

Rethinking the Criminal Responsibility of Young People in England

The recent conviction in England of two primary school boys for the attempted rape of an eight year old girl once again case raises the issue of how old someone must be before they know they are committing a crime. This paper will consider the question of when is it fair to hold young people criminally responsible and to subject a young person to the full rigours of a criminal trial. It will examine the assumption that children mature earlier and argue that the law needs to recognise that children may not yet be developed enough to understand the wrongfulness of what they do. I will argue that the low age of criminal responsibility runs the risk of a child being prosecuted for crimes they are too immature to fully understand.

This issue is particularly important in light of the conviction in 2010 of two primary school boys for the attempted rape of an eight year old girl. The two boys were both aged 10 years old at the time of the offence. They had been accused of repeatedly assaulting the girl in a block of flats, a lift and a bin shed before taking her to a field and raping her in October 2009. They are the youngest males ever to be prosecuted for rape in England and Wales. During cross-examination via video the girl admitted lying to her mother about the incident and admitted that no rape had occurred. There was no other useful medical evidence, DNA evidence or forensic evidence. Nevertheless based on the evidence of an eight year old girl the two boys were convicted of attempted rape. Each of the boys were sentenced to a three year supervision order ensuring that the boys will be under the same level of supervision as the most serious adult paedophiles.¹ The former Director of public Prosecutions Lord Ken McDonald commented on this case and said “we are making demons of our children ... very young children do not belong in adult courts. They rarely belong in criminal courts at all”.

This case raises the question of whether child perpetrators should be treated as adults and how old someone must be before they know they are committing a crime?

In England and Wales the age of criminal responsibility is set at 10 years. The current law therefore assumes all children are sufficiently mature at this age to accept criminal responsibility for their behaviour. This paper will consider the question of when is it fair to hold young people criminally responsible and to subject a young person to the full rigours of a criminal trial. It will examine the assumption that children mature earlier and argue that the law needs to recognise that children may not yet be developed enough to understand the wrongfulness of what they do. I will argue that the low age of criminal responsibility runs the risk of a child being prosecuted for crimes they are too immature to fully understand. A child of 10 years can know that they are doing something wrong but not appreciate it is criminally wrong.

Principles of criminal liability

The law, as a system of rules that guides and governs human interaction, is premised on the view that humans can understand and follow rules. The law's concept of a person is a practical, reasoning, rule-following being who understands the difference between right and wrong. Effective criminal law requires that citizens understand that certain conduct is prohibited, the nature of their conduct and the consequences for doing what the law prohibits. Criminal liability "should be imposed only on persons who are sufficiently aware of what they are doing, and of the consequences it may have, that they can fairly be said to have chosen the behaviour and its consequences".

To be convicted of a criminal offence the defendant must have performed the *actus reus* and *mens rea* of the offence and have no defence available to them. The *actus reus* is the guilty conduct of a defendant. *Mens rea* is the mental element required by the definition of the crime. *Mens rea* has evolved into a requirement of positive culpability on the part of the defendant and is the means through which those who are thought to be deserving of punishment, because of their responsibility and their moral blameworthiness, are identified.

When it comes to imposing criminal liability upon children, the law has traditionally recognised that children may lack the capacity to be mentally culpable. The very existence of a separate justice system for young people is predicated in part on the assumption that the basic competencies of young people and adults differ in fundamental ways that affect judgment. Even prior to the creation of separate courts for young people in the late nineteenth century, young children were considered to lack the capacity to form culpable intent and so could not be criminally responsible.

For example, the pre-Norman Laws of Ine dating from the eight century suggest the age of 10 years as the age at which young people could be held criminally responsible for their actions, below 10 years of age they were considered to lack *mens rea*. By the fifteenth century the pre-Norman age limits had been lowered to seven years of age.

The Children Act 1908 created a separate and distinct system of justice for children. The 1908 Act established juvenile courts with both civil jurisdiction over children in need and criminal jurisdiction over offending children. The 1908 Act represented the first time in England that a statute recognized the principle that juvenile offenders should be heard separately from adult offenders in special sittings of the magistrates' court. The 1908 Act

assumed that children were less responsible than adults for their actions and should not be subject to the full rigours of the criminal law.

Section 50 of the Children and Young Persons Act 1933 raised the age of criminal responsibility from seven to eight years and the Criminal Justice Act 1963 raised it to the current age of 10 years.

Although the minimum age of criminal responsibility in England and Wales is much lower than most other countries in Europe and many countries worldwide, traditionally the English youth justice system has not prosecuted young people once they have achieved the age of criminal responsibility. Instead the presumption of *doli incapax* was invoked. According to the legal doctrine of *doli incapax*, children did not become fully criminally responsible for their actions once they reached the age of criminal responsibility. They would only be held criminally responsible if in addition to committing the *actus reus* and *mens rea* of a criminal offence, the prosecution could also prove, beyond all reasonable doubt, that when doing the act, the child knew that what they were doing was seriously wrong as opposed to being merely mischievous or naughty.

Therefore under English law a child below the age of 10 was considered *doli incapax*, a child between 10 and 14 was presumed *doli incapax* as at this age children were considered incapable of identifying right from wrong, and therefore lacked the criminal intent necessary for prosecution. The presumption of *doli incapax* reflected a concern that using criminal penalties to punish a child who does not appreciate the wrongfulness of his or her actions lacks moral justification and ensured that the law treated people as fully responsible from 14 years of age.

However attitudes towards children changed during the late twentieth century. In *C (A Minor) v DPP*,² which concerned the actions of a 12 year old boy who had been caught with a companion tampering with a motorbike, Mr Justice Laws in the High Court ruled that the presumption of *doli incapax* was “no longer part of the law of England”. Laws J believed that arguing a child of 14 years of age would not appreciate the moral obliquity of his actions was out of touch with today’s society and contrary to common sense. Laws J argued that:

“whatever may have been the position in an earlier age, when there was no system of universal compulsory education and when perhaps children did not grow up as quickly as they do nowadays, this presumption at the present time is a serious disservice to our law”³

The judgment of Laws J was subsequently overruled by the House of Lords.⁴ The House of Lords case was decided on the grounds of legal propriety and the respective roles of the judiciary and parliament, rather than because of any judicial commitment to the merits of the presumption. Lord Lowry in the House of Lords stated that “the presumption has in recent years been the object of some logical and forceful criticisms” and that the presumption “is not, and never has been, completely logical”. Lord Jauncey described the presumption as “an affront to common sense”. Nevertheless the House of Lords ruled that abolishing the presumption of *doli incapax* was a significant change to the law and therefore was a matter for parliament to consider rather than the judiciary.

The arrival of the New Labour government in May 1997 signalled a willingness to enshrine the views of Laws J in law. The White Paper *No More Excuses* recommended modernising “the archaic rule of *doli incapax*” as it was “contrary to common sense” which is “not in the interests of justice, or victims or of the young people themselves”. The New Labour government, echoing the judgment of the

House of Lords, asserted that the presumption might have been justified in an earlier era but that the existence of compulsory education from the age of five meant that children grew up much quicker, mentally and physically, and therefore knew right from wrong; “an excuse culture has developed within the youth justice system. It ... too often excuses the young offenders before it, implying that they cannot help their behaviour”.

Following this White Paper came the Crime and Disorder Act 1998, section 34 of which abolished the presumption of *doli incapax*. Section 34 means that a child aged 10 years of age is no longer presumed incapable of understanding the nature of criminal conduct and can be considered as legally responsible for their actions as an adult. Consequently English law now “holds that a person is completely irresponsible on the day before his tenth birthday and fully responsible as soon as the jelly and ice-cream have been cleared away the following day”.⁵ In England and Wales children who are alleged to have broken the law are held accountable for their actions through the criminal justice process, which means they are subject to an adversarial system that prioritises the finding of guilt or innocence and sentencing for a particular offence.

The age of criminal responsibility varies from country to country, however England and Wales takes a markedly more punitive approach to this issue than comparable countries [SEE PPT SLIDE].

Only 7 countries do not have a minimum age of criminal responsibility: the Congo, France, Mauritius, Nauru, Poland, Somalia, and the United States of America.

The English approach to the age of criminal responsibility has led to the development of a youth justice system which criminalises children at an earlier age than most comparable countries. Since the abolition of doli incapax in 1998 there has been a 560 per cent increase in custody for 10 to 14-year-olds. This has resulted in the charge that England and Wales is “the site of the most punitive youth justice system in Europe”.

Are children mature enough to understand the nature of criminal liability?

As *doli incapax* is no longer available, any child over the age of 10 years is now held to understand the significance of their actions. The abolition of the presumption is partly based on the universal availability of education from the age of five years. However in *C (A Minor) v DPP*, Lord Lowry responded with the following observation:

“It is true that there is (and has been for a considerable time) compulsory education and ... perhaps children now grow up more quickly. But better formal education and earlier sophistication do not guarantee that the child will more readily distinguish right from wrong.”

Furthermore Cavadino observes that “in view of the association between truancy and offending and the recent sharp rise in school exclusions, ... many of the children concerned have in practice failed to benefit from universal compulsory education.”⁶ To ensure that children understand the nature of criminal conduct, it is crucially important that young people attend school, and in particular are not prevented from attending through exclusion. Once at school the child’s experience needs to be a positive one.

However various studies have found a strong link between truancy and youth crime, both of which they found to have begun at the same time. The *Offending, Crime and Justice Survey* noted that truancy was a ‘high risk’ characteristic since 62% of truants in their study admitted to offending and/or anti-social behaviour.⁷ The findings from the *Offending, Crime and Justice Survey* echo the findings of earlier research. Graham and Bowling found that 67% of young males who had truanted from school admitted offences, whereas only 38% of non-truants offended.⁸ Graham and Bowling concluded that for both males and females the odds of offending of those who truanted were more than three times greater than those who had not truanted. The Youth Lifestyles survey 1998/99 found that the more persistent the truant

the higher the offending rates. Among males aged 12 to 16 years 47% of those who had truanted more than once a month reported offending behaviour compared with 13% of those who had truanted less often and only 10% of non-truants.

Clearly there is a reciprocal relationship between delinquency and truancy. Truancy may be both a cause and a consequence of juvenile offending behaviour; therefore it is difficult to determine which causes which. Nonetheless the probability of committing offences rises considerably if truanting from school. Not only must the child be attending school, but the child's experience of school and the extent to which they enjoy school, do well and achieve good results can be significant factors in preventing crime. Graham and Bowling found that detachment from school was a significant indicator of offending behaviour especially in young females.

The *Offending, Crime and Justice Survey* asked respondents about their school environment and those who complained of poor teaching quality and a lack of clear rules amongst other problems, also reported a 50% offending rate. The *Offending, Crime and Justice Survey* found that decreasing levels of school discipline increased the likelihood of an offending trajectory and drug use. Consequently it recommended that further consideration be given to enhancing schools' disciplinary policies.

Rather than using the availability of universal education as a justification for subjecting young people to the full rigours of the criminal justice system; greater attention needs to be paid to the links between the education system and the young person's offending behaviour. Universal education does not necessarily act as a guarantee that young people will understand the nature of criminal conduct, but may instead be part of the problem. Engaging

young people in suitable education is fundamental to preventing them from offending in the future.

To apply the same standards of criminal responsibility to a 13 year old as an adult is to ignore large amounts of evidence about the immaturity of children at that age. The abolition of *doli incapax* removed an important principle which had acted to protect children from the full rigour of the criminal law. Bandalli argues that the abolition of *doli incapax* reflects a steady erosion of the special consideration afforded to children and is 'symbolic of the state's limited vision in understanding children, the nature of childhood or the true meaning of an appropriate criminal law response'. Similarly Fionda refers to the abolition of *doli incapax* as being part of an 'almost stubborn blindness towards the incapacity of children'. Its abolition reflects a complete refusal to recognise the nature of childhood and places greater emphasis on 'justice' and less emphasis on 'youth'. Commenting upon the US system, but with clear parallels, Rutherford observes that "age no longer seems to be a measure of how guileless or immature a child is. Instead, age is seen as a subterfuge for malicious behaviour. As the boundary between adults and children is pushed to ever younger ages, we are virtually eradicating the concept of adolescence."⁹

This shift is occurring at a time when neuroscience research which has examined the brain developments and cognitive functioning of adolescents has found that the brain does not reach full maturity until the early-to-mid twenties. Moreover, with respect to moral culpability, those parts of the brain that deal with judgement, impulsive behaviour and foresight develop in the twenties rather than the teen years. Neuroscience data has found that there are developmental differences in the brain's biochemistry and anatomy that may limit adolescents ability to perceive risks, control impulses, understand consequences and control emotions.¹⁰ The prefrontal lobe of the brain that mediates emotional impulses does not fully

develop until the mid-twenties. Because the prefrontal lobe is not fully mature, teens are almost inevitably overly emotion and subject to wide mood swings.¹¹ If young people lack the capacity to make a meaningful choice and to control their impulses, should they be held criminally culpable for their behaviour?

The possibility that most child defendants may not be fit to plead to charges by virtue of their developmental immaturity and impaired judgment is seldom considered. Under the normal rules of criminal law, a defendant whose decision-making capacities are impaired, for example by mental illness, are deemed less blameworthy than typical offenders. The neuroscientific evidence supports the conclusion that children and adolescents are less capable decision-makers than adults in ways that are relevant to their criminal choices.¹² The Law Commission for England and Wales recently recognised this and recommended that 'developmental immaturity' be incorporated into the defence of diminished responsibility, which is a partial defence to murder. The Law Commission recommended that it should be possible for the courts to consider whether the young person's developmental immaturity and cognitive limitations impairs their ability to stand trial for murder. This recommendation was not included in the Coroners and Justice Act 2009.

Anglo-American criminal jurisprudence shares the assumption that desert based on moral fault is a necessary precondition for just punishment. The judgment that the actor is responsible has to be made first and this is why it is permissible to blame him or her for their actions, *because* we have made the judgment that he or she is a responsible actor. If blameworthiness is a necessary precondition of punishment, then less responsible young people should not be punished as responsibility in criminal law is usually only imposed on responsible subjects. Terms such as 'intention' and 'culpability' cannot and should not be applied without taking account of the large differences in capacity and judgment between

adults and children. Moore argues that criminal liability should be avoided for a wrongful action if 'at the moment of such action's performance, one did not have sufficient capacity or opportunity to make the choice to do otherwise'. Moore viewed youth as within the category of 'status excuses' concerning 'individuals who do not and cannot function well enough for us to confidently liken their actions and intentions to the actions and intention of sober, sane adults.' Similarly the legal scholar Professor Peter Arenella asks 'why should someone qualify as a moral agent if he lacks the capacity to deliberate about whether he should have acted differently?'¹³

For Zimring an important test of the moral quality of any penal policy is whether its treatment of those who are still growing up is consistent with other ways in which the law deals with those who are advancing towards adulthood – for instance age related legal rules concerning drinking, driving, marriage, voting, military service and so on.¹⁴ In England until a young person is 16 years old they cannot consent to sexual relations or join the armed forces. The age at which you can buy cigarettes or alcohol or vote is 18 years. Young people cannot get a driving licence until the age of 16 years or get a part-time job until they are 13. So 'children are perceived as needing and receiving protection from the consequences of their immaturity in other areas of the law' and this should be equally appropriate for criminal responsibility, otherwise childhood becomes irrelevant to criminalisation.

These views are also shared by the judiciaries in England and the US. The US Supreme Court decision in *Roper v Simmons*¹⁵ which declared the juvenile death penalty unconstitutional also accepted and reaffirmed the presumption of the diminished responsibility of youth. The US Supreme Court ruled that young peoples' objective immaturity, vulnerability and comparative lack of control over their immediate surroundings renders them less culpable than adult criminals.

In England, the House of Lords (now the Supreme Court) in *R v G and R*¹⁶ emphasised that ignoring the special position of children in the criminal justice system is not acceptable in a modern civil society. Lord Bingham held that conviction of serious crime should depend on proof not simply that the defendant caused (by act or omission) an injurious result to another but that his state of mind was culpable when so acting. Bingham believed that although it was clearly blameworthy to take an obvious and significant risk of causing injury to another, it was not clearly blameworthy to do something involving a risk of injury to another if the accused genuinely did not perceive the risk. Such a person might fairly be accused of stupidity or lack of imagination, but neither of those failings should expose him to conviction of serious crime or risk of punishment.

This case concerned two boys aged 11 and 12 years who went camping overnight without their parents' permission. During the course of this trip they threw lit newspapers under a plastic wheelie bin and caused £1m of damage to a shop. The boys thought there was no risk of the fire spreading in the way it eventually did. Lord Bingham held that it was neither moral nor just to convict a young person on the strength of what someone else would have apprehended if the defendant himself had no such apprehension. As Lord Diplock stated, in the differing context of the partial defence of provocation to murder, 'to require old heads on young shoulders is inconsistent with the law's compassion of human infirmity'.¹⁷

International human rights obligations

In *R v G and R* Lord Steyn argued that the criminal law was obliged to consider the mental incapacity of children in assessing their responsibility for criminal acts and drew special

attention to the United Nations Convention on the Rights of the Child, Article 40 of which requires each state to set a reasonable minimum age of criminal responsibility. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) 1985 recommend that the minimum age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. The important consideration, as outlined in Rule 17 of the Beijing Rules, is whether a child, by virtue of his or her individual discernment and understanding, can be held responsible for their behaviour. The Commentary to the Beijing Rules stress that there should be a close relationship between the age of criminal responsibility and the age at which young people acquire other social rights such as marital status and the right to vote. In line with this rule the UN Committee on the Rights of the Child has recommended states parties to increase their age of criminal responsibility to the age of 12 years as the absolute minimum age. In its report in 2002 the UN Committee expressed that it was 'particularly concerned' about 'the abolition of the principle of *doli incapax*' and recommended that the age of criminal responsibility should be raised considerably.¹⁸

The European Committee of Social Rights has also declared that the age of criminal responsibility in England is 'manifestly too low' and accordingly was not in conformity with article 17 of the *European Social Charter* which provides mothers and children with a right to social and economic protection.¹⁹ The European Social Charter is a Council of Europe treaty, signed in 1961, which guarantees social and economic human rights.

The Council of Europe's Human Rights Commissioner has also frequently expressed concern at the low age of criminal responsibility in England. The Commissioner in 2005, Alvarez Gil-Robles, commented that he had "extreme difficulty in accepting that a child of 12 or 13 can be criminally culpable for his actions, in the same sense as an adult".²⁰ While

noting that the *European Convention on Human Rights* does not require any age limit to be set before a child can be held criminally responsible, the Commissioner suggested that the age level in England should be raised to bring it into line with other European countries. In 2006 the current Commissioner, Thomas Hammarberg, argued for an increase in the age of criminal responsibility across Europe with the aim of progressively reaching 18 years and recommended that innovative systems of responding to juvenile offenders below that age should be tried with a genuine focus on their education, reintegration and rehabilitation.

Domestically, the House of Lords and House of Commons Joint Committee on Human Rights recommend that the age of criminal responsibility be increased to 12 years.²¹ The Joint Committee argued that unless evidence of the effectiveness of the present age of criminal responsibility in reducing crime and disorder can be convincingly presented, then it needs to be brought more in line with our European neighbours. Such a recommendation would meet both the requirements of effective criminal justice and our duty under the UN Convention on the Rights of the Child to uphold children's human rights.

England's closest neighbours have taken steps to increasing their ages of criminal responsibility. In Scotland the age of criminal responsibility at which children can be prosecuted in adult criminal courts has recently been raised to twelve years by section 52 of the Criminal Justice and Licensing (Scotland) Act 2010.²² This brings Scots law into line with jurisdictions across Europe and means that children under twelve will instead be held to account for any offending behaviour through Children's Hearings. This system, which is respected internationally addresses the needs and behaviour of children and young people who face serious problems in their lives.

In Guernsey the Children Law 2008, effective since January 2010, significantly reformed arrangements for dealing with children in conflict with the law. The age of criminal responsibility has been raised to 12 years. The criminal court has been largely replaced by the Child Youth and Community Tribunal (CYCT), closely modelled on the Scottish Children's Hearing system. Unlike the Scottish system, however, which has a cut off at age 16, tribunals will deal with nearly all children below the age of 18 years

In the Republic of Ireland the Children Act 2001 raised the age of criminal responsibility in Ireland from seven to 12 years.²³ This change means that children up to the age of 12 cannot be charged with a criminal offence. However the Criminal Justice Act 2006 allows for children as young as 10 years of age in Ireland to be charged with the offences of murder, rape and aggravated sexual assault.²⁴ The Criminal Justice Act 2006 also abolished the rebuttable presumption of *doli incapax* which applied to any child between seven and 14 years. Therefore children between 12 and 14, and those between 10 and 14 if they have been charged with a serious offence, no longer enjoy the presumption of *doli incapax*. For serious offences Ireland now shares with England one of the lowest ages of criminal responsibility in Europe.

The views of the judiciary in the US and in England, academics and human rights organisations resonate with public opinion on this issue. The Independent Commission on Youth Crime and Antisocial Behaviour found that public attitudes towards dealing with crime in Britain have hardened in the past 40 years and are among the most punitive to be found in any European country.²⁵ 'Lenient sentencing' has been widely perceived as a cause of both youth and adult crime and appears to be a significant reason for the lack of confidence expressed in the youth justice system. However the Commission found that public views on youth crime are more complex than they appear. When participants in

surveys have been given in-depth information about real cases and asked to select an appropriate sentence, their choice of sanction has turned out to be either similar or more lenient than the sentence that was actually imposed by a court. Although abstract questions about offenders and offending may elicit an immediate, punitive response, people tend to be more thoughtful and fair-minded when exposed to the facts and background of particular cases.

More generally there are indications that the public express less punitive views towards young offenders than adults. Attitude surveys show agreement that youth and immaturity can be mitigating factors, especially if the offence did not involve weapons or violence. 'Deliberative' surveys, where the participants take a view on specific cases after learning about the background circumstances reveal an approach to sentencing that is even more temperate. For example, knowing that a young person is remorseful and has taken reparative steps to make good some of the harm their behaviour has caused to a victim can have a powerful influence in reducing demands for custodial sentences.

Similarly US research has found that the public may be more receptive to differential treatment of youth and to more rehabilitative rather than punitive policies. Scott *et al.* in their study found little support for trying young people as adults or for treating young offenders as adults.²⁶ Similarly a study conducted by the MacArthur foundation found that a majority of the public supports rehabilitation over incarceration and is willing to pay an additional 20% in taxes to provide rehabilitative services to young offenders. A report published by the Justice Policy Institute found that "what the public wants ... are rational and effective juvenile justice reforms that treat young people in developmentally appropriate ways".²⁷

Conclusion

The Prison Reform Trust reported that many who work in the field of youth justice are convinced that the adversarial court system of England and Wales is inappropriate as a means of addressing the wrong doing of children.²⁸ Young defendants often do not understand legal proceedings or the language used by lawyers, they report feeling intimidated and isolated in court and may not receive a proper explanation of what has happened until after a hearing is over. They also feel frustration that the courts seem rarely to understand the context in which their offences were committed, including the pressures facing them. As the Privy Council stated in the case of *Kunnath v the State*²⁹:

“It is an essential principle of the criminal law that a trial for an indictable offence should be conducted in the presence of the defendant. The basis of this principle is not simply that there should corporeal presence but that the defendant, by reason of his presence, should be able to understand the proceedings and decide what witnesses he wishes to call, whether or not to give evidence and if so, upon what matters relevant to the case against him.”

If young people are not sufficiently mature and competent to understand the process of a trial in a criminal court, can they be held criminally culpable for their behaviour? Raising the age of criminal responsibility, comprises an effective strategy for removing children and young people from the reach of the criminal justice system altogether. The age of criminal responsibility in England and Wales should be reviewed with a view to raising it at least to the UN Committee on the Rights of the Child recommended minimum of 12 years and preferably to the European norm of 14 years.

Meanwhile the presumption of *doli incapax* should be re-established, and children who commit offences should be dealt with through a welfare-based approach. The adoption of a welfare approach to child offending, does not imply that the harms caused by youth

offending should be tolerated, but means ensuring that all children who are alleged to have offended have access to the range of health and social care services they require whether they are formally prosecuted or not. And with respect to those who are prosecuted, it entails recognising fully the range of difficulties that they are likely to face throughout the court process, and taking steps to address them. As Howard argued, 'no civilised society regards children as accountable for their actions to the same extent as adults'. It will be interesting to see how the coalition government handles this, given that the Conservative Party have rejected calls for the age of criminal responsibility to be raised, while the Lib Dems have supported raising the age.³⁰

¹ MacDonald, K. (2010) 'This spectacle has no place in a civilized land' *Times Online*, 25 May, available online at www.timesonline.co.uk/tol/comment/columnists/guest_contributors/article7135435.ece

² [1994] 3 All ER 190

³ [1994] 3 All ER 190, 196

⁴ ([1995] 1 AC 1

⁵ Tony Smith "Doli Incapax under threat" (1994) *Cambridge Law Journal* 426, at p. 427

⁶ Paul Cavadino "Goodbye Doli - must we leave you?" (1997) 9 *Child & Family Law Quarterly* 165, at p. 167.

⁷ Jon Hales, Camilla Nevill, Steve Pudney, Sarah Tipping *Longitudinal analysis of the Offending, Crime and Justice Survey 2003–06* (Home Office, 2009)

⁸ John Graham, Benjamin Bowling *Young People and Crime* (Home Office, 1995).

⁹ Rutherford, J. (2002) 'Juvenile Justice caught between The Exorcist and A Clockwork Orange' *DePaul Law Review* 51, 715-42

¹⁰ Lexson, F.J., Repuci, D. "Effects of Psychopathology on Adolescent medical Decision-Making" (1998) 5 *University of Chicago Law School Roundtable* 63, 77-78.

¹¹ Rutherford, J. "Juvenile justice caught between *The Exorcist* and *A Clockwork Orange*" (2002) *De Paul Law Review* 51, 715, 727.

¹² Scott, E., Steinberg, L. (2008) 'Adolescent development and the regulation of youth crime', *The Future of Children*, 18, 15-33, 20

¹³ Peter Arenella "Character, choice and moral agency: the relevance of character to our moral culpability judgements" (1990) 7 *Social Philosophy and Policy* 59, at p. 67.

¹⁴ Zimring, F.E. (2000) 'Penal proportionality for the Young Offender: Notes on Immaturity, Capacity, and diminished responsibility' in Grisso, T. & Schwartz, R.G. (eds.) (2000) pp. 271-89 *Youth on Trial. A developmental Perspective on Juvenile Justice* (University of Chicago Press

¹⁵ (2005) 543 US 551

¹⁶ [2003] UKHL 50, para 53

¹⁷ *Camplin* [1978] AC 705, 717

¹⁸ United Nations Committee on the Rights of the Child *Consideration of Reports Submitted by State Parties under Article 44 of the Convention. Concluding observations: United Kingdom of Great Britain and Northern Ireland* (UNCRC, 2002).

¹⁹ European Committee of Social Rights, *Conclusions XVII-2 (United Kingdom) Articles 7, 8, 11, 14, 17 and 18 of the Charter* (2005) pp. 30. <www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/UKXVII2_en.pdf

²⁰ Alvaro Gil-Robles, Commissioner for Human Rights, *Report on his visit to the United Kingdom 4th-12th November 2004 for the attention of the Committee of Ministers and the Parliamentary Assembly*, CommDH (2005) 6, para. 105.

²¹ Joint Committee on Human Rights *Tenth Report of Session 2002-2003, HL117/HC81* (The Stationery Office, 2003), at para. 38

²² Passed in June 2010

²³ (section 52 Children Act 2001)

²⁴ section 129 Criminal Justice Act 2006

²⁵ Independent Commission on Youth Crime and Antisocial Behaviour *Time for a fresh start* (The Police Foundation, 2010) at p. 23.

²⁶ Elizabeth S. Scott, N. Dikon Reppucci, Jill Antonishak, Jennifer T. De Gennaro "Public attitudes about the culpability and punishment of young offenders" (2006) 24 *Behavioural Sciences & the Law* 6, 815.

²⁷ Juvenile Policy Institute (2007) *The accelerating pace of juvenile justice reform* www.justicepolicy.org j

²⁸ Jessica Jacobson, Jenny Talbot *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children* (Prison Reform Trust, 2009)

²⁹ [1993] 1 WLR 1315, [1993] 4 All ER 30.

³⁰ Hirsch, A. (2010) 'Too young to understand?' *The Guardian* 24 May; available online at www.guardian.co.uk/society/2010/may/24/boys-attempted-rape-criminal-responsibility