claim than adults to be forgiven," and "a greater possibility exists that a minor's character deficiencies will be reformed." [173] Because of the diminished culpability of juveniles, the penological objectives of retribution and deterrence do not provide adequate justification for imposition of the death penalty. The majority preferred a categorical rule over individualized assessment of each offender's maturity, explaining that "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability." [174]

The *Roper* Court found confirmation for its holding in "the overwhelming weight of international opinion against the juvenile death penalty." [175] Although "not controlling," the rejection of the juvenile death penalty by other nations and by international authorities was "instructive," as it had been in earlier cases, for Eighth Amendment interpretation.[176]

***Limitations on Capital Punishment: Equality of Application.***—One of the principal objections to imposition of the death penalty, voiced by Justice Douglas in his concurring opinion in *Furman*, was that it was not being administered fairly—that the capital sentencing laws vesting "practically untrammeled discretion" in juries were being used as vehicles for racial discrimination, and that "discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishments." [177] This argument has not carried the day. Although the Court has acknowledged the possibility that the death penalty may be administered in a racially discriminatory manner, it has made proof of such discrimination quite difficult.

A measure of protection against jury bias was provided by the Court's holding that "a capital defendant accused of an interracial

---

[173] 543 U.S. at 570.

[174] 543 U.S. at 572–573. Strongly disagreeing, Justice O'Connor wrote that "an especially depraved juvenile offender may . . . be just as culpable as many adult offenders considered bad enough to deserve the death penalty. . . . [E]specially for 17-year-olds . . . the relevant differences between 'adults' and 'juveniles' appear to be a matter of degree, rather than of kind." Id. at 600.

[175] 543 U.S. at 578 (noting "the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty," id. at 575).

[176] 543 U.S. at 577, 578. Citing as precedent Trop v. Dulles, 356 U.S. 86, 102–03 (1958) (plurality opinion); *Atkins*, 536 U.S. at 317 n.21; Enmund v. Florida, 458 U.S. 782, 796–97, n.22 (1982), Thompson v. Oklahoma, 487 U.S. 815, 830–31 & n.31 (1988) (plurality opinion); and Coker v. Georgia, 433 U.S. 584, 596 n.10 (1977) (plurality opinion).

[177] 408 U.S. at 248, 257.