The United States Supreme Court Adopts a Reasonable Juvenile Standard in *J.D.B. v. North Carolina* for Purposes of the *Miranda* Custody Analysis: Can a More Reasoned Justice System for Juveniles Be Far Behind?

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I. Introduction

The "reasonable person" in American law is as familiar to us as an old shoe. We slip it on without thinking; we know its shape, style, color, and size without looking. Beginning with our first-year law school classes in torts and criminal law, we understand that the reasonable person provides a

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measure of liability and responsibility in our legal system.[1] She informs our notions of excuse or mitigation in criminal law,[2] the legality of police conduct during arrest or interrogation,[3] and the boundaries of negligence or recklessness in civil law.[4] She is an idealized person whose actions—as reflected in her idealized intelligence, educational background, judgment, experience, and temperament[5]—"display appropriate regard for both her interests and the interests of others."[6] The common-law "reasonable person" was initially formulated without reference to children. The recognition that the reasonable person standard failed to capture the distinct attributes of children and youth first surfaced in civil law. In tort law, for example, all American jurisdictions apply a different standard in order to measure the negligence of children—"that of a reasonable person of like age, intelligence, and experience under like circumstances."[7]

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[1] *See generally* Peter Westen, *Individualizing the Reasonable Person in Criminal Law*, 2 CRIM. L. & PHIL. 137 (2008).

[2] *See, e.g.*, MODEL PENAL CODE §§ 2.09, 3.04, 210.3(1)(b), 210.4 (1962) (duress, use of force in self-protection, manslaughter, and negligent homicide).

[3] *See, e.g.*, United States v. Mendenhall, 446 U.S. 544, 554 (1980) (holding that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave").

[4] *See, e.g.*, RESTATEMENT (SECOND) OF TORTS § 283 (1965).

[5] Peter Westen describes this idealized concept of "reasonableness":

> "[R]easonableness" is not an empirical or statistical measure of how average members of the public think, feel, or behave. Average is not the same as right or appropriate. Regrettably, average persons have been known to think, feel, and behave very differently from the way the polity to which they are duty-bound believes they should, and when they do, they are answerable to the polity for their failings. Rather, reasonableness is a normative measure of ways in which it is *right* for persons to think, feel or behave—or, at the very least, ways in which it is *not wrong* for them to do so.

Westen, *supra* note 1, at 138 (citations omitted); *id.* at 138 n.7 (citing examples of ways in which average persons act unlawfully, including driving in excess of speed limits, downloading copyrighted material from the internet, avoiding taxes, and using controlled substances).

[6] ARTHUR RIPSTEIN, EQUALITY, RESPONSIBILITY, AND THE LAW 192 (Gerald Postema ed., 1999).

[7] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2404 (2011) (citing RESTATEMENT (THIRD) OF TORTS § 10 cmt. b (2005)). *See also* RESTATEMENT (SECOND) OF TORTS § 283A (1965) (providing for standard of conduct for children of "a reasonable person of like age, intelligence, and experience under like circumstances," and grounding this relaxed standard in the notion that a child is defined as "a person of such immature years as to be incapable of exercising the judgment, intelligence, knowledge, experience, and prudence demanded by the standard of the reasonable man applicable to adults"). A relaxed standard of conduct for children reflects the following principle:

> [A] standard of conduct demanded by the community for the protection of others against unreasonable risk . . . must be the same for all persons, since the law can have no favorites; and yet allowance must be made for some of the differences between individuals, the risk apparent to the actor, *his capacity to meet it*, and the circumstances under which he must act.

RESTATEMENT (SECOND) OF TORTS § 283 cmt. c (1965) (emphasis added).

In the criminal law, however, the acknowledgment that children and youth differ from adults in the very domains that give definition to the reasonable person—education, judgment, and experience—has generally failed to take hold. Juveniles seeking to invoke the traditional defenses available to adults, such as self-defense, provocation, or recklessness, are forced to do so without regard for their distinct developmental characteristics.[8] Historically, courts have measured the reasonableness of police conduct, or the reasonableness of a juvenile's conduct in response to the behavior of law enforcement, against the same reasonable person standard applied to adults.[9]

In *J.D.B. v. North Carolina*, the United States Supreme Court considered the case of a thirteen-year-old middle-school student who was removed from class and interrogated about burglaries in his neighborhood by four adults, including a police investigator and a uniformed school resource officer, in a closed-door conference room.[10] The Court held, for the first time, that the test for determining whether or not a juvenile suspect would have felt free to terminate a police interrogation—that is, the test for determining whether or not the juvenile was "in custody" such that he should have received *Miranda* warnings at the outset of the interrogation—must be evaluated through the lens of a reasonable juvenile, rather than a reasonable adult.[11] In this Article, we explore the implications of this holding and suggest that the Court's recognition of a reasonable *juvenile* standard for the purposes of the *Miranda* custody analysis augurs a broad shift in the analysis of a juvenile's guilt, criminal responsibility, and conduct across a wide spectrum of American criminal law.

This Article begins with an explanation of the reasonable person standard and its application to various areas of law. It then explains how children deviate from the normal model of reasonable behavior due to different cognitive and emotional capacities. Section III discusses how the Supreme Court's recent recognition that children are distinct from adults in *Roper v. Simmons*[12] and *Graham v. Florida*[13] led to the Court's shift in *J.D.B.* Section IV reviews the concept of custodial interrogation—and how the coercive

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[8] *See, e.g.*, People v. Juarez, No. B214315, 2011 WL 2991530, at *7 (Cal. Ct. App. July 25, 2011) ("[T]he standard to be applied in deciding criminal culpability for a homicide or in deciding between voluntary and involuntary manslaughter turns on whether a defendant's actions were those of a reasonable person, not the actions of a reasonable juvenile." (citing Walker v. Superior Court, 47 Cal. 3d 112, 136–37 (1988))); *see also* State v. Alford, No. A07–1025, 2008 WL 4006657, at *4 (Minn. Ct. App. Sept. 2, 2008) (holding that jury was properly instructed regarding defense of others from "reasonable person" standard, rather than "reasonable juvenile" standard, in seventeen-year-old defendant's trial for murder and arson).

[9] *See, e.g.*, *In re* J.D.B., 686 S.E.2d 135, 140 (N.C. 2009) (holding that J.D.B. was not in custody when he confessed, "declin[ing] to extend the test for custody to include consideration of the age . . . of an individual subjected to questioning by police." (citing Yarborough v. Alvarado, 541 U.S. 652, 668 (2004))).

[10] J.D.B. v. North Carolina, 131 S. Ct. at 2399–400.

[11] *Id.* at 2403.

[12] 543 U.S. 551 (2005).

[13] 130 S. Ct. 2011 (2010).

and intimidating atmosphere of such interrogation can taint statements of suspects—a concept recognized by the Court in *Miranda*[14] and later refined to allow for consideration of a juvenile suspect's age in *J.D.B.* Section V of the Article explains how those developmental differences between children and adults ultimately led to the recognition in *J.D.B.* that a reasonable juvenile standard was required. The Article then argues that the reasonable juvenile standard has application in several other areas of the criminal law beyond the Fifth Amendment context and explains how such an analysis might be applied.

II. The Reasonable Person Standard

a. Background

The "reasonable person" is a legal fiction that appears throughout the common law.[15] It is an objective standard against which triers of fact measure individuals' conduct or blameworthiness.[16] The standard appears in the "unreasonable searches and seizures" clause of the Fourth Amendment to the Constitution,[17] in which reasonableness functions as a tool for assessing the legality of police conduct.[18] Determinations of "reasonableness" can also serve either to excuse criminal conduct or mitigate its blameworthiness, such as in the affirmative defense of duress,[19] the justification of self-defense,[20] the excuse of provocation/extreme emotional disturbance,[21] and the categorization of degrees of homicide.[22] The Supreme Court created another

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[14] 384 U.S. 436, 444 (1966).

[15] The reasonable person standard emerged in the common law during the first half of the nineteenth-century. The concept appeared for the first time in both tort and the criminal law in the same year. *See* R. v. Kirkham (1837) 173 Eng. Rep. 422, 424 (stating that "the law . . . requires that [man] should exercise a reasonable control over his passions"); Restatement (Second) of Torts § 283 reporter's notes (1965) (citing Vaughn v. Menlove (1837) 132 Eng. Rep. 490). While the definition of "reasonableness" absorbs different content in each of the various areas of the common law—tort, criminal law, criminal procedure, contracts, etc.—it consistently embodies the basic concept of conformity to objective norms of behavior.

[16] *See, e.g.*, People v. Cross, 127 P.3d 71, 78 (Colo. 2006); People v. Goetz, 497 N.E.2d 41, 50–51 (N.Y. 1986); Jankee v. Clark County, 612 N.W.2d 297, 310 (Wis. 2000).

[17] U.S. Const. amend. IV.

[18] *See, e.g.*, Michigan v. Chesternut, 486 U.S. 567, 573 (1988); United States v. Mendenhall, 446 U.S. 544, 554 (1980) ("[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.").

[19] *See, e.g.*, Model Penal Code § 2.09 (1962).

[20] *See, e.g.*, *id.* § 3.04.

[21] *See, e.g.*, *id.* § 210.3(1)(b).

[22] For example, see *Commonwealth v. Legg*, which employs the reasonable person standard in felony-murder cases:

> When an actor engages in one of the statutorily enumerated felonies and a killing occurs, the law, via the felony-murder rule, allows the finder of fact to infer the killing was malicious from the fact that the actor engaged in a felony of such a dangerous nature to human life because the actor, *as held to a standard of a reasonable man*, knew or should have known that death might result from the felony.

opportunity to apply a reasonable person standard in its decision in *Miranda v. Arizona*, holding that statements obtained from defendants during custodial interrogation, without full warning of constitutional rights, were inadmissible as having been obtained in violation of Fifth Amendment privilege against self-incrimination.[23]

What qualities does the reasonable person possess? Concise descriptions of the reasonable person in the criminal law are hard to find. Joshua Dressler summarizes criminal law jurists' efforts to describe the reasonable person: "[T]his person possesses the intelligence, educational background, level of prudence, and temperament of an average person [and] lacks unusual physical handicaps."[24] Because the reasonable person is a fungible figure who appears throughout the common law, it is also instructive to examine the standard definition in the tort context. The Restatement (Second) of Torts describes the "reasonable man" as "a person exercising those qualities of attention, knowledge, intelligence, and judgment which society requires of its members for the protection of their own interests and the interests of others."[25]

To penalize someone for failure to conform to a standard she was always incapable of meeting is not the proper object of the criminal law.[26] Reflecting these concerns, the Model Penal Code encourages some degree of individualization of the reasonable person standard.[27] The drafters of the Code ensured some flexibility by reference to "the actor's situation."[28] The

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417 A.2d 1152, 1154 (Pa. 1980) (emphasis added); *see also* MODEL PENAL CODE § 210.4 (1962).

[23] Miranda v. Arizona, 384 U.S. 436 (1966).

[24] JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 10.04 [B][3][b] (1987); *see also* RIPSTEIN, *supra* note 6, at 192 ("[T]he reasonable person in [the law's] sense is . . . the person whose actions display appropriate regard for both her interests and the interests of others."). *See supra* note 5 for an explanation of the relationship between "reasonable person" and "average person."

[25] RESTATEMENT (SECOND) OF TORTS § 283 cmt. b (1965).

[26] This principle is implicit—if not explicit—in a wide range of sources, from case law to model legislation to treatises. *See, e.g.*, Atkins v. Virginia, 536 U.S. 304, 306 (2002) (finding that, "[b]ecause of their disabilities in areas of reasoning, judgment, and control of their impulses . . . [mentally retarded persons] do not act with the level of moral culpability that characterizes the most serious adult criminal conduct," and therefore should never be subject to the death penalty); *see also* MODEL PENAL CODE § 2.02(1) (1962) (stating one is not guilty of an offense unless one acts with prescribed degree of culpability); SANFORD H. KADISH & STEPHEN J. SCHULHOFER, CRIMINAL LAW AND ITS PROCESSES 203–04 (7th ed. 2001).

[27] For example, the Model Penal Code provides that:

> A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe *in the actor's situation*.

MODEL PENAL CODE § 2.02(2)(d) (1962) (emphasis added). This phrase appears elsewhere in the Code in sections that address blameworthiness, such as the provision that downgrades murder to manslaughter in instances of extreme emotional disturbance. *Id.* § 210.3.

[28] *See, e.g.*, *id.* § 202(2)(d).

phrase is "designedly ambiguous."[29] The drafters of the Code endorsed a formulation that "affords sufficient flexibility to differentiate in particular cases between those special aspects of the actor's situation that should be deemed material for purpose of grading [of offenses] and those that should be ignored."[30] It is this question—precisely which special aspects of the actor's situation are material—that is at issue in the formulation of a reasonable juvenile standard. As discussed below, *J.D.B.* resolved this question in the affirmative with regard to age. Notably, however, the Court in *J.D.B.* took pains to point out that accounting for a child's age as part of the custody analysis does no damage to the objective nature of the analysis.[31] Because the differences between children and adults are "self-evident to anyone who was a child once himself,"[32] accounting for age "in no way involves a determination of how youth 'subjectively affect[s] the mindset' of any particular child."[33]

b. The Reasonable Person Standard and Children: Kids Are Different

The qualities that characterize the reasonable person throughout the common law—attention, prudence, knowledge, intelligence, and judgment—are precisely those that society fails to ascribe to minors, thereby justifying a wide range of laws regulating children.[34] For example, age requirements for operating motor vehicles reflect a societal consensus that children possess a lesser standard of awareness and judgment than the reasonable (adult) person. Whereas the reasonable person possesses a degree of knowledge and intelligence that society requires of its members for protection of the collective interest,[35] public education entitlement laws evince a societal consensus that young people lack "the capacities needed for productive adult lives."[36] Infancy doctrine in contract law, along with age requirements for enlisting in the military and for voting, is indicative of a belief that

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[29] 2 AM. LAW INST., MODEL PENAL CODE AND COMMENTARIES § 210.3 cmt. at 62 (1980).

[30] *Id.* at 63. The term "situation" is intentionally ambiguous and leaves room for the reasonable person to take on "some, but not all" of the defendant's personal characteristics, leaving it to the courts to determine which characteristics are relevant. Michael Vitiello, *Defining the Reasonable Person in the Criminal Law: Fighting the Lernaean Hydra*, 14 LEWIS & CLARK L. REV. 1435, 1443 (2010). Prior to the holding in *J.D.B.*, lower courts were free to determine whether age was a relevant characteristic. In the wake of *J.D.B.*, the degree to which these reasonableness determinations must now incorporate consideration of the age of the individual in question is likely to be one of the next frontiers in the shifting boundaries between children and adults in American law generally and in the criminal law specifically.

[31] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2403–06 (2011).

[32] *Id.* at 2403.

[33] *Id.* at 2405 (citation omitted).

[34] For an overview of the origins and history of modern legal regulation of children, see BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 34–45 (1999); ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 62–67 (2008). *See also J.D.B.*, 131 S. Ct. at 2404.

[35] RESTATEMENT (SECOND) OF TORTS § 283 cmt. b (1965).

[36] SCOTT & STEINBERG, RETHINKING JUVENILE JUSTICE, *supra* note 34, at 67.

minors are incapable of exercising the degree of judgment required to merit entrusting them with such weighty responsibilities.[37] The societal belief that children lack one or more of the characteristics of a reasonable person animates each of these regulatory schemes.

Very early in its development, common-law doctrine reflected the view that children should not be held to the same standard of conduct as adults.[38] Indeed, the very definition of "child" in the realm of tort law is "a person of such immature years as to be incapable of exercising the judgment, intelligence, knowledge, experience, and prudence demanded by the standard of the reasonable man applicable to adults."[39] Instead, negligence doctrine holds children to a standard of care described as "that of a reasonable person of like age, intelligence, and experience under like circumstances."[40]

This reduced standard of conduct for children in the negligence context reflects the notion that if an individual is incapable of meeting a standard of conduct, it is unjust to hold her legally accountable for failing to meet that standard. Because the reasonable person is a legal fiction possessing the same general characteristics throughout the common law, it is only logical that the principles underlying the tort doctrine embodied in the Restatement § 283A—namely, that a child's age is relevant to determinations of reasonableness—would extend to other areas of the law.[41]

III. *Roper v. Simmons* and *Graham v. Florida*: Evolving Juvenile Justice Doctrine Informs *J.D.B. v. North Carolina*

Between 2005 and 2011, the United States Supreme Court decided two landmark juvenile cases that have profoundly altered the Court's analysis of juveniles' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment,[42] with significant implications for the status and treatment of youth generally in the justice system. In 2005, in *Roper v. Simmons*, the Court abolished the juvenile death penalty under the Eighth Amendment.[43] In 2010, in *Graham v. Florida*, the Court declared that a sentence of life without parole imposed on a juvenile convicted of a non-homicide offense likewise violated the Eighth Amendment.[44] As noted above, in 2011, the Court decided *J.D.B. v. North Carolina*, requiring that a child's age be

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[37] *Id.* at 64–67; *see also J.D.B.*, 131 S. Ct. at 2404; Roper v. Simmons, 543 U.S. 551, 569 (2005); Feld, *supra* note 34, at 34–45.

[38] *See* Lara A. Bazelon, Note, *Exploding the Superpredator Myth: Why Infancy Is the Preadolescent's Best Defense in Juvenile Court*, 75 N.Y.U. L. Rev. 159, 159–61 (2000) (citing sources discussing origins of infancy defense dating back to Roman era).

[39] Restatement (Second) of Torts § 283A cmt. a (1965).

[40] Id. § 283A.

[41] *See J.D.B.*, 131 S. Ct. at 2403–06.

[42] U.S. Const. amend. VIII.

[43] 543 U.S. 551, 578 (2005).

[44] 130 S. Ct. 2011, 2034 (2010).

considered in applying the *Miranda* custody analysis.[45] In all three of these cases, the Court acknowledged the importance of considering immaturity when applying constitutional protections to juveniles; the Court also demonstrated its receptivity to grounding constitutional principles in well-settled developmental and scientific research.

In *Roper v. Simmons*, the Supreme Court disallowed the death penalty for juveniles based in large part on developmental research. The Court was persuaded that juveniles were different from adults in ways that challenged the traditional justifications for applying the death penalty.[46] Specifically, citing studies relied upon by such amici curiae as the American Medical Association[47] and the American Psychological Association,[48] the Court noted three characteristics of youth that supported its abolition of the juvenile death penalty: (i) Youth are immature and fail to demonstrate mature judgment; (ii) youth are more susceptible to peer pressure, particularly negative peer pressure;[49] and (iii) youth is a transient developmental phase, and adolescent offenders have a greater capacity than adult offenders for rehabilitation and reformation of their characters.[50] Given these characteristics, the Court went on to observe that "[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."[51]

The *Roper* Court held that adolescents' limited decision-making capacity and susceptibility to outside influences are relevant to the determination of their criminal responsibility. As Justice Kennedy wrote for the Court in *Roper*: "As the scientific and sociological studies . . . tend to confirm, [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the

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[45] 131 S. Ct. at 2408.

[46] 543 U.S. at 569.

[47] *Roper*, 543 U.S. at 569–70; Brief for Am. Med. Ass'n et al. as Amici Curiae Supporting Respondent, *Roper*, 543 U.S. 551 (No. 03-633), 2004 WL 1633549.

[48] *Roper*, 543 U.S. at 569–70; Brief for Am. Psychological Ass'n & Mo. Psychological Ass'n as Amici Curiae Supporting Respondent, *Roper*, 543 U.S. 551 (No. 03-633), 2004 WL 1636447.

[49] Adolescents' heightened susceptibility to peer pressure is relevant to the determination of their criminal responsibility or culpability. Researchers have established a significant relation between adolescent crime and peer pressure. Elizabeth Scott, *Criminal Responsibility in Adolescence: Lessons from Developmental Psychology*, *in* YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 304 (Thomas Grisso & Robert G. Schwartz eds., 2000). Research demonstrates that "most adolescent decisions to break the law take place on a social stage where the immediate pressure of peers is the real motive for most teenage crime." Franklin E. Zimring, *Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility*, *in* YOUTH ON TRIAL, *supra*, at 280. Indeed, "group context" is the single most important characteristic of adolescent criminality. *Id.* at 281. Although a young person may be able to discriminate between right and wrong when alone, resisting temptation in the presence of others requires social experience; it is a distinctive skill that many adolescents have not yet fully developed. *Id.* at 280–81.

[50] *Roper*, 543 U.S. at 569–70.

[51] *Id.* at 573.

young. These qualities often result in impetuous and ill-considered actions and decisions."[52] The Court further explained, "juveniles have less control, or less experience with control, over their own environment."[53]

Five years after *Roper*, the Court in *Graham v. Florida* reiterated and further emphasized its findings about youth: "No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles. As petitioners' *amici* point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."[54] The Court extended *Roper*'s analysis by including in *Graham* the conclusion that adolescent decision-making is distinguished by not only cognitive and psychosocial but also neurological deficits.[55] These developmentally normal impairments in making decisions can be exacerbated when adolescents are under stress.[56]

IV. From *Miranda v. Arizona* to *J.D.B. v. North Carolina*

Like the reasonable person, "*Miranda* warnings" are familiar to us, though arguably this familiarity comes as much from watching countless television episodes of *Law and Order* as from what we learned in first-year criminal law courses. *Miranda v. Arizona*, the United States Supreme Court's decision mandating that a set of prophylactic warnings be given to suspects prior to custodial interrogation by law enforcement,[57] was decided over forty-five years ago. The oft-quoted *Miranda* warnings—that the suspect has, among other rights, a right to remain silent and a right to request the presence of counsel[58]—were adopted to protect the Fifth Amendment

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[52] *Id.* at 569 (citations omitted) (internal quotation marks omitted).

[53] *Id.*; *see also* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003) ("[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting."); Zimring, *supra* note 49, at 280 ("The teen years are periods when self-control issues are confronted on a series of distinctive new battlefields. . . . New domains . . . require not only the cognitive appreciation of the need for self-control in a new situation but also its practice."). A child faced with a new type of situation may therefore have more difficulty exercising the necessary self-control than a more experienced adult. Further, because adolescents tend to discount the future and weigh more heavily the short-term risks and benefits, they may experience heightened pressure from the immediate coercion they face. *See* Elizabeth S. Scott, N. Dickon Reppucci & Jennifer L. Woolard, *Evaluating Adolescent Decision Making in Legal Contexts*, 19 Law & Hum. Behav. 221, 231 (1995).

[54] Graham v. Florida, 130 S. Ct. 2011, 2026 (2010).

[55] *See id.*

[56] *See* Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court*, *in* Youth on Trial, *supra* note 49, at 26 (explaining that even when older adolescents attain raw intellectual abilities comparable to those of adults, their relative lack of experience may impede their ability to make sound decisions).

[57] 384 U.S. 436, 444 (1966).

[58] *Id.* Specifically, the *Miranda* Court instructed that, prior to questioning, a suspect "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed." *Id. See also* Florida v. Powell, 130 S. Ct. 1195, 1204 (2010) ("The

privilege against self incrimination[59] from the "inherently compelling pressures" of questioning by the police.[60] While any police interview has "coercive aspects to it,"[61] interviews that take place in police custody carry a "heighten[ed] risk that statements are not the product of the suspect's free choice."[62] *Miranda* expressly recognized that custodial interrogation in an "incommunicado police dominated atmosphere"[63] creates psychological pressures that "work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely."[64]

Miranda warnings are specifically designed to protect the individual against the coercive nature of *custodial interrogation*.[65] As such, they are required only when a person is "in custody."[66] To determine whether a person is in custody, courts make two discrete, objective inquiries: "[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a *reasonable person* have felt he or she was at liberty to terminate the interrogation and leave."[67] Thus, the custody analysis—and, hence, the legality of the interrogation—turns on whether a reasonable person would have believed herself to be under formal arrest or restrained in her freedom of movement to the degree associated with formal arrest.[68]

In 2011, the Supreme Court ruled in *J.D.B. v. North Carolina*,[69] that a child suspect's age was relevant to determining when she has been taken into custody and is consequently entitled to a *Miranda* warning.[70] In *J.D.B.*, the

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four warnings Miranda requires are invariable, but this Court has not dictated the words in which the essential information must be conveyed.").

[59] U.S. CONST. amend. V.

[60] *Miranda*, 384 U.S. at 467.

[61] Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (per curiam).

[62] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2401 (2011) (citation omitted) (internal quotation marks omitted).

[63] *Miranda*, 384 U.S. at 456.

[64] *Id.* at 467.

[65] *J.D.B.*, 131 S. Ct. at 2402.

[66] *Miranda*, 384 U.S. at 445. The *Miranda* Court explained that:

> The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way. In each, the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. In none of these cases was the defendant given a full and effective warning of his rights at the outset of the interrogation process. In all the cases, the questioning elicited oral admissions, and in three of them, signed statements as well which were admitted at their trials. They all thus share salient features—incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.

Id.

[67] *J.D.B.*, 131 S. Ct. at 2402 (emphasis added) (quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995)).

[68] *Id.*

[69] 131 S. Ct. 2394 (2011).

[70] *Id.* at 2406.

Court had the opportunity to review the efficacy of the *Miranda* doctrine in the context of the interrogation of a thirteen-year-old middle-school student who was questioned in a closed-door school conference room by school administrators and members of law enforcement.[71] Writing for the majority, Justice Sotomayor stated: "[S]o long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test."[72] Justice Sotomayor effectively characterized youth as an unambiguous fact that "generates commonsense conclusions about behavior and perception,"[73] and she noted that such conclusions are "self-evident to anyone who was a child once himself, including any police officer or judge."[74]

The Court tied its ruling to the accepted view in "[a]ll American jurisdictions . . . that a person's childhood is a relevant circumstance" in ascertaining what the so-called reasonable person would have done in the particular circumstances at issue.[75] The Court noted that the common law has reflected the reality that children "cannot be viewed simply as miniature

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[71] *Id.* at 2398–408. Justice Sotomayor, writing for the majority, did not consider the school setting a proxy for age, as Justice Alito, in his dissent, seemed to suggest. *Id.* at 2415 (Alito, J., dissenting). Justice Sotomayor countered:

> A student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game. Without asking whether the person "questioned in school" is a "minor," . . . the coercive effect of the schoolhouse setting is unknowable.

Id. at 2405 (citation omitted). Compare *Howes v. Fields*, in which the Court held that a prisoner who was told that he was free to terminate the interrogation prior to questioning within a separate room in the prison was not in custody for the purposes of *Miranda*. 132 S. Ct. 1181, 1194 (2012). While the prisoner could not move about the prison freely and would have had to wait to be escorted back to his cell if he chose to end the interrogation, the Court held that this restriction on the prisoner's freedom of movement was no greater than he experienced anytime he moved around the prison. *Id.* This has little bearing on the Court's holding in *J.D.B.*, in which Justice Sotomayor disagreed with Justice Alito's suggestion in dissent that the place of J.D.B.'s interrogation—a school setting where his freedom of movement was generally restricted—was the controlling factor in holding that *Miranda* applied. Rather, Justice Sotomayor was clear that it was J.D.B.'s age that was relevant to the determination of whether he was in custody, not where he was interrogated. *J.D.B.*, 131 S. Ct. at 2405.

[72] *Id.* at 2406. While the interrogation of J.D.B. took place in a school setting, the majority opinion took pains to point out that its holding did not turn on this fact. Responding to the assertion in Justice Alito's dissent that the traditional *Miranda* analysis accounts for the coercive nature of in-school interrogations, the majority noted that "the effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned." *Id.* at 2405.

[73] *Id.* at 2403 (quoting Yarborough v. Alvarado, 541 U.S. 652, 674 (2004) (Breyer, J., dissenting)).

[74] *Id.* Responding to the dissent's concern about "gradations among children of different ages," *id.* at 2407, Justice Sotomayor wrote: "Just as police officers are competent to account for other objective circumstances that are a matter of degree such as the length of questioning or the number of officers present, so too are they competent to evaluate the effect of relative age." *Id.*

[75] *Id.* at 2404 (quoting RESTATEMENT (THIRD) OF TORTS § 10 cmt. b. (2005)).

adults"[76] and that questions of liability routinely take proper account of age.[77] The Court distinguished age from "other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person's understanding of his freedom of action."[78] The Court concluded:

> To hold, as the State requests, that a child's age is never relevant to whether a suspect has been taken into custody—and thus to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.[79]

V. *J.D.B. v. North Carolina*: The Facts and the Analysis

While the questions presented in *Roper* and *Graham* focused squarely on the issue of the blameworthiness of youth in the sentencing context, the issues raised in *J.D.B.* took the analysis one step further. By the Court's logic, the same characteristics of youth that render young people less culpable than adults in an Eighth Amendment context—i.e. immature moral reasoning and judgment, susceptibility to peer pressure, and capacity for reformation—are directly relevant to analyses of reasonableness that pervade the criminal law.[80]

J.D.B. was a 13-year-old middle-school student in Chapel Hill, North Carolina, who was removed from his classroom by a uniformed police officer and escorted to a conference room for questioning.[81] The door to the conference room was closed.[82] There, a police investigator, the uniformed school resource officer, the assistant principal, and an adult administrative intern interrogated him for approximately 30–45 minutes.[83] Questioning began with small talk, including discussion about sports and J.D.B.'s family life.[84] Ultimately, the officers began to question J.D.B. about recent breakins in his neighborhood during which some items were taken.[85] Before beginning the questioning, the officers present did not give J.D.B. *Miranda*

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[76] *Id.* at 2404 (citing Eddings v. Oklahoma, 455 U.S. 104, 115–16 (1982)).
[77] *Id.* at 2403–04.
[78] *Id.* at 2404. In *Yarborough*, for example, the Court declined to view a suspect's prior interrogation history with law enforcement as relevant to the custody analysis "because such experience could just as easily lead a reasonable person to feel free to walk away as to feel compelled to stay in place." *Id.* at 2404 (citing *Yarborough*, 541 U.S. at 668).
[79] *Id.* at 2408.
[80] *See id.* at 2403–04.
[81] *Id.* at 2399.
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*

warnings or the opportunity to call his grandmother, who was his legal guardian, nor did they tell him he was free to leave the room.[86]

J.D.B. immediately denied any wrongdoing.[87] J.D.B. said that he had been in the neighborhood where the break-ins had occurred because he was looking for a job mowing lawns.[88] After the officer pressed J.D.B. for details about his efforts to find a part-time job, the officer presented J.D.B. with a digital camera that was among the stolen items the police had recovered.[89] At this point in the interrogation, the assistant principal "urged J.D.B. to 'do the right thing,' warning J.D.B. that 'the truth always comes out in the end.'"[90] J.D.B "asked whether he would 'still be in trouble' if he returned the 'stuff.'"[91] The officer explained that the return of the items would be helpful, but "this thing is going to court" in any event.[92] The officer continued: "[W]hat's done is done[;] now you need to help yourself by making it right."[93] He also advised J.D.B. that he might need to seek a secure custody order if he thought J.D.B. would continue to break into other people's houses; the officer explained that a secure custody order is "where you get sent to juvenile detention before court."[94] J.D.B. then "confessed that he and a friend were responsible for the break-ins."[95] Only at this point did the officer tell J.D.B. he did not have to answer the officer's questions and he was free to leave.[96] J.D.B. indicated he understood his rights, provided further details to the officer, and ultimately drafted a written statement.[97] J.D.B. was permitted to return home at the end of the school day.[98]

J.D.B. was charged in juvenile court with breaking and entering and larceny.[99] His public defender moved to suppress his statements and the evidence obtained by the police, arguing that J.D.B. had been interrogated in a custodial setting without being afforded *Miranda* warnings and that his statements were involuntary.[100] The trial court denied the motion, finding that J.D.B. was not "in custody" for purposes of *Miranda* during the interrogation at school.[101] J.D.B. entered a transcript of admission to the charges, but he renewed his objection to the denial of his motion to suppress.[102] A

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[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.* at 2399–400.
[93] *Id.* at 2400.
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*

divided panel of the North Carolina Court of Appeals affirmed.[103] The North Carolina Supreme Court likewise affirmed, over two dissents,[104] adopting the lower court's finding that J.D.B. was not in custody and expressly "declin[ing] to extend the test for custody to include consideration of the age . . . of an individual subjected to questioning by police."[105]

With Justice Sotomayor writing for the majority, the Supreme Court reversed. The Court reiterated its core belief, underlying *Miranda*, that custodial police interrogation "[b]y its very nature . . . entails 'inherently compelling pressures.'"[106] The Court attached special significance to J.D.B.'s age, noting that the risk of coercion is "all the more acute"[107] when it is a child who is the subject of the custodial interrogation. In response to the State's argument that age has no place in the custody analysis, the Court said simply: "We cannot agree."[108] For the first time since deciding *Miranda*, the Court acknowledged that proper application of the custody analysis required taking a child's age into account:

> In some circumstances, a child's age "would have affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave." . . . That is, a *reasonable child* subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. We think it clear that courts can account for that reality without doing any damage to the objective nature of the custody analysis.[109]

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[103] *Id.*

[104] Justice Brady dissented from the majority decision, disagreeing that J.D.B.'s age was not relevant to the *Miranda* custody determination. Looking specifically to North Carolina law, Justice Brady wrote: "It is logical that age should be considered as part of the reasonable person standard in a custody analysis under N.C.G.S. § 7B-2101." *In re* J.D.B., 686 S.E.2d 135, 141 (N.C. 2009). Justice Brady specifically held:

> [T]he proper inquiry in the instant case when determining whether defendant was in custody . . . should be whether, under the totality of the circumstances, a reasonable juvenile in defendant's position would have believed he was under formal arrest or was restrained in his movement to the degree associated with a formal arrest.

Id. at 142. Justice Hudson also dissented. She agreed that J.D.B.'s age was a relevant factor in the custody determination, *id.* at 149–50, and also noted the inherently coercive nature of the school environment: "[J]uveniles are faced with a variety of negative consequences—including potential criminal charges—for refusing to comply with the requests or commands of authority figures. . . ." *Id.* at 147.

[105] *J.D.B.*, 131 S. Ct. at 2400 (quoting *In re* J.D.B., 686 S.E.2d 135, 140 (N.C. 2009)).

[106] *Id.* at 2401 (quoting Miranda v. Arizona, 384 U.S. 436, 467 (1966)).

[107] *Id.*

[108] *Id.* at 2402.

[109] *Id.* at 2402–03 (emphasis added) (quoting Stansbury v. California, 511 U.S. 318, 325 (1994) (per curiam)). In *J.D.B.*, the Court was presented with a question it had been asked to consider in 2004 in *Yarborough v. Alvarado*, 541 U.S. 652 (2004), about the relevance of age to the *Miranda* custody analysis. The Ninth Circuit had ruled, in a federal habeas corpus proceeding under the Antiterrorism and Effective Death Penalty Act of 1996, that the state courts had wrongly concluded that Alvarado's age (seventeen at the time of his police interrogation) was irrelevant to the determination of whether he would have felt free to terminate the questioning. The Supreme Court reversed, holding that a state court decision that failed to take

The Court stressed that age is a fact that "generates commonsense conclusions about behavior and perception."[110] Importantly, the Court wrapped its "commonsense" approach in both the research that had guided its prior rulings in *Roper v. Simmons*[111] and *Graham v. Florida*[112] as well as prior Supreme Court case law that has consistently recognized the link between juvenile status and legal status.[113] Referencing these prior decisions, the majority observed: "'[O]ur history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults."[114]

The Court's observation that age yields "objective conclusions" about youths' susceptibility to influence or outside pressures was drawn directly from *Roper* and *Graham*, cases that relied on research confirming widely held assumptions about youth. As the Court noted:

> The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. . . . Like this Court's own generalizations, the legal disqualifications placed on children as a class . . . exhibit the settled understanding that the differentiating characteristics of youth are universal.[115]

Underscoring the relevance of these demonstrated differences, the Court rejected the arguments of the State and the dissent that allowing consideration of age to inform the custody analysis would undercut the intended "clarity" of the *Miranda* test.[116] Instead, the majority noted that "ignoring a

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account of the juvenile's age as part of the *Miranda* custody analysis was not "objectively unreasonable" under the deferential standard of AEDPA. *Yarborough*, 541 U.S. at 665–66. While the Court in *Yarborough* acknowledged that accounting for a juvenile's age under *Miranda* "could be viewed as creating a subjective inquiry," *id.* at 668, the Court did not address whether such a view would be correct under law. *Id.* Indeed, Justice O'Connor, concurring in *Yarborough*, acknowledged that a suspect's age might indeed be relevant to the "custody" inquiry. *Id.* at 669 (O'Connor, J., concurring).

[110] *J.D.B.*, 131 S. Ct. at 2402 (quoting *Yarborough*, 541 U.S. at 674 (Breyer, J., dissenting)).

[111] 543 U.S. 551 (2005).

[112] 130 S. Ct. 2011 (2010).

[113] *J.D.B.*, 131 S. Ct. at 2404–05.

[114] *Id.* at 2404. As the Court wrote:

> We have observed that children "generally are less mature and responsible than adults," that they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," that they "are more vulnerable or susceptible to . . . outside pressures" than adults, and so on. Addressing the specific context of police interrogation, we have observed that events that "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."

Id. at 2403 (citations omitted).

[115] *Id.* at 2403–04.

[116] *Id.* at 2407. In dissent, Justice Alito, with whom Justices Thomas and Scalia joined, argued that one of the key virtues of the *Miranda* custody test was its "ease and clarity of . . . application," *id.* at 2415 (citing Moran v. Burbine, 475 U.S. 412, 425 (1986)), and that the rule announced by Justice Sotomayor would undo that purpose. *Id. See also* Withrow v. Williams, 507 U.S. 680, 694 (1993). In Justice Alito's view, "*Miranda* greatly simplified matters by

juvenile defendant's age will often make the [*Miranda*] inquiry more artificial . . . and thus only add confusion."[117] The Court faulted the State's and the dissenters' arguments that *Miranda* works only with a "one-size-fits-all" analysis, and it insisted that age is both a relevant and an objective circumstance that cannot be excluded from the custody analysis "simply to make the fault line between custodial and noncustodial 'brighter.' "[118] In response to the dissent's and the State's argument that gradations among children of different ages would further erode the objectivity of the test, Justice Sotomayor disagreed that such a concern justified "ignoring a child's age altogether."[119] Justice Sotomayor wrote:

> Just as police officers are competent to account for other objective circumstances that are a matter of degree such as the length of questioning or the number of officers present, so too are they competent to evaluate the effect of relative age. . . . The same is true of judges, including those whose childhoods have long since passed. . . . In short, officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to

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requiring police to give suspects standard warnings before commencing any custodial interrogation." *J.D.B.*, 131 S. Ct. at 2411 (Alito, J., dissenting). While acknowledging that *Miranda*'s requirements were "no doubt 'rigid,' " *id.* (citation omitted), Justice Alito wrote that "with this rigidity comes increased clarity," *id.* (citation omitted), and that "this gain in clarity and administrability is one of *Miranda*'s 'principle advantages.' " *Id.* (citation omitted). Justice Alito specifically distinguished the Court's voluntariness test—which takes into account both "the details of the interrogation" and "the characteristics of the accused," *id.* (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973))—from *Miranda*'s "one-size-fits-all prophylactic rule." *Id.* at 2414. Rather than simplify law enforcement's job, Justice Alito insisted that the inclusion of the suspect's age in the *Miranda* custody test "will be hard for the police to follow, and it will be hard for judges to apply." *Id.* at 2415.

[117] *J.D.B.*, 131 S. Ct. at 2407. Justice Sotomayor stressed the objective nature of the *Miranda* custody test, reiterating that the " 'subjective views harbored by either the interrogating officers or the person being questioned' are irrelevant." *Id.* at 2402 (quoting Stansbury v. California, 511 U.S. 318, 323 (1994)). Justice Sotomayor continued: "The test, in other words, involves no consideration of the 'actual mindset' of the particular suspect subjected to police questioning." *Id.* (quoting Yarborough v. Alvarado, 541 U.S. 652, 667 (2004)). Nevertheless, Justice Sotomayor found the dissent's and State's arguments that consideration of the suspect's age would undermine the objective nature of the test flawed. Without minimizing the important goal of clarity, Justice Sotomayor wrote:

> Not once have we excluded from the custody analysis a circumstance that we determined was relevant and objective, simply to make the fault line between custodial and noncustodial "brighter." Indeed, were the guiding concern clarity and nothing else, the custody test would presumably ask only whether the suspect had been placed under formal arrest. . . . But we have rejected that "more easily administered line," recognizing that it would simply "enable the police to circumvent the constraints on custodial interrogations established by *Miranda*."

Id. at 2407 (quoting Berkemer v. McCarty, 468 U.S. 420, 441 (1984)).

[118] *Id.* at 2407.

[119] *Id.*

> know that a 7-year-old is not a 13-year-old and neither is an adult.[120]

The *J.D.B.* Court's pronouncement that it is acceptable for courts to account for a person's youth in a custody analysis opens the door to a broader examination of age in other facets of the justice system. Indeed, as science has built on its base of knowledge about adolescents, the research has pointed in only one direction: Youths' judgment is inherently compromised by their age and placement along the developmental continuum. *J.D.B.*'s holding acknowledged the constitutional significance of the fact that the "reasonable juvenile" thinks and acts differently than the historic "reasonable person."

VI. Reasonableness Applied: Justifications, Defenses, and Excuses[121]

J.D.B. was groundbreaking, distinguishing for the first time in the *criminal* context the oft-cited "reasonable person" from the "*reasonable juvenile*."[122] Given the prevalence of the reasonable person standard in criminal law, the logic of *J.D.B.* suggests that absent compelling justification to the contrary a child's age has "an objectively discernible relationship" to determinations of reasonableness throughout the common law.[123] Thus, there are numerous instances when the characteristics of youth might dictate a different view of the reasonableness of the defendant's conduct or mental state, or otherwise require different treatment of youth. In other words, the adoption of a reasonable juvenile standard has the potential to alter long-standing views about a juvenile's criminal responsibility and guilt.

J.D.B. held that a child's age is a relevant component of an objective custody analysis, insofar as age would affect "'how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.'"[124] The

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[120] *Id.* (cross-references omitted).

[121] While the *J.D.B.* reasonable juvenile standard arose in the context of criminal procedure, this Article explores the implications of the standard as it relates to determinations of the blameworthiness of the defendant. *J.D.B.*'s holding has clear implications for other areas of criminal procedure—including voluntariness of waivers of rights and seizure inquiries. Those inquiries closely parallel the *Miranda* custody analysis insofar as they relate to whether a subject's age is relevant to determining the coercive effect of *police* conduct. In contrast, this Article seeks to expand the conversation about the implications of *J.D.B.* beyond the realm of criminal procedure. As such, it explores the relevance of a subject's age to determinations of the blameworthiness of that subject's conduct and/or state of mind. Insofar as *J.D.B.*'s holding is a direct outgrowth of the Court's findings in *Roper* and *Graham*, our thesis—that a defendant's age is relevant to objective inquiries into the blameworthiness of her conduct and/or state of mind—is not a radical departure from the Court's jurisprudence to date. To the contrary, it follows directly from the Eighth Amendment proportionality analysis in those cases.

[122] *See supra* note 109 and accompanying text. As noted above, *supra* Section I, tort doctrine adopted a lower standard of reasonableness for children much earlier.

[123] *Id.* at 2404.

[124] *Id.* at 2403 (quoting Stansbury v. California, 511 U.S. 318, 325 (1994)).

opinion went on to ground this holding in "commonsense conclusions"[125] about children's behavior and abilities that "apply broadly to children as a class."[126] Notably, the attributes listed demonstrate the ways in which children as a class fail to conform to the characteristics of the reasonable person that appear in the common law. The reasonable person exercises qualities of sufficient attention, knowledge, intelligence, and judgment.[127] In contrast, the opinion describes children as "lack[ing] experience, perspective and judgment"[128] and "possess[ing] only an incomplete ability to understand the world around them."[129]

Below, we examine several specific areas of the criminal law in which an assessment of the "reasonableness" of the offender's conduct or an assessment of how a "reasonable person" would have acted or reacted under similar circumstances bears directly on criminal responsibility. We suggest that viewing the questions of reasonableness or the conduct of the reasonable person through the lens of a reasonable juvenile should lead to a different analysis of juveniles' accountability in criminal law.

a. Duress Defenses

The assertion of duress as a defense to criminal liability is a prime example of how changing views of adolescence should inform the standard of reasonableness to which a court—or a jury—can hold a juvenile. Typically, a criminal defendant may prove duress if a reasonable person would have been "unable to resist" the force or threats she faced.[130] Courts have historically emphasized the objective nature of the duress inquiry:

> [I]n order for a duress defense to criminal liability to succeed, the coercive force of the threat must be sufficient such that a person of *ordinary* firmness would succumb. . . . Additionally, there must be no *reasonable* legal alternative to violating the law. . . . These requirements set out an objective test.[131]

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[125] *Id.* at 2403 (citing Yarborough v. Alvarado, 541 U.S. 652, 674 (2004) (Breyer, J., dissenting)).

[126] *Id.* at 2403.

[127] RESTATEMENT (SECOND) OF TORTS § 283 cmt. b (1965).

[128] *J.D.B.*, 131 S. Ct. at 2403 (quoting Bellotti v. Baird, 443 U.S. 622, 635 (1979)).

[129] *Id.* at 2403.

[130] *See, e.g.*, CONN. GEN. STAT. ANN. § 53a-14 (West 2011); N.Y. PENAL LAW § 40.00 (McKinney 2009). *See also* GA. CODE ANN. § 16-3-26 (2011); 21 AM. JUR. 2D *Criminal Law* § 142 (2011) ("The defense of duress is available when the defendant is coerced to engage in unlawful conduct by the threat or use of unlawful physical force of such degree that a person of reasonable firmness could not resist.").

[131] United States v. Willis, 38 F.3d 170, 176 (5th Cir. 1994) (citations omitted). *See also* 21 AM. JUR. 2D *Criminal Law* § 142 (2011) ("In order to justify the defense of duress, the defendant's fear arising from the threat must have an objective reasonable basis, rather than a subjective one. The elements of the duress defense are addressed to the impact of the threat on a reasonable person.").

Prior to *Roper*, *Graham*, and *J.D.B.*, the state of the law was such that juvenile defendants seeking to prevail on a duress defense would have had to contend with arguments that the defendant's youth was—at best—irrelevant to the reasonableness inquiry or, worse, that accounting for age would distort the objective nature of the inquiry. For example, in 2007, the Connecticut Supreme Court considered whether a trial court was required to give a jury instruction that would have allowed the jury to consider the defendant's age in evaluating his defense of duress.[132] Juvenile Law Center filed an amicus curiae brief in support of the defendant, arguing that Connecticut law, federal constitutional law, and adolescent development research all dictate that the jury in that case should have been instructed to consider the defendant's young age—and its attendant impact on decision-making capability and susceptibility to peer pressure—in determining whether his resorting to the use of force was reasonable.[133] The court rejected this position, on the grounds that the legislature had already made a determination that sixteen-year-olds are to be treated as adults for purposes of criminal liability. The court arrived at this decision after a discussion of the objective component of the duress defense, implying that requiring juries to consider a defendant's age would corrupt this objectivity.[134] If this issue were to come before the court again, the court would have to grapple with the implications of *J.D.B.*, rather than simply deferring to the judgment of the legislature.

In light of *J.D.B.*'s pronouncement that "courts can account for [the] reality [that a child's age would affect how a reasonable person would respond to a given situation] without doing any damage to the objective nature of the custody analysis,"[135] courts can take age into account in duress cases without being vulnerable to criticism for converting an objective test into a subjective test. As research has demonstrated and the Supreme Court has recognized,[136] two significant characteristics make it more likely that adolescents will "succumb" to external pressures that an adult would be capable of resisting: their limited decision-making capacity and their susceptibility to outside influences.[137] Because these characteristics apply to juveniles as a class, juries should be able to inquire as to whether a reasonable person "of ordinary firmness"[138] *and* "of like age, intelligence, and experience"[139] would have succumbed to the pressures that a given defendant did, without depriving the test of its objectivity.

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[132] State v. Heinemann, 920 A.2d 278 (Conn. 2007).

[133] Brief for Juvenile Law Ctr. & Nat'l Juvenile Defender Ctr. as Amici Curiae Supporting Defendant-Appellant at 2–3 (Connecticut law), 4–5 (federal constitutional law), 6–10 (adolescent development), *Heinemann*, 920 A.2d 278 (No. 17789), 2007 WL 4868300.

[134] *Heinemann*, 920 A.2d at 301–05.

[135] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2397 (2011).

[136] *See* Roper v. Simmons, 543 U.S. 551, 569 (2005); Brief for Am. Med. Ass'n et al., *supra* note 47, at 5–9.

[137] United States v. Willis, 38 F.3d 170, 176 (5th Cir. 1994).

[138] *Id.*

[139] RESTATEMENT (SECOND) OF TORTS § 283A (1965).

b. Justified Use of Force

The defense of justified use of force (self-defense, defense of others, defense of property) is codified in various ways across jurisdictions, but such defenses invariably incorporate reasonableness determinations.[140] The issue of reasonableness comes into play in the threshold question of whether it was reasonable for the defendant to believe that another person was using or about to use unlawful physical force against the defendant or a third party.[141] Reasonableness also factors into determinations of whether the degree of force used to combat the threat was lawful: Use of physical force is typically authorized under the law "to the extent [that the defendant] reasonably believes such to be necessary to defend himself, herself, or a third person . . . ."[142]

A fact-finder evaluating a juvenile's defense of justified use of force must first identify a subjectively held belief that a threat existed.[143] Once identified, the question becomes whether that subjective belief was reasonable. *J.D.B.* unequivocally announced that age is objectively relevant to a reasonable child's belief that she was not free to leave.[144] Prior to this holding, juvenile defendants faced the same predicament in the self-defense context as they did in the duress context: They lacked authoritative precedent saying that age is relevant to determining the reasonableness of subjectively held beliefs.

The same principles that led the Court in *J.D.B.* to declare that age is a factor that should be included in an objective custody analysis also bear directly upon the question of reasonableness in this context. The Court in *J.D.B.* acknowledged its own prior findings that teenagers are more easily

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[140] For example, the Code of Alabama provides:

> A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose.

ALA. CODE § 13A-3-23 (2012); *see also* GA. CODE ANN. § 16-3-21 (2011) ("A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force . . . .").

[141] For example, see the New York Penal Law regarding use of force in defense of a person:

> A person may, subject to the provisions of subdivision two, use physical force upon another person when and to the extent he or she reasonably believes such to be necessary to defend himself, herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by such other person . . . .

N.Y. PENAL LAW § 35.15(1) (McKinney 2009).

[142] *Id.*

[143] People v. Goetz, 497 N.E.2d 41, 52 (N.Y. 1986).

[144] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2404 (2011).

intimidated and overwhelmed by police interrogation techniques than adults are.[145] This observation logically extends beyond the context of police interrogation into other coercive situations, such as those in which physical force is imminently threatened. Because "children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them,"[146] evaluating a juvenile's subjective belief that a threat exists against the standard of a reasonable *adult* person does not adequately assess a juvenile's culpability in a self-defense context.

This logic applies equally to the second prong of the self-defense analysis: the reasonableness of the defendant's belief that degree of force used to meet the threat was necessary. Young people are characterized by an underdeveloped capacity to assess risks and to make healthy choices.[147] Using the archetype of the reasonable (adult) person to assess an individual young person's subjective belief that the degree of force used was necessary does not account for the fact that young people's cognitive abilities are still developing. Punishing a young person for failing to live up to an adult standard fails to achieve the objective of the criminal law—punishing only those acts that are accompanied by *mens rea*.[148] This is not to say that all young people are incapable of calibrating the force they employ to meet the threat with which they are faced. Rather, the argument is that when evaluating the level of force used by juveniles in a self-defense context, fact-finders should compare the juvenile defendant's actions to those of a reasonable young person of like age, intelligence, and experience under like circumstances.

c. Provocation

Developmental research on juveniles' impulsivity and undeveloped decision-making capabilities suggests that the partial excuse of provocation is another doctrinal area in which a reasonable juvenile standard ought to apply. The law recognizes provocation as a partial excuse for criminal homicide that would otherwise constitute murder.[149] The common law doctrine requires that the act of killing be committed i) "under the influence of passion . . . produced by an adequate or reasonable provocation," and ii) "before a reasonable time has elapsed for the blood to cool and reason to resume its habitual control."[150] The "cooling period" required by the major-

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[145] *Id.* at 2403 (citing Haley v. Ohio, 332 U.S. 596, 599 (1948) (plurality opinion)); *see also* Gallegos v. Colorado, 370 U.S. 49, 54 (1962) (stating that "no matter how sophisticated," a juvenile subject of police interrogation "cannot be compared" to an adult suspect).

[146] *J.D.B.*, 131 S. Ct. at 2397.

[147] *See supra* note 50 and accompanying text.

[148] MODEL PENAL CODE § 2.02(2) (1962).

[149] *See, e.g.*, MODEL PENAL CODE § 210.3 (1962).

[150] Maher v. People, 10 Mich. 212, 218 (1862). For another example, see *Allen v. State*:

> Voluntary manslaughter is defined by NRS 200.050 and NRS 200.060. It consists of a killing which is the result of a sudden, violent and irresistible impulse of passion. The law requires that the irresistible impulse of passion be caused by a serious and

ity of jurisdictions is designed to ensure that the homicidal act was "the result of the temporary excitement, by which the control of reason was disturbed, rather than of any wickedness of heart or cruelty."[151] The concept of blameworthiness that underlies the reasonable juvenile standard is thus squarely at the center of the provocation doctrine as well.[152]

Provocation doctrine recognizes that human beings are imperfect and that "passion" or "extreme emotional disturbance" can lead even otherwise-reasonable people to commit heinous acts. As the Ninth Circuit has noted, "This standard does not imply that reasonable people kill, but rather focuses on the degree of passion sufficient to reduce the actor's ability to control his actions."[153] The notion that there is a specific quantum of passion that is sufficient to excuse partially a loss of control over one's actions is relevant to the reasonable juvenile standard. Indeed, the concept of juveniles' impaired ability to control their actions lies at the center of the *Roper* and *Graham* decisions. Adolescent development research confirms what every parent knows to be true of teenagers: They are less able than adults to regulate their emotions and control their actions. The defendant's brief in *Roper* relied on this research to make the point that juveniles who commit crimes are—in some instances—less culpable than adults:

> [E]ven late adolescents are less able than adults to control their impulses and exercise self-restraint in refraining from aggressive behavior. [T]he developing adolescent can only learn his or her way to fully developed control by experience. This process will probably not be completed until very late in the teen years. . . . [E]xpecting the experience-based ability to resist impulses . . . to

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highly provoking injury, or attempted injury, sufficient to excite such passion in a reasonable person. If there is an interval between the provocation and the killing sufficient for the passion to cool and the voice of reason to be heard, the killing will be punished as murder.

647 P.2d 389, 390–91 (Nev. 1982). See also *Walden v. State*:

> Voluntary manslaughter occurs when one causes the death of another under circumstances which otherwise would be murder, only if one acts solely as the result of a sudden, violent and irresistible passion that was caused by a serious provocation sufficient to excite such passion in a reasonable person. If there was an interval between the provocation and the killing sufficient for the voice of reason and humanity to be heard (an issue to be decided by a jury), the killing shall be punished as murder.

491 S.E.2d 64, 66 (Ga. 1997) (citations omitted).

[151] *Maher*, 10 Mich. at 219.

[152] *See* Harold Hall, Caroline Mee & Peter Bresciani, *Extreme Mental or Emotional Disturbance (EMED)*, 23 U. HAW. L. REV. 431, 451 (2001) ("EMED is derived from the common law doctrine of 'heat of passion' which was premised on the idea that an actor was less culpable if he killed under circumstances that might have provoked 'most people' to violence.").

[153] United States v. Roston, 986 F.2d 1287, 1294 (9th Cir. 1993) (Boochever, J., concurring) (commenting on provocation standard set forth in Model Criminal Jury Instructions for Ninth Circuit).

> be fully formed prior to age eighteen or nineteen would seem on present evidence to be wishful thinking.[154]

Given what we know about juveniles' limited impulse control, coupled with their documented diminished capacity for logical and moral reasoning and judgment, it is clear that applying an adult reasonable person standard to a juvenile accused of homicide under conditions of extreme emotional disturbance is akin to fitting a square peg into a round hole. Thus, in order for the provocation doctrine to remain "consistent with the law's compassion of human infirmity,"[155] it must embrace the reasonable juvenile standard that is an established principle in tort law and which the Court effectively sanctioned in *J.D.B.*

d. Negligent Homicide

Negligent conduct is that which creates an unjustified, foreseeable risk of causing harm.[156] A risk is foreseeable if a reasonable person would have envisioned the danger inherent in the conduct.[157] A foreseeable risk is unjustified if a reasonable person, considering the purposes and dangers of the conduct in question, would not have acted as the defendant did.[158] Parsing out the elements of negligence in this way sheds light on the ways in which a reasonable juvenile standard is a more just approach to evaluating the conduct of young people.

The reasonable person standard operates at the center of the concept of foreseeability. If a risk inherent in an activity is not foreseeable, then there is nothing unreasonable—and hence, nothing blameworthy—about a person's failure to perceive it or change her course of conduct in recognition of the risk. Instead, the law targets those actors who pursue a course of conduct despite the fact that the risks present are of such magnitude that society demands their awareness of them.

The adolescent development research that supported the defendant's arguments in *Roper* speaks directly to the question of juveniles' ability to perceive and evaluate risks.[159] The region of the brain associated with impulse control, risk assessment, and moral reasoning—the pre-frontal cortex—is

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[154] Brief for Respondent at 19, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633) (citations omitted) (internal quotations marks omitted), 2004 WL 1947812.

[155] KADISH, *supra* note 26, at 421 (citing D.P.P. v. Camplin, (1978) A.C. 705 (H.L.)) (deciding that jury in case of fifteen-year-old defendant "should be instructed that the standard of self-control to be demanded of a person (the 'reasonable man') is that of a person of the sex and age of the defendant. The court gave as a reason for the age qualification that 'to require old heads on young shoulders is inconsistent with the law's compassion of human infirmity.' ").

[156] JOSHUA DRESSLER, UNDERSTANDING THE CRIMINAL LAW 546 (5th ed. 2009). *See also supra* Section II.B.

[157] *See* DRESSLER, *supra* note 156, at 131.

[158] *See id.* at 546.

[159] *See* Brief for Am. Med. Ass'n et al., *supra* note 47, at 16.

"structurally immature" well into late adolescence.[160] As a result, juveniles suffer from an "inability to perceive and weigh risks and benefits accurately."[161] Thus, not only are juveniles as a class less able to envision the danger inherent in conduct, but their ability to discern whether a risk is justified is also impaired.

These findings bear directly upon the issue of culpability, a connection that the *Roper* Court plainly recognized.[162] Requiring that a reasonable juvenile standard be used to evaluate the actions of juvenile defendants would allow juries to make a more honest appraisal of juvenile defendants' culpability. Rather than inquiring whether the risk was foreseeable to the reasonable adult, jurors should determine what is to be expected of "reasonable [young people of the defendant's] age, intelligence[,] and experience" under like circumstances.[163] Anything less—according to the *Roper amici*—is "to hold [juveniles] accountable not just for their acts, but also for the immaturity of their neural anatomy and psychological development."[164]

e. Felony Murder

The felony murder doctrine subjects defendants to criminal liability for murder if the defendant simply participated in the commission of a felony in the course of which someone was killed.[165] In order to be found guilty of felony murder, the defendant need not have intended that anyone be killed nor have committed the actual killing.[166] The doctrine is often justified by a "transferred intent" theory, in which the defendant's intent to commit the underlying felony is sufficient to establish the intent to kill, since a "reasonable person" would know that death is a possible result of felonious activities.[167] Felony murder statutes generally do not incorporate the concept of reasonableness on their face—the statutes arise from legislatures' determinations that an individual electing to participate in the commission of a felony thereby subjects herself to strict liability for the results of her actions and

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[160] *Id.*

[161] *Id.* at 6 ("It is not that adolescents do not perform cost-benefit analyses; rather, they skew the balancing, resulting in poor judgments.").

[162] Roper v. Simmons, 543 U.S. 551, 571 (2005) ("Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications . . . for the death penalty apply to them with lesser force than to adults.").

[163] RESTATEMENT (SECOND) OF TORTS § 283A cmt. b (1965).

[164] Brief for Am. Med. Ass'n et al., *supra* note 47, at 22.

[165] *See, e.g.*, COLO. REV. STAT. § 18-3-102(1)(b) (2011); ME. REV. STAT. ANN. tit. 17-A § 202 (2011).

[166] *See, e.g.*, COLO. REV. STAT. § 18-3-102(1)(b) (2011); ME. REV. STAT. ANN. tit. 17-A § 202 (2011).

[167] *See, e.g.*, Commonwealth v. Legg, 417 A.2d 1152, 1154 (Pa. 1980) (finding it proper to transfer intent to commit a felony to intent to kill because "the actor engaged in a felony of such a dangerous nature to human life . . . [that] the actor, *as held to a standard of a reasonable man*, knew or should have known that death might result from the felony." (emphasis added) (citation omitted)).

those of her accomplices, regardless of whether she had specific intent for a death to result or subjectively foresaw the risk of death.[168]

The felonies enumerated in felony murder statutes—typically, violent felonies such as murder, robbery, burglary, kidnapping, arson, gross sexual assault, etc.[169]—are deemed to be so dangerous that a reasonable person would—or should—foresee the attendant risk of death.[170] As our discussion of the reasonable juvenile standard suggests, a standard based on a hypothetical reasonable adult is not properly applied to juveniles, whose impaired ability to perceive and evaluate risks is well-established and recognized by the Supreme Court.[171] Because transferred intent theory obviates the need for juries to make a finding as to the foreseeability of the death, however, felony murder statutes provide no opportunity for fact-finders to account for juveniles' cognitive differences. Therefore, findings of guilt under felony murder statutes do not adequately reflect the diminished culpability of young defendants.

In 2010, Juvenile Law Center, in collaboration with the Defender Association of Philadelphia and faculty at Temple University's Beasley School of Law, the Boston University School of Law, and the University of San Francisco School of Law, filed a petition for post-conviction relief in the Montgomery County (Pennsylvania) Court of Common Pleas on behalf of Aaron Phillips.[172] The petition challenged a life without parole sentence that Mr. Phillips received pursuant to a felony murder conviction.[173] At the time of the crime, Mr. Phillips was seventeen years old.[174] He was involved in an unarmed "snatch-and-grab" robbery in which the victim died eighteen days after the robbery due to medical complications.[175] Juvenile Law Center argued, among other points, that Pennsylvania's second degree felony murder statute is unconstitutional as applied to juveniles:

> [Juveniles are] developmentally different from the adult "reasonable person" in constitutionally relevant ways. . . . [T]he primary justifications for the felony-murder rule—deterrence and retribution—are inapt for juveniles who, "lacking the foresight and judg-

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[168] *See, e.g.*, Lowe v. State, 2 So. 3d 21, 46 (Fla. 2008) ("'[Felony murder is] an exception to the general rule that murder is homicide with the specific intent of malice aforethought. Under the felony murder rule, state of mind is immaterial. Even an accidental killing during a felony is murder.'" (quoting Adams v. State, 341 So. 2d 765, 767–68 (Fla. 1976))).

[169] *See, e.g.*, COLO. REV. STAT. § 18-3-102(1)(b) (2011); ME. REV. STAT. ANN. tit. 17-A § 202 (2011).

[170] *See, e.g.*, Legg, 417 A.2d at 1154 (Pa. 1980).

[171] *See* J.D.B. v. North Carolina, 131 S. Ct. 2394, 2397 (2011); Graham v. Florida, 130 S. Ct. 2011, 2032 (2010); Roper v. Simmons, 543 U.S. 551, 569 (2005); Scott, Reppucci & Woolard, *supra* note 53, at 230–31.

[172] Brief for Appellant at 5, Pennsylvania v. Phillips, 32 A.3d 835 (Pa. Super. Ct. 2010) (No. 3427 EDA 2010), 2011 WL 4611095, *petition for allowance to appeal denied*, 34 A.3d 829 (Pa. 2011).

[173] *Id.* at 4–5.

[174] *Id.* at 4.

[175] *Id.* at 6–7.

> ment of fully competent adults, are prone to make decisions without careful deliberation, and do not fully understand the consequences of their actions." Hence, in the case of a juvenile, one cannot properly infer malice to commit murder merely from the juvenile's participation in the underlying felony. This is especially true for juveniles such as Mr. Phillips whose involvement was limited to participation in an unarmed robbery in which the victim died from unforeseeable medical complications.[176]

Because of this flaw in the construction of the felony murder statutes, the solution to this problem is not as simple as requiring fact-finders to incorporate age into a reasonableness analysis. Rooting it out will require creative solutions—either from sentencing judges or legislatures. In jurisdictions with mandatory sentencing schemes, advocates must look to legislative solutions such as a rebuttable presumption of foreseeability or a requirement of an explicit finding of foreseeability. Juries evaluating a defendant's liability for a death that resulted from her commission of a felony would be instructed to account for the defendant's youth when determining whether the death was or should have been reasonably foreseeable. Aaron Phillips suggested this solution to the Court of Common Pleas in his *pro se* supplemental amendment to our petition for post-conviction relief:

> Arguably, should the statute in . . . question . . . survive constitutional scrutiny as applied to . . . child offenders, then there should be a rebuttable, rather than a mandatory conclusive presumption regarding mens rea . . . which is automatically presumed to be manifest based solely on the mere commission of the underlying felony. . . . While such an irrebuttable mandatory presumption may pass constitutional muster when applied to an adult, it should not pass muster when applied to a child.[177]

To subject young defendants to an adult reasonableness standard in the felony murder context fails to account adequately for their actual level of culpability. As such, strict application of the felony murder doctrine to juvenile defendants ignores the key holdings of *Roper*, *Graham*, and *J.D.B.*

VII. Conclusion

As the Supreme Court established in *J.D.B.*, failure to adopt a test or measure of reasonableness or of the reasonable person that accounts for the settled characteristics of youth "would be to deny children the full scope" of the safeguards these established criminal law defenses and other mitigating

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[176] *Id.* at 38–39 (citations omitted).

[177] Supplemental Amendment to Pending PCRA Petition at 2, Pennsylvania v. Phillips, No. CP–46–CR–0025720–1986 (Pa. Sup. Ct. Aug. 16, 2010).

considerations are intended to provide.[178] For youth prosecuted as adults in the criminal justice system, this question cannot be avoided. The Supreme Court's broad recognition that youth are different precludes uniform treatment of juvenile and adult defendants on issues where youths' understanding, judgment, or mental state reflects their developmental status and distinguishes them from adults in legally and constitutionally relevant ways. In the juvenile justice system, courts must likewise acknowledge relevant characteristics of youth in deciding such fundamental questions as the scope of a child's blameworthiness, the voluntariness of a child's confession, the reasonableness of the child's belief that she was threatened with or subject to force, or the reasonableness of her belief that she could not extricate herself from peers or circumstances resulting in criminal conduct.

In *J.D.B.*, the Supreme Court recognized that our civil law already " 'accept[s] the idea that a person's childhood is a relevant circumstance' to be considered."[179] Collectively, *J.D.B.*, *Roper*, and *Graham* all give momentum to extending this principle to the criminal law, where personal traits should be considered for purposes of both mitigation and culpability. As this Article explains, *J.D.B.*'s requirement that age be considered in the *Miranda* custody analysis supports adoption of youth status as a relevant consideration elsewhere in the justice system. As the Court wrote: "The State and its amici offer numerous reasons that courts must blind themselves to a juvenile defendant's age. None is persuasive."[180]

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[178] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2408 (2011).
[179] *Id.* at 2404 (citation omitted).
[180] *Id.* at 2406.