

European Human Rights Commission challenges UK sentencing procedures in the Jamie Bulger case

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"A community is infinitely more brutalised by the habitual employment of punishment, than it is by the occasional occurrence of crime" (The Soul of Man under Socialism, by Oscar Wilde).

Last week the European Commission of Human Rights ruled that British solicitors acting on behalf of Robert Thompson and Jon Venables may take their clients' case to the European Court of Human Rights later this year. The two were imprisoned in 1993 for the killing of two-year-old Jamie Bulger when they were aged 11. The decision provides an opportunity to review a case whose legal, social and ideological ramifications continue to reverberate nine years on.

Thompson and Venables were just 10 years old at the time of the killing. Yet they were committed for trial as adults, before a Crown Court in November 1993. They had been captured on videotape leading Jamie out of a shopping mall in Liverpool and both implicated one another in his killing.

The floor of the dock had to be specially raised so the children could see over the mantle. Neither gave evidence at their trial, as they were both suffering severe post-traumatic stress disorder. In any event, the various legal terms and deliberations would have been completely incomprehensible to them.

In his summation, the trial judge admitted that he was unable to determine their "relative culpability". Yet the children were found guilty of murder and sentenced to eight years detention, subsequently increased to a 15-year minimum by Home Secretary Michael Howard on the grounds of "public concern".

The European Commission of Human Rights ruled that the children had been denied their right to a fair trial under Article 6 of the European Convention. The boys' psychological state, the trial procedures and the "highly charged" atmosphere in which they were conducted meant that "the primary purposes of the proceedings, the establishment of the facts of the case and the allocation of responsibility, were impaired". Instead the trial ran the risk of "presenting the appearance of an exercise in the vindication of public outrage".

The two children's human rights were further breached by the intervention of a politician in their sentencing, as opposed to "an independent and impartial tribunal", the EC stated.

The trial was indeed unprecedented. Whilst English law sets the age of criminal responsibility at 10, previous instances of serious crimes committed by children had been heard in more sensitive and closed surroundings. The abandonment of such procedures in the Bulger case was motivated by the social and political imperatives of the Tory government.

In the course of the preceding decade, the Thatcher government had dispensed with Britain's traditional policy of social reforms and embarked on a ruthless offensive against the social gains and democratic rights of working people. The prime minister justified the gutting of industries, public services and entire cities such as Liverpool on the grounds that there "was no such thing as society". An unprecedented redistribution of wealth took place *away* from working people to the rich.

By the 1990s the consequences of this were plain for all to see. Some 3 million people were unemployed. Poverty levels had doubled, as millions were thrown onto the margins of society or kept in a permanent state of economic insecurity. For many, family life broke down under the strain, leaving Britain with the highest divorce rate in Europe.

The burden fell particularly hard on children and adolescents. Amongst this age group poverty rates rose threefold, becoming the single most important factor in the rise of crime, truancy, school exclusions and ill health. Education and social provisions were systematically undermined, with instances of social services departments having to close their "child at risk" registers for lack of resources.

Under conditions of such sharp social polarisation, the Tories were acutely sensitive towards any discussion of the catastrophe being caused by their policies. Nothing was to interfere with the huge increase in wealth for City speculators and Britain's bosses. The latter's ability to continue reaping their bonanzas demanded further inroads against workers' living standards.

It was these considerations that shaped the Bulger trial. In the weeks leading up to it, Prime Minister John Major demanded that society "should condemn more and understand less". Leading politicians and the media denounced any attempt to try to understand why the children had killed as an apology for murder. There were no reasons other than that the two were "evil" and "freaks of nature", they claimed.

In court, details of Thompson's and Venables' backgrounds, which could have provided a valuable insight into their actions, were not admitted. Robert Thompson was one of the youngest of seven boys. His mother, a lone parent, was an alcoholic. His father, who left home when Robert was five, was also a heavy drinker who beat his wife and children. Despite his quiet and friendly manner, Thompson came from a home in which it was normal practise for the older children to violently attack the younger ones, and he was invariably on the receiving end.

Jon Venables' parents were also separated. His brother and sister had educational problems and attended special needs schools, whilst his mother suffered psychiatric problems. Following his parents' separation, Jon became isolated and attention-seeking. At school he would regularly bang his head on walls or slash himself with scissors. No effort was made to find the cause of his obvious distress.

Had such an account been presented, it would have raised the question of why the children had been allowed to get into such a state, without anyone intervening to help. But this would have meant addressing the social decline that had ravaged Liverpool over the years, with which under-resourced social and educational services were unable to cope. More fundamentally it would have meant asking why society had allowed such circumstances to exist. The conclusion of such an approach could only have been that society had not only failed to protect Jamie Bulger, but Thompson and Venables as well.

Despite the panic whipped up around the case, anyone posing these questions would have received a sympathetic hearing. The later statements by Vincent Moss, a juror in the case, are indicative of this. "We should have gone back into the court and we should have said, 'Yes, we do have a verdict: these young boys are in urgent need of social and psychiatric help'." Instead the jury were prevented from delivering such a verdict. Harrowed by the terrible evidence presented before them of Jamie's killing, made to listen to tapes of Thompson and Venables wailing for their mothers during police interrogation and harassed by a lynch mob media, the jury "were there simply to rubber stamp a verdict", he said.

The trial of two bewildered and disturbed children was a political exercise aimed at conditioning public opinion to accept the introduction of brutal methods against the young. Britain's inner cities had become a haven for "depraved" and "evil" children, the politicians and media claimed. Beyond redemption, the only recourse was to take swift, retributive action for society's protection.

The trial coincided with the launch of the Criminal Justice Bill. As well as curtailing democratic rights such as the freedom of speech and the right to assembly, this bill introduced new powers allowing for the detention and imprisonment of minors. New prisons for 12- to 15-year olds were opened, run by the Prison Service instead of social services as was previously the case with youth detention centres.

The Labour Party played a key role in facilitating the implementation of these measures. The Bulger trial became an occasion for Labour to prove the extent to which it had abandoned all notions of progressive social reform. As Labour spokesman for Home Affairs at the time, Tony Blair called for harsher measures against children, thus positioning Labour as the party of "law and order" and himself as its future leader.

The passage of time and a change of governments have not altered this approach. For the past six years, Thompson and Venables' solicitors and their families have sought to challenge both the legality of the trial and Howard's intervention. Two years ago, Britain's House of Lords ruled that Howard's increase in the tariff was illegal, but no decision has since been taken on what the tariff should be. Explaining why they had taken the case to Europe, Venables' solicitor John Dickinson said that the "substantial issues" raised by his client's case just "couldn't be considered in this country".

Labour has responded to the EC decision by making clear it will make no change in Britain's judicial policy regarding juveniles, or in allowing ministers to set tariffs. Home Secretary Jack Straw has stated that he will set a new minimum jail term for the two, before the case reaches the Human Rights Court. There is speculation that this could

be a 15-year minimum--as originally imposed by Howard.

Thompson and Venables' case will be heard later this year before a human rights court panel, before passing before a seven-judge chamber or the Court's Grand Chamber. A final decision could take a further two or three years. In the meantime the two, now 17 years old, will be transferred to an adult prison where they will be placed in maximum security--amongst sex offenders and sociopaths--for their "own protection".

Whilst they are said to have responded well to treatment, neither will discuss their involvement in Jamie's killing. One psychiatrist has said that the events of the last years had been so traumatic that it is doubtful they ever will.

The situation facing children is worse under Labour than it was under the Tories. Some 14 million people are officially below the poverty line. Poverty levels in inner-city areas are as high as 50 percent and many schools have virtually their entire intake dependent on free school meals or other benefits.

Labour has committed itself to the further erosion of services, cuts in public spending and draconian legislation directed against the young. Its Crime and Disorder Bill will eradicate the concept of juvenile justice in all but name. When Venables and Thompson came to trial, the prosecution was charged with proving that the boys knew their actions were seriously wrong. This is to be overturned. Labour's Bill places the onus on the defence to prove the reverse. It also introduces child curfews, "parenting orders", fast-track punishment for juveniles, Youth Justice Boards and special Youth Offending Teams.

A representative from the Criminal Bar Association described the Bill as a "dramatic shift" in juvenile policy, as the emphasis is placed on punishing crime rather than child welfare. In the field of social policy as well Labour's concentration is entirely on discipline--in the home, at school, etc.

Two reports indicate the tragic human toll of this approach. A survey published by the National Society for the Prevention of Cruelty to Children found that at least one child is killed through abuse or neglect every week. Those most at risk of being killed are less than 12 months old. The homicide rate for infants is almost five times higher than that faced by the rest of the population. In almost 90 percent of cases in which children are killed it is by a family member, most often a parent. "Poverty, unemployment and discrimination place intolerable pressures on individuals. This can lead them to harm the children in their care," it said.

Another report commissioned by the Mental Health Foundation earlier this year recorded a dramatic increase in mental ill-health amongst youth. Some 20 percent of those aged below 20 years old are affected by it at any one time. The report noted that young people who suffered from mental problems were treated with intolerance rather than compassion. A troubled child today "is less understood than its Victorian counterpart", it warned.

The trial of Thompson and Venables testifies to the truth of this statement. It is not possible to seriously redress the terrible circumstances facing young people without raising the demand for an end to the vindictive imprisonment of the two boys.



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