decision in *Roper v. Simmons* [169] drew parallels with *Atkins*. A consensus had developed, the Court held, against the execution of juveniles who were age 16 or 17 when they committed their crimes. Since *Stanford*, five states had eliminated authority for executing juveniles, and no states that formerly prohibited it had reinstated the authority. In all, 30 states prohibited execution of juveniles: 12 that prohibited the death penalty altogether, and 18 that excluded juveniles from its reach. This meant that 20 states did not prohibit execution of juveniles, but the Court noted that only five of these states had actually executed juveniles since *Stanford*, and only three had done so in the 10 years immediately preceding *Roper*. Although the pace of change was slower than had been the case with execution of the mentally retarded, the consistent direction of change toward abolition was deemed more important.[170]

As in *Atkins*, the Court in *Roper* relied on its "own independent judgment" in addition to its finding of consensus among the states.[171] Three general differences between juveniles and adults make juveniles less morally culpable for their actions. Because juveniles lack maturity and have an underdeveloped sense of responsibility, they often engage in "impetuous and ill-considered actions and decisions." Juveniles are also more susceptible than adults to "negative influences" and peer pressure. Finally, the character of juveniles is not as well formed, and their personality traits are "more transitory, less fixed." [172] For these reasons, irresponsible conduct by juveniles is "not as morally reprehensible," they have "a greater

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[169] 543 U.S. 551 (2005). The case was decided by 5–4 vote. Justice Kennedy wrote the Court's opinion, and was joined by Justices Stevens, Souter, Ginsburg, and Breyer. Justice O'Connor, who had joined the Court's 6–3 majority in *Atkins*, wrote a dissenting opinion, as did Justice Scalia, who was joined by Chief Justice Rehnquist and Justice Thomas.

[170] Dissenting in *Roper*, Justice O'Connor disputed the consistency of the trend, pointing out that since *Stanford* two states had passed laws reaffirming the permissibility of executing 16- and 17-year-old offenders. 543 U.S. at 596.

[171] 543 U.S. at 564. The *Stanford* Court had been split over the appropriate scope of inquiry in cruel and unusual punishment cases. Justice Scalia's plurality would have focused almost exclusively on an assessment of what the state legislatures and Congress have done in setting an age limit for application of capital punishment. 492 U.S. at 377 ("A revised national consensus so broad, so clear and so enduring as to justify a permanent prohibition upon all units of democratic government must appear in the operative acts (laws and the application of laws) that the people have approved."). The *Stanford* dissenters would have broadened this inquiry with a proportionality review that considers the defendant's culpability as one aspect of the gravity of the offense, that considers age as one indicator of culpability, and that looks to other statutory age classifications to arrive at a conclusion about the level of maturity and responsibility that society expects of juveniles. 492 U.S. at 394–96. The *Atkins* majority adopted the approach of the *Stanford* dissenters, conducting a proportionality review that brought their own "evaluation" into play along with their analysis of consensus on the issue of executing the mentally retarded.

[172] 543 U.S. at 569, 570.