

British 10-year-old boys convicted of attempted rape

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The prosecution of two pre-pubescent boys for the rape of an eight-year-old girl epitomises the ugly and punitive approach of the British judicial system towards young children.

Aged 10 at the time of the alleged offence in October last year, the boys stood trial at the Old Bailey. This week, the boys were cleared of rape but convicted, on a ten to two majority verdict, of attempted rape. The eight-year-old girl involved gave evidence via a video-link. The boys will be sentenced in eight weeks time, but in the meantime have been ordered to sign the sex offenders register.

The presiding judge, Mr. Justice Saunders, admitted he had no understanding of how this would work in the case of such young offenders. And he confessed that it was “not ideal” to have subjected the three children to such a trial.

This not only begs the question as to why the case ever went to court, but why Justice Saunders refused to stop the proceedings—even when the girl changed her testimony during cross-examination to state that she had lied, and had not been attacked.

The trial itself was an abuse of the three children involved, all of whom will have been traumatised by the proceedings. The fact that the court moderated its usual proceedings so as to mimic a primary school timetable only underscores the incongruity of the Old Bailey trial.

Both boys had pled not guilty. Their defence said that the three had been involved in a game of “Show me yours and I’ll show you mine”, and there was no evidence—other than the girl’s original testimony—to support allegations of an assault. During cross-examination the young girl, clutching her teddy, said she had wanted to play with the boys and had said she had been attacked when she feared that she had been “naughty” and would be deprived of sweets as a result.

The trial and conviction of such young boys for attempted rape caused howls of outrage in much of the media—including the right-wing press—that England had been made a laughing stock by prosecuting children for playing “doctors and nurses”.

Columnist Philip Johnston in the *Daily Telegraph* asked if

there was “any other country in the world where the pre-pubescent fumbblings of children would result in a rape trial”.

“I find it almost impossible to get my head around” the fact that the case had gone to trial, he wrote. “Have we lost all concept of childhood in this country?”

In the *Times*, Ken MacDonald, a former director of public prosecutions, said that the spectacle of children on trial for rape “has no place in a civilised land”.

Such complaints are entirely warranted. This was an incident that would usually be resolved by discussions between the children’s parents. That the police and Crown Prosecution Service were almost immediately involved points to a disturbing level of hysteria. But the media, the various protests notwithstanding, are entirely culpable in this state of affairs.

Barely a day goes by when the press is not involved in highlighting—often in a sensationalist and near pornographic manner—child abuse, particularly of a sexual character. Such is the panic created by this fear-mongering that the ages of those involved is not considered a mitigating factor.

The two boys in this case are not the first to be charged with rape. In the three years to 2008, seven children aged between 10 and 11 years of age were prosecuted for rape—none of whom were found guilty.

During the same time-frame 289 children aged between 12 and 14 were arraigned for rape—80 of whom were found guilty, a near one-in-three conviction rate that Michael White in the *Guardian* noted was “far higher than for adults and grounds for suspicion in itself”.

In the same newspaper, Afua Hirsch noted, “In 2009 the House of Lords looked again at whether young offenders older than 10 should be prosecuted if they did not know their actions were wrong. Ruling in an appeal case, brought by lawyers acting for a boy aged 12 who was convicted of inciting a child to engage in sexual activity, the law lords found that a young offender had no such defence under English law.”

The assault on the “concept of childhood” has a long pedigree. England and Wales have one of the lowest ages of

criminal responsibility in Europe, aged ten. But it was the Labour Party under Tony Blair that spearheaded the criminalisation of children.

Blair seized on the killing of two-year-old Jamie Bulger in February 1993 by Jon Venables and Robert Thompson—then aged ten—to mark out Labour as the natural party of law and order. He spearheaded a hysterical campaign by the media and the political establishment in which no consideration was to be given to the ages of those involved, or their terrible personal and social circumstances. Such factors were dismissed as “excuses” aimed at covering over the fact that Thompson and Venables were “evil”, “savages” and “freaks of nature”.

The trial of Thompson and Venables in an adult court rebutted the centuries old principle of *doli incapax*—the presumption that a child under the age of 14 cannot be held accountable for his or her actions unless it is proven the child knew what he or she was doing.

The boys were sentenced to prison for eight years, but Rupert Murdoch’s *Sun* newspaper organised a petition drive to raise their term of incarceration. Sure enough, it was upped to 10 years and then 15 years by then Conservative Home Secretary Michael Howard on the grounds of “public outrage”.

Under the incoming Labour government, *doli incapax* was abolished by the Crime and Disorder Act 1998, clearing the way for all children aged ten years and over to be tried as adults. It was Labour’s Sexual Offences Act 1993 that established that boys under the age of 14 could be prosecuted for rape or other sexual offences.

Only after the European Court ruled that Howard’s intervention contravened the European Convention of Human Rights concerning the right to a fair trial, was the sentence given to Thompson and Venables reduced to the original tariff. Throughout their imprisonment, along with their families, the boys were subject to death threats. The pair had to be given new identities on their release from jail. Even that has not been enough to prevent the media from regularly running lurid “exposés” of the tribulations and suspected whereabouts of the two young men.

What is barely acknowledged in all the criticisms over this latest rape case is that it is the direct result of this original miscarriage of justice in 1993.

Why the reluctance to state the obvious? The overturning of *doli incapax* involved an assault on all notions of progressive social reform, including rehabilitation. Writing in the *Independent* on the politicisation of child offenders in England, Paul Vallely opined, “In Britain, under the guise of a thirst for justice, we indulge a lust for vengeance. It is as if we need a vehicle for outrage displaced from wider disquiet about social trends for which child crime becomes a kind of

lightning conductor. There is an atmosphere of moral panic which brands all youths as hostile hoodies, up to no good. In this febrile atmosphere the working assumption is that all kids are guilty unless otherwise proved.”

Vallely does not say what these “social trends” consist of. The answer can be encapsulated in just two words—social inequality. The powers-that-be were all too aware that de-industrialisation, the gutting of welfare provision and the driving down of wages meant condemning an entire generation to financial and social insecurity. At the same time, and on this basis, Labour pioneered the massive enrichment of a tiny layer of the super-rich.

MacDonald noted that the prison in which the two boys were tried for rape “is built on the site of Newgate prison. In the past judges would enter it clutching bright coloured posies to ward off the stench from the cells down below. Many unfortunates, including the quite young, were sentenced to death in courtrooms that still exist. Opposite its great doors, in the 19th century, stood a scaffold where men and women were strangled in public.”

Both socially and legally, the conditions of working class children have been returned to something akin to the Victorian era as part of a broader offensive against the social position of the working class. The brutalisation of young people by depriving them of any protection that would otherwise be afforded them due to their youth became a political necessity.

As the *World Socialist Web Site* wrote on the Bulger case, should the campaign of vilification against young children “prove successful, we will be much closer to a legal system based on vengeance and retribution, which will have terrible consequences for democratic rights and society in general.”



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