

IT'S JUST LIFE

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In this essay, Vance discusses the American practice of incarcerating children, and how it has affected his own life.

A small teenage boy is curled up in a fetal position on a twin bed in a locked room. His eyes are nearly swollen shut. His face is bloody, bruised, and almost unrecognizable. Tears stream down his cheeks as he buries his face deeply into the pillow, praying for the pain to end.

Click. The sound of the door unlocking makes the boy jump out of bed. The raw emotions running through him cause his body to tremble and his heart to beat wildly. Sweat forms on his brow. His face is now a mixture of blood, sweat, and tears. His mind is racing as fear and adrenaline prepare him for the possibilities. Ready or not, he must face whatever comes next...alone.

For most people, the events depicted above are an unthinkable horror. Who would do that to a child? How could they? Righteous indignation begins to morph into anger. After all, children should be protected. That is a principle sewn into the fabric of this country. America protects the weak and vulnerable. It is the land of equality. In this country, we value diversity. We recognize the intrinsic value of all human life. We believe that all people have been endowed with certain unalienable rights: life, liberty, and the pursuit of happiness.

But do we really? What if I told you that the boy was a prisoner in a maximum security prison? He is one of many nameless, faceless people shoved into the shadows of society and simply forgotten. When people learn that the small boy was convicted of murder, their attitudes change. Suddenly, the “unthinkable horror” is relabeled as “justice.”

The story above is a true one. It happened to me in the early 1990s, nearly thirty years ago, after I was thrown into the general population at the Indiana State Prison. No one outside of that prison knew what I was going through. No one inside that prison cared. I was left to spend day after day, year after year, longing for the freedom, safety, and help that would never come.

As I write this, I am forty-five years old. I have spent sixty-six percent of my life behind bars. I have been incarcerated twice as long as I have lived in the free world. And my sentence is not over. My earliest possible release date is one month before my seventy-second birthday. At that time, I will have spent eighty percent of my life in prison.

Anthony Kennedy, an esteemed Justice of the United States Supreme Court for three decades, said, “A people confident in its laws and institutions should not be

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ashamed of mercy.”¹ Unfortunately, the law does not yet encompass the ideal contained within those noble words. In fact, the law does not have any true mechanism for that mercy. At sentencing, the capacity for compassion is clouded by hurt and anger. There is no avenue for prisoners like me to come back after serving a lifetime in prison to demonstrate reform or ask for mercy. Indiana does not have what may be called traditional parole opportunities. Ever since the state replaced its indeterminate sentencing scheme with a determinate one, an inmate is automatically paroled at their earliest possible release date, but there is no longer the possibility of appearing before a parole board to demonstrate reform and seek to be released earlier.² Even when the state did have traditional parole, it was commonly denied because of the “nature and circumstances of the crime,” one of the statutory criteria the parole board must consider.³ Reliance on this factor made the parole process perfunctory because it is the one factor the prisoner can never change. Modifications to a sentence are subject to the approval of local prosecutors, who seldom agree to them for violent offenders. After all, most of the prosecutors have run election campaigns with a tough-on-crime agenda. Politically, they cannot afford to extend mercy to criminals, even if those criminals are reformed.

Proof of this mercilessness is seen within the sentencing practices themselves. Sentencing children to a lifetime in prison violates the United Nations Convention on the Rights of the Child and other international human rights agreements.⁴ Civilized nations agree that such sentencing practices are an abomination. Yet sweeping tough-on-crime legislation has resulted in life and de-facto life sentences for children in the United States.

America is currently at a crossroads. Within recent years, the Supreme Court has impacted child-sentencing practices. In *Roper v. Simmons*, the Court ruled it was unconstitutional to sentence children to death.⁵ In *Graham v. Florida*, the Court banned life-without-parole sentences for children who commit nonhomicide offenses.⁶ In *Miller v. Alabama*, the Court evaluated the philosophical question of whether children who commit murder are somehow different than children who commit other crimes.⁷ The justices decided that kids are kids, regardless of their crimes. As a result, they declared that mandatory life-without-parole sentences for juveniles convicted of homicide violate the Eighth Amendment’s prohibition against

¹ Justice Anthony M. Kennedy, Speech at the American Bar Association Annual Meeting, (Aug. 9, 2003) (transcript available at https://www.supremecourt.gov/publicinfo/speeches/sp_08-09-03.html).

² See IND. CODE ANN. § 35-50-6-1 (West 2022); IND. CODE ANN. § 11-13-3-2(b)(2) (West 2022).

³ IND. CODE ANN. § 11-13-3-3(h) (West 2022).

⁴ Convention on the Rights of the Child, art. 37(a), Nov. 20, 1989, 1577 U.N.T.S. 3, available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. See also, e.g., International Covenant on Civil and Political Rights, arts. 10(3), 14(4), Dec. 16, 1966, 999 U.N.T.S. 171, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 16, Dec. 10, 1984, 1465 U.N.T.S. 85, available at <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

⁵ 543 U.S. 551 (2005).

⁶ 560 U.S. 48 (2010).

⁷ 567 U.S. 460 (2012).

cruel and unusual punishment.⁸ Four years later, in *Montgomery v. Louisiana*, the *Miller* decision was determined to be retroactive.⁹

In these decisions, the Court recognized that there are developmental differences between child and adult brains. Relying heavily upon new neuroscientific research, the Court concluded that children are less culpable than adults due to their developmental states and the traits associated with those levels of development.¹⁰ The Court's decisions also relied upon the fact that children have greater mental plasticity and capacity for change.¹¹ The most striking factor the Court considered, however, was the denial of hope. The Court recognized that a life-without-parole sentence for a juvenile is unacceptable in part because it "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind of [the prisoner], he will remain in prison for the rest of his days."¹²

Hope is powerful. Hope can be a light in the darkest hour. Hope can drive a man to keep going, to do more, and to be better. Unfortunately, the reverse is also true. Hopelessness can extinguish light, allowing the world to be consumed by darkness. The hopeless often sink into the depths of depravity.

I have experienced both. At the beginning of my sentence, I was utterly lost. As I was attempting to contend with the culture shock associated with the harsh realities of my new world, I was grappling with the profound loss of everything and everyone I had ever known. I was trying to cope with feelings of guilt and remorse for my crimes, which threatened to overwhelm me at every turn. At the same time, all of the hurt that led up to those crimes—the torment that I had buried for so long—plagued me. To make matters worse, the more predatory prisoners viewed me as prey, causing me to doubt my own survival and thrusting me into cognitive dissonance.

This is the part that people in the real world do not see: the aftermath of a life sentence. The internal struggle that the world never sees is often the most deeply felt. The hellish battle is the hardest, longest one of our lives. And it must be waged while living in a violent land where only the strong survive, and the rules are in opposition to everything we have been taught.

Along the way, I obtained my education and became an advocate. As I worked to help others, I became different. I found purpose in the struggles. I unearthed reward in victory. I discovered aspiration in accomplishment. I found hope in change and peace in connecting with others.

This brings us back to America's crossroads. Recently, the Supreme Court narrowed the scope of its prior decisions. In *Jones v. Mississippi*, the Court essentially limited the *Miller* holding to mandatory sentencing schemes, leaving the states autonomy to apply the prior cases' neuroscientific underpinnings as they see

⁸ *Id.*

⁹ 577 U.S. 190 (2016).

¹⁰ *Roper*, 543 U.S. at 569–70; *Graham*, 560 U.S. at 68; *Miller*, 567 U.S. at 471–78.

¹¹ *Graham*, 560 U.S. at 68; *Miller*, 567 U.S. at 471–78.

¹² *Graham*, 560 U.S. at 70 (quoting *Naovarath v. State*, 779 P.2d 944, 944 (Nev. 1989)).

fit.¹³ Potentially, this new ruling allows us to revert to the cruel and unusual child-sentencing laws that had been reformed in the wake of *Miller*.

I have learned that advocacy is not about the task; it is about the people. It is empathy in action. It is a necessary response to unfair practices because injustice and inequality never self-correct.

So, this is my act of advocacy. I am reaching out to you with one simple plea: remember. Remember that children are more than their worst acts. Remember that inaction has consequences too. Remember the little boy at the beginning of this article and how you felt before you knew he was a prisoner.

¹³ 593 U.S. ___, 141 S. Ct. 1307 (2021).