promote fairness to the accused through an "individualized" consideration of his circumstances. In the Court's words, statutory aggravating circumstances "play a constitutionally necessary function at the stage of legislative definition [by] circumscribing the class of persons eligible for the death penalty," [109] while consideration of all mitigating evidence requires focus on "the character and record of the individual offender and the circumstances of the particular offense" consistent with "the fundamental respect for humanity underlying the Eighth Amendment." [110] As long as the defendant's crime falls within the statutorily narrowed class, the jury may then conduct "an *individualized* determination on the basis of the character of the individual and the circumstances of the crime." [111]

So far, the Justices who favor abandonment of the *Lockett* and *Woodson* approach have not prevailed. The Court has, however, given states greater leeway in fashioning procedural rules that have the effect of controlling how juries may use mitigating evidence that must be admitted and considered.[112] States may also cure some constitutional errors on appeal through operation of "harmless error" rules and reweighing of evidence by the appellate court.[113] Also, the Court has constrained the use of federal *habeas corpus* to review state court judgments. As a result of these trends, the Court recognizes a significant degree of state autonomy in capital sentencing in spite of its rulings on substantive Eighth Amendment law.

While holding fast to the *Lockett* requirement that sentencers be allowed to consider all mitigating evidence,[114] the Court has upheld state statutes that control the relative weight that the sentencer

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[109] Zant v. Stephens, 462 U.S. 862, 878 (1983). This narrowing function may be served at the sentencing phase or at the guilt phase; the fact that an aggravating circumstance justifying capital punishment duplicates an element of the offense of first-degree murder does not render the procedure invalid. Lowenfield v. Phelps, 484 U.S. 231 (1988).

[110] Eddings v. Oklahoma, 455 U.S. 104, 112 (1982) (quoting Woodson v. North Carolina, 428 U.S. 280, 304 (1976) (plurality opinion)).

[111] Zant v. Stephens, 462 U.S. 862, 879 (1983).

[112] *See*, *e.g.*, Johnson v. Texas, 509 U.S. 350 (1993) (consideration of youth as a mitigating factor may be limited to jury estimation of probability that defendant would commit future acts of violence).

[113] Richmond v. Lewis, 506 U.S. 40 (1992) (no cure of trial court's use of invalid aggravating factor where appellate court fails to reweigh mitigating and aggravating factors).

[114] *See*, *e.g.*, Hitchcock v. Dugger, 481 U.S. 393 (1987) (instruction limiting jury to consideration of mitigating factors specifically enumerated in statute is invalid); Penry v. Lynaugh, 492 U.S. 302 (1989) (jury must be permitted to consider the defendant's evidence of mental retardation and abused background outside of context of deliberateness or assessment of future dangerousness); Skipper v. South Carolina, 476 U.S. 1 (1986) (exclusion of evidence of defendant's good conduct in jail denied defendant his *Lockett* right to introduce all mitigating evidence); Abdul-Kabir v. Quarterman, 550 U.S. 233 (2007) (jury must be permitted to consider the defendant's evidence of childhood neglect and mental illness damage outside of the con-