WENDLANDT, J. (concurring, with whom Gaziano, J., joins). The determination whether the Commonwealth's harshest punishment is so disproportionate to the offender as to shock the conscious is neither one we abdicate to the Legislature, as marshalled by the dissent, nor one we rest on the shoulders of scientists and social scientists. I write to clarify what should be pellucid: it is our constitutional duty to ensure prescribed punishments pass constitutional muster, and nothing in art. 30 of the Massachusetts Declaration of Rights prevents us from doing so. To be faithful to the enormity of this charge, we must undertake a comprehensive review of our statutes, the scientific record, our collective experiences, and common sense.

Having examined these sources, I conclude that they confirm what any parent of adult children can tell you: a child does not go to bed on the eve of her eighteenth birthday and awaken characterized by a lessened "transient rashness, proclivity for risk, and inability to assess consequences." Miller v. Alabama, 567 U.S. 460, 472 (2012). In recognition of this indisputable fact, society does not treat the transition from childhood to adulthood as a binary act accomplished at age eighteen; becoming an adult is much more fluid, with development continuing long after a child's eighteenth birthday. In the ways that matter for the Commonwealth's harshest punishment, young adults of the ages of eighteen, nineteen, and twenty share key characteristics

with their under-eighteen year old peers; they "have diminished culpability and greater prospects for reform" than older adults and "are less deserving of the most severe punishments." See id. at 471, quoting Graham v. Florida, 560 U.S. 48, 68 (2010). For this reason, condemning a person in the process of "growing up" to die in prison on the basis that she falls on the "wrong" side of an arbitrary line drawn at age eighteen is inconsistent with "the evolving standards of decency that mark the progress of a maturing society" (citation omitted). Graham, supra at 58. Accordingly, I agree with the court that imposition of life without the possibility of parole on young adults ages eighteen, nineteen, and twenty is unconstitutional.

1. Legislature's treatment of young adults. Undoubtedly, the first source in the determination of our contemporary standards of decency that define the bounds of cruel punishment is legislative enactments. See Good v. Commissioner of Correction, 417 Mass. 329, 335 (1994) ("In divining contemporary standards of decency, we may look to State statutes and regulations, which reflect the public attitude as to what those standards are"). See also Graham, 560 U.S. at 61, quoting Roper v. Simmons, 543 U.S. 551, 563 (2005) ("The Court first considers 'objective indicia of society's standards, as expressed in legislative enactments and state practice' . . ."); Atkins v. Virginia, 536 U.S. 304, 312 (2002) ("the clearest and most

reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures" [quotation and citation omitted]).[1]

Our statutes reflect legislative recognition that maturity is a gradual endeavor,[2] and that while age eighteen is a milestone, society does not view it as the end of the metamorphosis toward adulthood. As the court and Justice Kafker thoroughly catalogue, for many activities considered by society to require greater care, less risk taking, and more resilience

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[1] In concluding that a mandatory sentence of life in prison without the possibility of parole violated the Eighth Amendment to the United States Constitution when imposed on juvenile nonhomicide offenders, the United States Supreme Court considered that, although thirty-seven State legislatures permitted the sentence, only eleven States imposed the sentence in practice, and vanishingly few juvenile offenders actually received it. See Graham, 560 U.S. at 62-67 (only approximately 123 juvenile nonhomicide offenders were serving sentences of life without parole; seventy-seven of those offenders were in Florida, and the remainder were in just ten States). See also Atkins, 536 U.S. at 316 (considering that "even in those States that allow the execution of [offenders with intellectual disabilities], the practice is uncommon," in concluding that "a national consensus has developed" against executing such individuals). Because the sentence is mandatory for all adults over the age of eighteen in Massachusetts, see G. L. c. 265, § 2 (a), we cannot look to sentencing practices as they pertain to young adult offenders.

[2] As Justice Cypher notes, post at , at a point earlier than the age of eighteen, the Legislature has recognized that one commences the transition from being a child to being an adult and therefore awards certain freedoms to these young people before they turn eighteen years old. For example, young women, as early as age sixteen, can obtain an abortion without parental consent. See G. L. c. 112, § 12R.

to peer pressure, the Legislature continues to treat young adults over the age of eighteen like juveniles. To engage in these activities legally, young adults must wait until they are twenty-one.

This special treatment exemplifies the Legislature's acknowledgment of two facts: first, that the impetuousness of youth, the proclivity to risk taking, and the susceptibility to peer pressure are not attributes exclusive to those under the age of eighteen, and instead continue into young adulthood; and second, that these attributes are not fixed, but generally fade over time because young adults, like juveniles, are characterized by a malleability of character.[3]

2. Science and social science. Of course, consideration of legislation is the beginning; it is not the end of our analysis under art. 26 of the Massachusetts Declaration of Rights. To be faithful to our responsibility to protect individuals from cruel or unusual punishment meted out by the

[3] Private institutions also recognize that young adults are not ready for all the responsibilities of adulthood. See, e.g., K.U. Lindell & K.L. Goodjoint, Juvenile Law Center, Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region, at 12 (2020) ("while not a statutory restriction, most car rental companies limit rentals to individuals under age [twenty-five], recognizing the increased risk posed by this age group"). See also Metz, How Age and Gender Affect Car Insurance Rates, Forbes Advisor (updated Aug. 17, 2023), https://www.forbes.com/advisor/car-insurance/rates-age-and-gender [https://perma.cc/LB8G-PHEG] ("The high car insurance rates that young drivers pay start to go down at age [twenty-five]").

State, we cannot be blind to the truths that the scientific sources with which we have been presented show.[4]

Our experiment with scientific fact finding on the topic of adult brain development validates the graduated treatment of young persons reflected in our statutes. The court's careful review of this record is undisputed. In brief, it shows that neuroscientists see in their magnetic resonance imaging (MRI) scans corroboration for that which we experience in life; the brain characteristics of persons even years older than eighteen mirror those of persons under eighteen. The brain generally continues to develop through the mid-twenties. Until some ill-defined point in the third decade of life, adults, especially

[4] See, e.g., Miller, 567 U.S. at 471 (determination that life in prison without possibility of parole for juveniles violates Eighth Amendment rested "not only on common sense -- on what 'any parent knows' -- but on science and social science as well" [citation omitted]); Graham, 560 U.S. at 68 (considering "developments in psychology and brain science" in Eighth Amendment proportionality analysis as to life in prison without possibility of parole for juveniles convicted of nonhomicide offenses); Roper v. Simmons, 543 U.S. 551, 569 (2005) (considering what "any parent knows" and what "scientific and sociological studies . . . tend to confirm" to conclude death penalty for juveniles violates Eighth Amendment); Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655, 669 (2013), S.C., 471 Mass. 12 (2015) (concluding imposition of sentence of life in prison without possibility of parole for juveniles, even after individualized hearing, violates art. 26 of Massachusetts Declaration of Rights "[g]iven current scientific research on adolescent brain development").

men,[5] generally are more impulsive and their brains are more plastic than those of older adults.[6]

3. Collective experience and common sense. Significantly, while the findings based on current technological advances in brain science show substantial similarities between juveniles and young adults, we do not check our common sense at the laboratory door. Our statutes, experiences, and common sense tell us that there is no magic switch to the process of growing up, and that fact, now buttressed by neuroscientific data and informed by social science studies, must be weighed in the exercise of our duty to determine whether punishment is cruel or unusual. See Matter of the Personal Restraint of Monschke, 197 Wash. 2d 305, 306 (2021) ("Modern social science, our precedent,

[5] See L. Brizendine, The Female Brain 44 (2006) (finding that female brain "matures two or three years earlier than the male brain"). See also Cauffman & Steinberg, (Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults, 18 Behav. Sci. & L. 741, 753 (2000) (finding that "females exhibit greater psychosocial maturity than males").

[6] Scientific studies report brain maturation at different ages: sometimes at the age of twenty-one, sometimes at twenty-two, sometimes at twenty-three or twenty-five, and sometimes in the middle to late twenties. Moreover, studies report that certain aspects of brain development, such as susceptibility to peer pressure and impulse control, also appear to mature at different rates.

and a long history of arbitrary line drawing have all shown that no clear line exists between childhood and adulthood").[7]

The scientific snapshot in this case confirms that which is apparent in our laws and in our treatment of this age cohort more generally -- namely, that in the ways that matter for criminal sentencing, young adults are similar to juveniles. Like juveniles, young adults have "an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking"; they are more vulnerable to peer pressure; and their "character is not as well formed as an adult's . . . and [their] actions [are] less likely to be evidence of irretrievabl[e] deprav[ity]" (quotations omitted). Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass.

[7] The parties in this case ask us to consider the constitutionality of the punishment of life in prison without the possibility of parole when it is imposed on defendants aged eighteen, nineteen, and twenty. That the scientific record is not precise as to where the line should be drawn, see note 6, supra, should come as no surprise given our collective experiences showing that, while some generalizations may be drawn, in the end "growing up" is an individualized endeavor. This does not mean that "we may as well give up and let the [L]egislature draw its arbitrary lines." Matter of the Personal Restraint of Monschke, 197 Wash. 2d at 323. At the least, in response to the only question with which we have been presented in this case, I conclude that drawing a fixed line at the age of eighteen, thereby leaving young adults aged eighteen, nineteen, and twenty to the punishment, is not supported by our statutes, the scientific data and social science, our collective experiences, or common sense.

655, 660 (2013) (Diatchenko I), S.C., 471 Mass. 12 (2015), quoting Miller, 567 U.S. at 471.

Relying on these hallmarks of youth, the United States Supreme Court concluded that mandatory life in prison without the possibility of parole is a cruel punishment when applied to juveniles. Miller, 567 U.S. at 489. And, in view of these characteristics of juveniles, we separately concluded that art. 26 prohibits the mandatory imposition of this punishment. See Diatchenko I, 466 Mass. at 667. We also concluded that art. 26 offers greater protections to our children than are available under the Eighth Amendment to the United States Constitution. Specifically, we concluded that, in view of the hallmarks of youth that characterize juveniles, art. 26's greater protection prohibits so-called Miller hearings to determine whether, on an individualized consideration of a particular juvenile homicide defendant's circumstances, the sentence of life without the possibility of parole was proportionate. Id. at 669-671. Because the aforementioned review of our statutes, the scientific data, collective experiences, and common sense confirms that these same qualities characterize young adults, it necessarily follows that art. 26 prohibits the punishment as applied to this cohort. For these reasons, I concur.