole*, DAILY BEAST (June 26, 2012, 4:45 AM), http://www.thedailybeast.com/articles/2012/06/26/families-decry-supreme-court-decision-on-juvenile-life-without-parole.html.

4 *Id.*

5 Jackson v. Hobbs, 132 S. Ct. 548, 181 L. Ed. 2d 395 (2011).

to live out the remaining years in prison, was handed down two years later when 14 year-old Evan Miller was also sentenced to LWOP.[6]

Their crimes were reprehensible. Both Jackson and Miller were convicted of felony murder: Jackson during an armed robbery, Miller while committing arson.[7] Undisputedly, the boys were guilty and should face serious consequences for their decisions. However, those two sentences—like the 1,164 other juveniles sentenced to LWOP since 1990—defied customary international law and amounted to human rights violations.[8]

II. OVERVIEW OF THE NOTE

This Note will examine US violations of Convention Article 37(a), a statute that prohibits LWOP sentences for juveniles. It will give an overview of traditional theory on the origin of customary international law and then explore developing contemporary theory. It will then illustrate how contemporary theory supports US subjugation of the Convention, and any legal exposure the United States may have for its failure to comply. Lastly, this Note will conclude with a proposal for changes to US criminal justice system in regard to juvenile sentencing practices.

Part A in section III will discuss the legal background of the Convention, including the purpose for its creation and relevant articles. Part B gives pertinent legal background on juvenile sentencing in the US. It provides a broad overview of the current issues with sentencing in relation to the Convention, and it notes relevant changes that occurred this past decade.

Part A of section IV discusses the traditional theory of customary international law. Part B transitions to the contemporary theory and sheds light on how conventional law evolves into customary law. Part C illustrates how contemporary theory supports the conclusion that the Convention binds the United States Part D will establish that the United States has left itself exposed to legal sanctions, and part E will justify the ICJ's jurisdiction on the United States.

Finally, parts V and VI conclude this Note by providing a damage assessment in connection with sentencing juveniles to LWOP. That burden is shared between those sentenced and the American criminal justice system as a whole. Part V further suggests changes that should be made to American juvenile sentencing laws to bring them into compliance with Convention and US criminal justice ideals.

---

6 Miller v. Alabama, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

7 *See generally id.*

8 HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES; LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE U.S. (2005), https://www.hrw.org/report/2005/10/11/rest-their-lives/life-without-parole-child-offenders-united-states#page.

III. LEGAL BACKGROUND

A. Legal Background on the Convention of the Rights of the Child

The Convention, effected on September 2, 1990, recognized that "the child, by reason of his mental and physical immaturity, needs special safeguards and care, including appropriate legal protection."[9] As of October 1, 2015, the United States is the only United Nations (UN) member that has not ratified it.[10]

The Convention consists of 54 articles separated into three parts.[11] Section I (the first forty-one articles) contains the substantive rights of children and provides guidelines for government interactions with children.[12] Section II outlines the process for creating a committee to oversee the implementation of the Convention.[13] Section III allows for all nations to sign the treaty. It details how the signature process is consummated and how amendments may be added.[14]

For purposes of this Note, Article 1 and Article 37(a) are the most relevant. Article 1 defines a child as any person under the age of eighteen unless another law applicable to the child determines legal maturity at a younger age.[15] Article 37(a) expressly forbids capital punishment and LWOP sentences for individuals under the age of eighteen.[16] This section covers what the Convention deems as tortious, inhumane, degrading, and cruel punishments.[17]

B. Legal Background on Juvenile Sentencing in the US

The United States is the only UN member that sentences juveniles to LWOP. However, there are several recent Supreme Court rulings that affect juvenile sentencing and shift American sentencing policy in the direction of

---

[9] G.A. Res. 44/25, Convention on the Rights of the Child (Sept. 2, 1990), http://www.ohchr.org/en/professionalinterest/pages/crc.aspx. *See also* Rhonda Copelon et. al., *Human Rights Begin at Birth: International Law and the Claim of Fetal Rights*, 13 REPRODUCTIVE HEALTH MATTERS 120–29 (2005), http://www.rhm-elsevier.com/article/S0968-8080(05)26218-3/pdf.

[10] *Status Report for Convention on the Rights of the Child IV(11)*, UNITED NATIONS (Nov. 9, 2015, 11:37 AM), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (showing the list of countries that have signed the agreement).

[11] G.A. Res. 44/25 , *supra* note 9.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] G.A. Res. 44/25, *supra* note 9.

[17] *Id.*

compliance with the Convention.[18] First, in 2010, the Supreme Court decided *Graham v. Florida*—a landmark case holding that sentencing juveniles to LWOP for non-homicide crimes violates the Eighth Amendment.[19]

In 2003, prosecutors charged 16 year-old Terrance Jamar Graham with one count of armed robbery with assault, and one count of attempted robbery.[20] He was tried as an adult.[21] The armed robbery with assault carried a maximum sentence of LWOP, and the attempted burglary carried a maximum sentence of fifteen years.[22] Terrance accepted an offer that withheld adjudication while he completed one year in a pre-trial detention facility, and three years of probation.[23] He was released in June of 2004 after completing a year in the pre-litigation facility.[24] However, in December of 2004, he violated his probation when he committed an armed home invasion robbery.[25] He was subsequently recharged for his juvenile crimes, and the judge sentenced him to LWOP for the armed robbery with assault and 15 years for the attempted robbery.[26] The First District Court of Appeal affirmed Terrance's sentence, finding it was not disproportionate to his crimes.[27] However, the Supreme Court disagreed on Eighth Amendment grounds.[28]

The Court clarified that cruel and unusual punishments are not necessarily barbaric in nature, but are sometimes simply disproportionate to the crime.[29] Proportionality, the Court said, goes to the heart of the Eighth Amendment: "Embodied in the Constitution's ban on cruel and unusual punishment is the 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'"[30] Proportionality does not, however, require strict equality between the crime and punishment.[31] Rather, proportionality is a narrow principle that "forbids only extreme sentences that are 'grossly disproportionate to the crime.'"[32] To determine gross disproportionality,

---

18 Graham v. State, 982 So. 2d 43, 44 (Fla. Dist. Ct. App. 2008); Jackson v. Hobbs, 132 S. Ct. 548, 181 L. Ed. 2d 395 (2011); Miller v. Alabama, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

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

20 *Graham*, 982 So. 2d at 44–45.

21 *Id.*

22 *Graham*, 560 U.S. at 57.

23 *Graham*, 982 So. 2d at 44.

24 *Id.*

25 *Id.*

26 *Id.*

27 *Graham*, 560 U.S. at 58.

28 *Id.*

29 *Id.* at 59.

30 *Id.* (quoting Weems v. United States, 217 U.S. 349, 367 (1910)).

31 *Id.* at 60.

32 *Graham*, 560 U.S. at 60 (quoting Harmelin v. Michigan, 501 U.S. 957, 111 (1991)).

the court must balance the gravity of the offense with the harshness of the penalty imposed.[33]

The Court in *Graham* found that sentencing a juvenile to LWOP was grossly disproportionate to the crimes committed because he or she would "die in prison with no meaningful opportunity of release, no matter what he could do to reform himself, no matter how he may atone for his crimes, or learn from his mistakes."[34] The holding created a blanket rule: juveniles cannot be sentenced to LWOP for non-homicide crimes.[35] If a state sentences a juvenile to life in prison, it does not have to guarantee eventual release, but there must be some meaningful opportunity to obtain release prior to the end of the original term of years sentence.[36]

While *Graham* was a step in the right direction—bringing the United States' juvenile sentencing law into partial alignment with the Convention—various states have ruled that *Graham* does not apply to term-of-years[37] sentences.[38] For example, in *Walker v. State*, the 17 year-old defendant, Jere Walker, was sentenced to five life sentences for two robberies and a sexual assault.[39] After the *Graham* decision, Walker appealed his sentence and the Florida Appellate Court found the sentence unconstitutional.[40] The Florida Appellate Court remanded Walker's case for resentencing.[41] However, the lower court judge resentenced Walker to 100 years in prison—effectively a life sentence.[42] Several other states have explicitly extended the *Graham* decision to term-of-years sentences.[43] However, many other states have declined to find de

---

33 *Id.* at 88 (Roberts, C.J., concurring).

34 *Id.* at 79.

35 *Id.* at 82.

36 *Id.*

37 A term-of-years sentence refers to a sentence that is a specified length of time, as opposed to a sentence of LWOP.

38 *See* Bunch v. Smith, 685 F.3d 546, 553 (6th Cir. 2012), *cert. denied*, *sub nom.* Bunch v. Bobby, 133 S. Ct. 1996 (2013); State v. Kasic, 265 P.3d 410, 415 (Ariz. Ct. App. 2011); Walle v. State, 99 So. 3d 967, 971, 973 (Fla. Dist. Ct. App. 2012); Henry v. State, 82 So. 3d 1084, 1087, 1089 (Fla. Dist. Ct. App. 2012); Adams v. State, 707 S.E.2d 359, 365 (Ga. 2011); Burnell v. State, No. 01-10-00214-CR, 2012 WL 29200, at *8–9 (Tex. Ct. App. Jan. 5, 2012).

39 John Barry, *Hillsborough Judge Gives 'Juvenile' Offender 100-Year-Sentence*, TAMPA BAY TIMES (Aug. 12, 2012, 9:53 AM), http://www.tampabay.com/news/courts/criminal/hillsborough-judge-gives-juvenile-offender-100-year-sentence/1244791.

40 Walker v. State, 940 So. 2d 1215 (Fla. App. Ct. 2006).

41 *Id.*

42 Walker v. State, 129 So. 3d 372 (Fla. Dist. Ct. App. 2013); Barry, *supra* note 39.

43 *See* Kelly Scavone, *How Long Is Too Long?: Conflicting State Responses to De Facto Life Without Parole Sentences After* Graham v. Florida *and* Miller v. Alabama, 82 FORDHAM L. REV. 3439 (2014) (noting that California and Iowa recognize "virtual LWOP" as unconstitutional. Also noting, Florida and Louisiana declined to extend *Graham* to "virtual LWOP.").

facto life sentences for juveniles who committed non-homicide crimes unconstitutional under the framework of *Graham*.[44]

In 2012, the Supreme Court decided the *Jackson* and *Miller* cases jointly,[45] finding *mandatory* LWOP sentences for juveniles also violated the Eighth Amendment.[46] In *Miller-Jackson*, the Court reasoned that juveniles are constitutionally different from adults with regard to sentencing.[47] Accordingly, sentencing an adult defendant found guilty of homicide to mandatory LWOP is not cruel or unusual punishment because adults have the mental capacity to appreciate their actions and understand the potential consequences.[48] On the other hand, sentencing juveniles, who cannot fully appreciate their actions, to mandatory LWOP is a disproportionate sentence and therefore violates the Eighth Amendment.[49] The Court emphasized and explained the need to evaluate instances of juvenile homicide on a case-by-case basis.[50] Courts need to account for mitigating factors in each case (such as age, upbringing, mental illness, etc.), and only after considering those factors within the context of the entire case can a juvenile be sentenced to LWOP without it being cruel and unusual.[51]

Both defense attorneys in the *Miller-Jackson* case argued that the LWOP sentences for juveniles are per se unconstitutional based on the Eighth Amendment.[52] However, the Court did not address the Eighth Amendment arguments because proportionality alone resolved the issue. Hence, despite the Court's decision to narrow the applicability of juvenile LWOP sentences combined with eliminating mandatory LWOP sentences entirely, the United States continues to sentence juveniles to actual and de facto LWOP.[53]

The *Miller-Jackson* decision affected 28 states; 14 state supreme courts found the decision applied retroactively, seven found that it was not retroactive, and six states enacted legislation making the decision retroactive.[54] The most recent Supreme Court case to affect juvenile LWOP sentences is *Montgomery v. Louisiana*. There, a 68 year-old prisoner, Henry Montgomery, brought his case to the Supreme Court.[55] He has been in prison since 1963 for a murder he

---

[44] *Id.*

[45] Jackson v. Hobbs, 132 S. Ct. 548, 181 L. Ed. 2d 395 (2011); Miller v. Alabama, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

[46] *See generally Miller*, 132 S. Ct. at 2455.

[47] *Id.* at 2464.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Miller*, 132 S. Ct. at 2464.

[52] *Id.* at 2474.

[53] Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. REV. 983, 990 (2008).

[54] Joshua Rovner, *Juvenile Life Without Parole: An Overview*, SENTENCING PROJECT, http://sentencingproject.org/doc/publications/jj_Juvenile_Life_Without_Parole.pdf.

[55] Montgomery v. Louisiana, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

committed only two weeks after his seventeenth birthday.[56] After his first conviction, Mr. Montgomery was sentenced to death, but this was overturned due to community prejudice.[57] Mr. Montgomery was retried and sentenced to LWOP under a mandatory sentencing scheme.[58] His new case relied on his sentence's mandatory nature—a now-unconstitutional proposition in light of *Miller-Jackson*.[59]

The Louisiana Supreme Court, like many other state courts, held that the *Miller-Jackson* decision was not retroactive and thus, Mr. Montgomery's sentence was not unconstitutional.[60] In 2016, the US Supreme Court addressed the retroactivity issue caused by the *Miller-Jackson* decision and found that the decision was indeed retroactive.[61] Other prisoners sentenced to mandatory life sentences pre-*Miller-Jackson* have brought similar suits and other states are currently litigating whether retroactivity applies.[62] The Supreme Court drastically curtailed the use of LWOP sentences for juveniles over the last few decades. The steady limiting of these punishments suggests a realization that LWOP sentences are not appropriate for juveniles.

IV. MODERN THEORY ON THE ORIGIN AND APPLICATION OF CUSTOMARY INTERNATIONAL LAW INDICATES THE UNITED STATES IS BOUND BY THE CONVENTION

International law is essentially split into conventional and customary law.[63] Conventional laws are derived from some type of formal agreement, like a treaty or convention, and are only binding on nations that sign it.[64] Customary law comes from wide spread common legal practices adopted by many countries and binds all nations.[65]

Traditional theory on the origin of international customary law was predicated on the time intensive and rigid formula discussed in depth below.[66] However, since the late 1960s and early 1970s, there has been a fundamental shift away from this formulistic conception toward a more fluid and organic creation

---

56 *Id.*

57 *Id.*

58 *Id.*

59 *Id.*

60 *Montgomery*, 136 S. Ct. at 718.

61 *Id.*

62 Rovner, *supra* note 54.

63 Roozbeh (Rudy) B. Baker, *Customary International Law in the 21st Century: Old Challenges and New Debates*, 21 EUR. J. INT'L L. 173, 176 (2010) [hereinafter *Customary International Law]*.

64 *Id.* at 176.

65 *Id.*

66 *Id.* at 174.

process of customary law.[67] Contemporary theory perceives customary law as evolving more quickly and binding a wider group of nations.[68] The modernized approach, examined below, allows for the nearly instantaneous creation of customary law that binds all nations upon adoption and acceptance by a wide and representative group of nations.[69]

A. Traditional Theory on the Origin of Customary International Laws

Traditional theory emerges from the composition of a variety of moving pieces. In general, traditional theory holds that customary law is dependent upon a nation's consent to adhere to a general practice of all nations.[70] Sometimes customary law is the product of conventional law. In order for a conventional law (which is only binding on the signatories) to evolve into customary law (which is binding on all nations), two elements must be present: general state practice and *opinio juris*.[71]

General state practice is the actual adoption or omission of a particular legal action by numerous nations for a substantial period of time.[72] *Opinio juris* posits that some nations participate in the general practice solely because those populations feel a legal obligation to do so.[73] Transforming conventional law into customary law is like a domino effect: Nation A signs a treaty with Nation B to undertake an action both feel a legal duty to perform. Nation A and Nation B's actions spur Nations C and D to follow the practice because those nations also recognize the same legal obligation. As more nations acknowledge the original obligation documented by Nations A and B over an extended period of time, state practice and *opinio juris* solidify and the practice itself becomes a customary rule of law

---

[67] In the late 1960s and early 1970s international organizations were concluding customary law could originate from situations not previously recognized—specifically by the transformation of conventional law into customary law. *See generally* North Sea Continental Shelf (Ger. v. Den. & Neth.), Judgment, 1969 I.C.J. 3 (Feb. 20); *see also* Barcelona Traction, Light and Power Co. (Belg. v. Spain), Judgment, 1964 I.C.J. 6 (July 24); *see also Customary International Law*, *supra* note 63, at 178.

[68] *Customary International Law*, *supra* note 63, at 174; Louis B. Sohn, "*Generally Accepted" International Rules*, 61 WASH. L. REV. 1073 (1986); Anthony D'Amato, *The Concept of Human Rights in International Law*, 82 COLUM. L. REV. 1110 (1982).

[69] *Customary International Law*, *supra* note 63, at 178.

[70] Sohn, *supra* note 68, at 1073−74; *Customary International Law*, *supra* note 63, at 176.

[71] Sohn, *supra* note 68, at 1073–74; *Customary International Law*, *supra* note 63, at 176.

[72] *Customary International Law*, *supra* note 63, at 176; Sohn, *supra* note 68, at 1073–74.

[73] Molly C. Quinn, *Life Without Parole for Juvenile Offenders: A Violation of Customary International Law*, 52 ST. LOUIS U. L. J. 283, 289 (2007).

As illustrated above, the creation of customary law under traditional theory is based on consent because each nation must agree independently to follow the general practice. This arrangement provides nations the authority to opt out of certain customary laws.[74] To effectively opt out, a nation must (i) systematically and continuously assert that it does not have a legal duty to follow the general practice, and (ii) actually abstain from following the general practice.[75] Only through these actions is there no state practice or *opinio juris*.[76]

Yet, within traditional theory there exists an exception to opting out: *jus cogens* norms. *Jus cogens* norms form when the actions and policy concerns of the international community change over time.[77] *Jus cogens* are preemptory rules: created when a majority of nations express, explicitly or implicitly, that a rule is so fundamental it cannot be denied.[78] For example, the prohibition against slavery is a *jus cogens* norm.[79] Regardless of any international legal document prohibiting slavery, and regardless of all countries banning the practice,[80] the prohibition is a *jus cogens* norm and no nation can ever opt out.[81] One practical effect created by the *jus cogens* slavery ban is that nations can never sign a treaty agreeing to supply and trade slaves between the signatory nations. *Jus cogens* norms do not exist for any one nation's benefit. Instead, the norms exist for the benefit of the entire international community.[82]

The counterparts to *jus cogens* norms are obligations *erga omnes*.[83] Obligations *erga omnes* are indispensable obligations that nations owe to all other nations.[84] Falling within these obligations are *jus cogens* norms.[85] In other words, a *jus cogens* norm, such as the prohibition of slavery, creates obligations *erga omnes* on all nations to refrain from the practice of slavery.[86] *Jus cogens norms* provide the basis for obligations *erga omnes*: when there is a fundamental rule

---

74 *Customary International Law*, *supra* note 63.

75 Quinn, *supra* note 73, at 289.

76 *Customary International Law*, *supra* note 63, at 176.

77 *Id.*

78 *Id.*; Sarah H. Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 YALE J. INT'L L. 1, 24–25 (2001); PETER MALANCZUK, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 57 (7th rev. ed. 2005).

79 *Customary International Law*, *supra* note 63, at 180; D'Amato, *supra* note 68.

80 Samantha Davis, *Top 7 Facts About Modern Day Slavery*, BORGEN PROJECT (Oct. 14, 2013), http://borgenproject.org/seven-facts-modern-day-slavery/.

81 *Customary International Law*, *supra* note 63, at 180; D'Amato, *supra* note 68.

82 Rafael Nieto-Navia, *Peremptory Norms (Jus Cogens) and International Humanitarian Law*, *in* MAN'S INHUMANITY TO MAN ESSAYS ON INTERNATIONAL LAW 595, 610 (Lal Chand Vohrah et al. eds., 2003).

83 *Customary International Law*, *supra* note 63, at 176; BEDERMAN, *supra* note 1.

84 BEDERMAN, *supra* note 1, at 23.

85 ANTHONY AUST, HANDBOOK OF INTERNATIONAL LAW 10 (2005); *Customary International Law*, *supra* note 63, at 177.

86 BEDERMAN, *supra* note 1.

(*jus cogens* norm), then all nations have an obligation (obligation *erga omne*) to adhere to it.

Obligations *erga omnes* also provide the necessary legal standing for nations to pursue court actions against other nations that fail to satisfy international legal obligations.[87] This legal standing extends to all nations, regardless of how individual nations are directly impacted from another nation's failure.[88] Consider: Nation X is enslaving people from Nation Y—a violation of a *Jus cogens* norm. Not only does Nation Y have legal standing against Nation X, but all the other nations can similarly make a claim.

For conventional law to transform into customary law, general practice and *opinio juris* must exist, shown by general and consistent practice based on a perceived legal duty for an extended time period. When conventional law is transformed into customary law, it might not be binding because nations can opt out through systematic and continuous denial.[89] Even if a nation attempts to opt out, the customary law must be evaluated to determine whether it fulfills the requirements of a *jus cogens* norm.[90]

B. Modern Theory on the Origin of Customary International Laws

The shift in theory over the past several decades has streamlined the emergence of binding customary law through holistic evaluation instead of piecemeal evolution.[91] This modern approach to customary law is more flexible and it accelerates the process.[92]

The ICJ's landmark decision in *North Sea Continental Shelf*, held that Article 6 of the 1958 Geneva Convention did not apply to Germany.[93] The holding in *Continental Shelf* created a new foundation for understanding the source of customary international law, and it provided a new understanding for how those laws can emerge.[94]

The case involved a dispute over boundary lines on the continental shelf between Germany, the Netherlands, and Denmark.[95] Germany claimed an area

---

87 *Customary International Law*, *supra* note 63, at 177; AUST, *supra* note 85; BEDERMAN, *supra* note 1.

88 *Customary International Law*, *supra* note 63, at 180; BEDERMAN, *supra* note 1, at 23.

89 *Customary International Law*, *supra* note 63, at 180; BEDERMAN, *supra* note 1, at 23.

90 *Customary International Law*, *supra* note 63, at 180; BEDERMAN, *supra* note 1, at 23.

91 *Customary International Law*, *supra* note 63, at 174.

92 *Id.*

93 *See generally* North Sea Continental Shelf (Ger. v. Den. & Neth.), Judgment, 1969 I.C.J. 3 (Feb. 20).

94 *Id.* at 180.

95 *Id.*

that Denmark and the Netherlands contended was improper because the claim did not follow the procedures outlined in Article 6 of the Geneva Convention, which specifically addresses territorial claims on the continental shelf.[96] Denmark and the Netherlands argued that Article 6 applied to Germany because the article was written to bind the entire international community, and because Germany showed predilection to its application when it adhered to other provisions in the Geneva Convention.[97]

Germany challenged the suit on two grounds.[98] First, Germany argued that it was not a party to Article 6 and was therefore not bound under the rules of conventional law.[99] Second, Germany asserted it was not bound under customary law because there was no state practice or *opinio juris*: (1) there was no general state practice because, in 1969, only 39 nations had ratified the convention and it was only two-years old, so there could not have been general state practice for an extended period of time; and (2) there was no *opinio juris* because a penchant for following a practice does not in and of itself demonstrate a nation feels a legal duty to do so.[100]

The ICJ held that Article 6 did not bind Germany because *opinion juris* requires proof that a nation bears a legal duty to follow a practice—predilection is not enough.[101] In one sense, this holding is conservative because it was in alignment with the traditional theory of customary law. However, the decision was also groundbreaking due to the Court's explanation of what the creation of a customary law requires. The Court explained: (1) a conventional international law can evolve into a customary international law when the "wide spread and representative participation" of nations takes place in ratifying or implementing the law, and (2) a new customary international law is not prevented from forming due to "a passage of only a short period of time."[102] In short, the ICJ's ruling streamlined the creation of customary laws.[103] No longer was it a struggle to establish a general state practice by securing the majority of international participation; only a significant number of nations were required to form customary law.[104] Because a conventional law can now promptly be converted into a customary law through adoption from a representative group of nations, the prior arbitrary "extended period of time" necessary for conversion was negated.[105]

---

96 *Id.*
97 *Id.*
98 *North Sea Continental Shelf*, 1969 I.C.J. 3.
99 *Id.*
100 *Id.*
101 *Id.*
102 *Id.*
103 *Customary International Law*, *supra* note 63, at 180.
104 *Id.* at 179.
105 *Id.*

A second ICJ decision redefined contemporary theory, though this case began more than twenty years before the final decision.[106] *Barcelona Traction* involved a Canadian utility company that operated light and power utilities in Spain.[107] A decades-long dispute had ensued between Canadian shareholders and the Spanish government, ultimately being withdrawn in 1958.[108] The claim was then re-filed in 1968 by Belgium on behalf of its shareholders, but the ICJ found Belgium had no standing because it had no legal interest in the matter.[109] Unlike Canada, Belgium was not a party to the contractual agreement, thus Spain had not directly harmed Belgian citizens, so there was no cognizable claim for the shareholders to allege.[110]

While the holding had little effect on customary law, the ICJ's distinction between obligations of individual nations to one another versus the international community in general was imperative. The ICJ explained that when an obligation exists between two nations, *only* those nations have a legal interest.[111] However, when there is an obligation owed to the international community in general, *all* nations have a legal interest because those are obligations *erga omnes*.[112] Furthermore, the ICJ stated that, "the basic rights of human persons" themselves create obligations *erga omnes*.[113] Thus, according to the ICJ, human rights are universal principles.[114]

The ICJ decisions in *Barcelona* and *Continental Shelf* nicely illustrate contemporary theory. Between *Barcelona* establishing the universality of human rights as obligations *erga omnes* and *Continental Shelf* holding that conventional law can become customary law through the adoption from a wide and representative group of nations, the modern approach has essentially transformed into a version of *jus cogens* norms.[115] Under contemporary theory, *Jus cogens* norms are created through treaties, conventions, and UN resolutions because the international community can prove an obligation *erga omnes* exists when a representative group adopts the conventional law.[116] Moreover, per *Continental Shelf*, the conventional law can now quickly transform into a customary law, binding the entire international community.

---

106 *Id.*

107 *See generally* Barcelona Traction, Light and Power Co. (Belg. v. Spain), Judgment, 1964 I.C.J. 6 (July 24).

108 *Id.*

109 *See generally id.*

110 *Id.*

111 *Id.*

112 *Barcelona* Traction, 1964 I.C.J. 6.

113 *Id.*

114 *Customary International Law*, *supra* note 63, at 180.

115 *Id.*

116 *Id.* at 178.

C. A Wide and Representative Group of Nations Have Ratified the Convention on the Rights of the Child—Making it Customary Law and Binding on All Nations

Current theory holds that a customary law is created when a widespread and representative group of nations adopt it.[117] The Convention is an internationally agreed upon and ratified document illustrating not only that a representative group of nations, but *the* representative group of nations has adopted and ratified it.[118] The Convention under current theory binds the United States, as its adoption is widespread and representative. To date, the US is the only member of the UN that has not ratified the laws contained within the Convention—including the prohibition on LWOP sentences for juveniles.[119]

The nearly unanimous ratification of the Convention illustrates how vital the international community considers its contents.[120] Because the Convention relates to human rights, and because it impliedly obligates the entire international community due to its unanimous ratification, the provisions within the Convention are obligations *erga omnes.*[121] As such, a nation cannot opt out of the Convention, regardless of whether it signed it or not.[122] Because the United States is subject to international laws and has a duty to fulfill any obligations *erga omnes* established within the international community,[123] the United States is bound by the Convention; its non-signatory status provides no excuse.[124]

D. The Provisions Contained in the Convention Are Obligations *Erga Omnes* and All Other Nations Have Legal Standing Against the United States if It Fails to Comply with the Convention

Under both traditional and contemporary theory, obligations *erga omnes* provide legal standing for actions by any nation against another for violations of

---

[117] North Sea Continental Shelf (Ger. v. Den. & Neth.), Judgment, 1969 I.C.J. 3 (Feb. 20).

[118] G.A. Res. 44/25, *supra* note 9.

[119] *Id.*

[120] *See generally Customary International Law*, *supra* note 63, at 173; AUST, *supra* note 85; BEDERMAN, *supra* note 1.

[121] *See generally Customary International Law*, *supra* note 63, at 173; AUST, *supra* note 85; BEDERMAN, *supra* note 1.

[122] *See generally Customary International Law*, *supra* note 63, at 177; BEDERMAN, *supra* note 1.

[123] *See generally Customary International Law*, *supra* note 63, at 177; AUST, *supra* note 85, at 10; BEDERMAN, *supra* note 1, at 23.

[124] *See generally Customary International Law*, *supra* note 63, at 177; BEDERMAN, *supra* note 1, at 23.

international law.[125] As discussed above, obligations *erga omnes* are created almost instantaneously upon the adoption and ratification of a conventional law by a wide and representative group of nations.[126] As Section C illustrated, the provisions set forth within the Convention are obligations *erga omnes*.[127] Thus, *erga omnes* are binding on all nations and they create a right of action for every nation against the others.[128] *Continental Shelf* establishes that any other nation could sue the United States for violating the Convention in the ICJ.[129]

E. The United States is Still Subject to the Jurisdiction of the International Court of Justice

The Optional Protocol of the UN Convention on Diplomatic Intercourse created the ICJ and set the stage for ratifying nations to submit to the ICJ's jurisdiction.[130] From April 1961 through December 1972 the US actively sought compliance from the international community to rationally and orderly settle future conflicts through proceedings in the ICJ.

The US, through ratification, submitted itself to the ICJ's jurisdiction, while also gaining the ability to sue other nations that ratified the Vienna Convention's Optional Protocol.[131] Years after ratification, the US attempted to withdraw from the ICJ's jurisdiction; however that withdrawal was not successful.[132]

In 1972, the Vienna Convention on the Law of Treaties—including the Optional Protocol—became effective with regard to the US[133] The Convention was not entered into without a great deal of thought and effort.[134] The Vienna Convention was introduced in 1961, ratified by the US Senate in 1965, and ratified again by President Nixon in 1972. That same year, the ratification was

---

[125] *See generally Customary International Law*, *supra* note 63, at 177; BEDERMAN, *supra* note 1, at 23.

[126] *See generally Customary International Law*, *supra* note 63; AUST, *supra* note 85, at 10–11; BEDERMAN, *supra* note 1, at 23.

[127] *See generally Customary International Law*, *supra* note 63; AUST, *supra* note 85, at 98.

[128] *See generally Customary International Law*, *supra* note 63, at 177–79; AUST, *supra* note 85, at 10–11; BEDERMAN, *supra* note 1, at 23.

[129] North Sea Continental Shelf (Ger. v. Den. & Neth.), Judgment, 1969 I.C.J. 3 (Feb. 20).

[130] *See generally* U.N. Convention on Diplomatic Relations, *supra* note 2.

[131] *See generally id.*

[132] John Quigley, *The U.S. Withdrawal from International Court of Justice Jurisdiction in Consular Cases: Reasons and Consequences*, 19 DUKE J. OF COMP. & INT'L L. 290, 290–91 (2009).

[133] Vienna Convention on the Law of Treaties, May 23, 1969, 63 A.J.I.L. 875, 1155 U.N.T.S. 331.

[134] *Id.*

then given to the Secretary General of the United Nations,[135] and subsequently President Nixon proclaimed the Vienna Convention effective.[136]

Fourteen years after the Vienna Convention went into effect, Nicaragua requested the United States appear before the ICJ.[137] In 1986, a case arose concerning the US military and paramilitary activity with regard to the Contras in Nicaragua.[138] However, three days before Nicaragua filed its suit in the ICJ, the United States filed a document with the ICJ saying it would not view itself as being under the jurisdiction of the Court for two years concerning any matters in Central America.[139]

Nicaragua argued the document filed by the United States did not actually deprive the Court of jurisdiction.[140] The ICJ agreed with Nicaragua, stating that it is able to decide whether or not it has jurisdiction over a case concerning two nations that have consented to the Optional Protocol.[141] The ICJ further stated that it does not automatically accept a nation's retraction of prior consent to jurisdiction.[142] The ICJ proceeded without the United States being present.[143] It found, in an eleven to four decision, that the United States had violated the prohibition on the use of force by supporting the rebellion of the Contras, a paramilitary group in Nicaragua, and therefore owed reparations to Nicaragua.[144] The United States never accepted the ICJ's ruling, and continues to maintain that the Court no longer has jurisdiction over the United States.

There is no question whether the United States withdrew its consent to ICJ jurisdiction. The question, however, is whether this withdrawal from the court was legal and effective. Many international agreements and treaties have denunciation clauses that allow for a party to withdraw from the agreement when certain steps are taken and requirements are fulfilled.[145] The Optional Protocol, however, has no denunciation clause.[146] The drafters of treaties are well trained and respected for their knowledge of the subject and ability to craft law; the lack of a denunciation clause is not an oversight or accident.[147] It is an intentional and calculated decision to prevent a party from later rescinding on their part.[148]

---

135 *Id.*

136 *Id.*

137 Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgement, 1986 I.C.J. Rep. 14 (June 27).

138 *Id.*

139 Quigley, *supra* note 132, at 290.

140 *Id.*

141 *Id.* at 291.

142 *Id.*

143 *Nicar. v. U.S.*, 1986 I.C.J. Rep. 14 at ¶¶ 26–31.

144 *Id.*

145 Quigley, *supra* note 132.

146 *See generally* U.N. Convention on Diplomatic Relations, *supra* note 2.

147 Quigley, *supra* note 132.

148 *Id.*

However, the lack of a denunciation clause in this treaty does not mean a country can never withdraw from the treaty. On the contrary, there is an argument that as autonomous and sovereign states, each nation has the freedom to do what will best suit its interest.[149] If taken in a strict sense, though, this proves problematic because every treaty and agreement would be rendered meaningless. The generally accepted principal regarding this issue in the international community comes from the Vienna Convention of the Law of Treaties.[150] While the United States is not a party to this treaty, it generally accepts most of the provisions as customary international law.[151] The law appears in Article 26 of the Vienna Convention on the Law of Treaties and states the following:

> 1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
> (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
> (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.
> 2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under this paragraph.[152]

While this article addresses the issue, it does not provide a clear-cut answer. Can it be established that the parties to the Optional Protocol intended the possibility for another party to withdraw? Does the *nature* of the Optional Protocol imply the ability for a party to withdraw? While this Article does not give an exact answer as to whether a party can or cannot withdraw from the Optional Protocol, it does answer an important question: *how* would a party need to withdraw (assuming it could). It is clear from the text of Article 26 that in order for a party to withdraw, it must give at least 12 months notice. It is also noteworthy that the Article does not state that adhering to the process will guarantee the acceptance of the attempted withdrawal.

---

149 *Id.*

150 *Id.*

151 *Id.* Just as this article explains how the Convention on the Rights of the Child is binding law on the United States based on the contemporary view of international law, there is an argument to be made that all international multilateral treaties, arguments, and other laws can potentially be binding on the international community as a whole. In this sense the jurisdiction of the International Court of Justice would be implicit based on the wide spread acceptance of its jurisdiction by a wide and representative group of nations. However, since this a wildly theoretical proposition to begin with, taking the approach described above to justify the International Court's jurisdiction over the United States. makes the suggestion slightly more plausible at the given time when this expanded contemporary theory of international law is recent and still developing.

152 Vienna Convention on the Law of Treaties, *supra* note 133.

Imagine that the Optional Protocol can be read in some manner that would imply the parties intended the ability to withdraw, or that the language of the document itself somehow implies the ability of a party to withdraw; in both scenarios, the US failed to comply with the protocols by not giving at least 12 months notice of its intent to withdraw. This being the case, the US did not adequately remove its self from the jurisdiction of the International Court in 1986. The US again proclaimed its exemption from ICJ jurisdiction in 2005 when Mexico filed suit for consular law violations, but again failed to take the measures require to withdraw.[153] Therefore, the US may currently be brought before the Court—though it will most likely continue to defy the international laws it has consciously and of its own freewill submitted to and persist to devalue the sense of order and justice the Court was created to administer.

V. SUGGESTION FOR REFORM IN AMERICAN JUVENILE SENTENCING LAW

Based on the foregoing analysis, the United States is in violation of international human rights law because it continues to sentence juveniles to LWOP. Although there has been progress, the United States continues to permit these illegal sentences. Not only does this violation damage the integrity of the international justice system, but the US's continued violations are also contrary to values of the American criminal justice system and expose it to legal action by the international community.

A. Juveniles and Adults Must be Treated Differently in the Criminal Justice System

Common sense dictates that juveniles and adults are inherently different. From physical appearance, to temperament, to worldview, juveniles and adults are not the same. Because this Note is about juvenile sentencing in the United States, the term "adult" refers to anyone over eighteen years of age and the term "juvenile" refers to anyone below eighteen.

This Note argues that, while it is reasonable to assume adults understand the consequences of their actions, it is unreasonable to expect the same from juveniles. The differences between adults and juveniles—an ability to recognize right from wrong and the ability to foresee the consequences of wrong choices—is why the two have separate criminal justice systems. Reflecting this perceived cognitive transformation in the criminal justice system makes intuitive sense.

---

[153] Adam Liptak, *U.S. Says It Has Withdrawn From World Judicial Body*, N.Y. TIMES (Mar. 10, 2005), http://www.nytimes.com/2005/03/10/politics/us-says-it-has-with drawn-from-world-judicial-body.html.

Yet, even at eighteen, the prefrontal cortex (the area of the brain responsible for decision-making and judgment) is still approximately two to seven years away from full development.[154] Those with a fully developed prefrontal cortex have stronger abilities to resist impulses.[155] As Ruben Gur puts it, 'If you've been insulted, your emotional brain says, 'Kill,' but your frontal lobe says you're in the middle of a cocktail party, 'so let's respond with a cutting remark.'"[156]

Combining American policy with scientific understanding of prefrontal cortex development leads to a head-scratching conclusion. The generally accepted jurisprudential rational behind harsher punishments for adults is the knowledge of right from wrong and the ability to resist the urge to act improperly. Thus, justifying the shift from more lenient juvenile punishment (due to the inadequate cognitive ability for juveniles to comprehend right and wrong) to harsher adult punishment at age eighteen (when science shows the cognitive ability is still not fully developed) is arbitrary.

The Supreme Court accepts that juveniles are different from adults.[157] In *Roper v. Simmons*, the Court held the death penalty inapplicable to juvenile defendants:

> First, juveniles lack maturity and responsibility and are more reckless than adults. Second, juveniles are more vulnerable to outside influences because they have less control over their surroundings. And third, a juvenile's character is not as fully formed as that of an adult. Based on these characteristics, the Court determines that 17–year–old capital murderers are not as blameworthy as adults guilty of similar crimes; that 17–year–olds are less likely than adults to be deterred by the prospect of a death sentence; and that it is difficult to conclude that a 17–year–old who commits even the most heinous of crimes is "irretrievably depraved."[158]

While this Note is not arguing for increasing the age of majority in the US to twenty-seven, or even twenty, it urges the US to more seriously examine relevant scientific research in juvenile brain development when considering the punishments being doled out to juveniles. Children as young as 14—at least six years from full development—are being sent to prison for the remainder of their lives with no chance of parole.

---

[154] *Brain Changes*, MIT: YOUNG DEVELOPMENT PROJECT, http://hrweb.mit.edu /worklife/youngadult/brain.html (last visited Oct. 25, 2016).

[155] *See generally id.*

[156] Mary Beckman, *Crime, Culpability, and the Adolescent Brain*, 305 SCIENCE 596, 597 (2004).

[157] Roper v. Simmons, 543 U.S. 551, 598 (2005).

[158] *Id.*

B. Prison Is Meant to Reform

The word "prison" in the US is virtually synonymous with "punishment." However, the government does a great deal to advertise prison as a form of rehabilitation. Judges consistently argue that incarceration, especially for children, is not intended as a punishment. However, LWOP sentences for juveniles cannot adhere to judicial sentiments that juvenile incarceration is about rehabilitation when there is no possibility for reintegration into society. There is a significant disconnect from the judicial and institutional sentiment that juvenile incarceration is meant to rehabilitate and the reality of LWOP sentences for juveniles.

Consider *Morgan v. Sproat*. In this class action lawsuit brought against a state delinquency institution, the court noted "the purposes of juvenile incarceration under Mississippi law are *therapeutic not punitive*."[159] In a more recent case, a New Jersey court in 2012 noted:

> It was made clear that insofar as conduct is treated as delinquent rather than criminal, the legislative approach is protective and rehabilitative and not punitive. The philosophy of the juvenile court is aimed at rehabilitation through reformation and education in order to restore a delinquent youth to a position of responsible citizenship.[160]

Yet, while rehabilitation is repeatedly proclaimed, it is a transparent charade. For example, these are the respective mission statements for the juvenile corrections facilities in Los Angeles, Cook County, and the City of New Orleans:

> Juvenile halls and camps provide confinement to minors ranging in age from 8 to 18 who await adjudication and disposition of legal matters. Camps *provide treatment*, care, custody, and training *for the rehabilitation* of delinquent minors as wards of the Juvenile Court . . . .[161]

> The Juvenile Temporary Detention Center provides the children with a safe, secure and caring environment with programs and structure that enhance personal development and *improve opportunity for success upon return to the community* . . . .[162]

---

159 Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1977) (emphasis added).

160 State *in re* A.C. 43 A.3d 454, 456 (N.J. Super. Ct. Ch. Div. 2012).

161 *Los Angeles Probation Dept. Juvenile Halls and Camps*, L.A. ALMANAC http://www.laalmanac.com/crime/cr39.htm (last visited Oct. 25, 2016) (emphasis added).

162 *Juvenile Temporary Detention Center*, COOK COUNTY GOV'T https://www.cookcountyil.gov/agency/juvenile-temporary-detention-center (last visited Oct. 25, 2016) (emphasis added).

> The mission of Youth Study Center is to provide a safe, secure, and humane environment for juveniles and staff; to provide juveniles an *opportunity for behavioral change*; and to provide quality services and programs for juveniles based on their individual needs.[163]

Interestingly, the phrasing of each noted mission statement contains words like "treatment," "behavioral change," and "success upon return to the community." However, in reality, these three counties are among the five counties most responsible for LWOP juvenile sentences in the United States.[164] While juvenile detention facilities do not determine their custodians, their branding reflects the apparent purpose of the facilities.

It may be true that these facilities do provide programs and treatment for juveniles who do not have LWOP sentences. However, with so much energy expended into shading juvenile detention facilities as places that provide the opportunity for self-improvement, and so much judicial emphasis on juvenile incarceration being about rehabilitation not punishment, why not make those statements true?

VI. CONCLUSION

International law is complicated, ever evolving, and difficult to enforce. Despite obstacles that prevent enforcement, all members of the international community are required to follow the agreements to which they are a party. The United States is a powerful actor in the international community and serves a crucial role as a permanent member of the UN Security Council. Nonetheless, the United States' international status does not prevent it from being exposed to legal action being initiated against it.

Every UN member except the United States recognizes the Convention's ban on LWOP for juveniles. However, conventional and customary international law provides a legal foundation for the proposition that the United States is bound to follow the Convention in its entirety. Because a) the United States is a party to

---

163 *Youth Study Center*, CITY OF NEW ORLEANS, http://www.nola.gov/youth-study-center/ (last visited Nov. 19, 2016) (emphasis added).

164 Beth Schwartzapfel, *Life Without Parole: For Juveniles, 5 Tough Counties*, THE MARSHALL PROJECT (Sept. 22, 2015, 7:15 AM), https://www.themarshallproject.org/2015/09/22/life-without-parole-for-juveniles-5-tough-counties#.liJ48T04p. The other two counties that make up the five responsible for a quarter of all juvenile life without parole sentences in the United States are Philadelphia and St. Louis, Michigan. Their mission statements provide similar explanations of what the facility does and also use key words such as *rehabilitation*. *See Welcome to the Juvenile Justice Home Page*, PHILA.GOV: DEP'T HUM. SERVS., http://dhs.phila.gov/intranet/pgintrahome_pub.nsf/content/jjshomepage (last visited Oct. 30, 2016); *Juvenile Detention*, BAY COUNTY MICH., http://www.baycounty-mi.gov/Juvenile/ (last visited Oct. 30, 2016).

the Convention, and b) the United States is bound by the Convention based on the customary international legal framework regardless of its signature, and its continued application of LWOP sentences to juveniles is illegal. Moreover, contemporary understanding of treaty formation supports the argument that the United States falls within the jurisdiction of the ICJ and can therefore be sued in that court for human rights violations.

The United Nations, and all nation-states with the exception of the US, have realized the destructive results of juvenile life without parole and acted to end this human rights violation. The United States seems reserved to await a case or controversy that can add to the piecemeal dismantling of juvenile LWOP that has been gradually occurring instead of confronting the issue head on and addressing it with appropriate legislation immediately.

Countries around the world, from England, to China, to Somalia, have outlawed juvenile LWOP sentences in favor of rehabilitation-based programs.[165] The pieces are in place to rehabilitate juveniles who are being thrown away in the American criminal justice system. There seem to be judges looking to reform not penalize and apparently facilities that intend to provide resources for successful reentry into society. These are American ideals of criminal justice: American judges declaring juvenile incarceration is for rehabilitation, not punishment. There is no rehabilitation for a juvenile destined to die in prison. If the US will not abolish juvenile life without parole to adhere to international human rights law, it should do so to abide by its own sense and proclamation of criminal justice.

[165] Dawei Wang, *The Study of Juvenile Delinquency and Juvenile Protection in the People's Republic of China*, CRIME & JUST. INT'L, Sept.–Oct. 2006, at 4; OVERARCHING PRINCIPLES—SENTENCING YOUTHS, UNITED KINGDOM SENTENCING GUIDELINES COUNCIL (2009), https://www.sentencingcouncil.org.uk/wp-content/uploads/web_overarching_principles_sentencing_youths.pdf.