

Not the last word: point and counterpoint

Children have rights even when they do wrong

(and even when they are called Rat Boy,
Blip Boy, Spider Boy and Boomerang Boy)

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Most of the offences committed by children are of a minor nature. Such petty crimes rarely, if ever, feature in media coverage as it is more concerned with the most extreme cases. The awful death of two-year-old James Bulger, killed by two ten-year-old boys, appears to have been used as an excuse in the UK to 'get tough' with all young offenders and change their treatment before the courts. Most children who come to the attention of the police and social workers were victims before they became villains. The need to exact retribution should not be used to obscure the lack of care extended to them early in their lives, nor used as an excuse to treat them as adults or, in some cases, more harshly than adults.

It is my guess that Australia is soon to be exposed to some more collective soul-searching about young people who commit crimes. Such periods of interest occur regularly, usually involving apparent crime waves or a particularly horrific crime committed by a young person. There are exceptions to this general rule, of course. One has been the public concern, articulately expressed by organisations such as Defence for Children International, over rumours that new facilities for Victoria's incarcerated young offenders may be privately owned or run. We are clearly reaching new heights of economic achievement when the crimes of the young can be turned to a profit that will fill the pockets of large (probably foreign) corporations.

While I was in the UK recently, the European Commission on Human Rights ruled on the case of the two boys who killed James Bulger. The case now goes to the European Court of Human Rights and, according to Levy (1999), is likely to lead to a review of the way children are sentenced in the criminal courts of the UK. I cannot pretend to understand the passage of this case through European tribunals and courts, but it appears that the European ruling clearly states that the boys who killed James Bulger did not receive a fair trial. This decision is apparently a form of preliminary finding which may or may not be supported in the European Court of Human Rights.

The awful death of James Bulger probably needs little recounting here. The boy, aged two years, was abducted from a shopping centre on Merseyside and battered to death with bricks and an iron bar on a railway line. The two boys who killed him were aged ten years at the time of the killing, were tried in an adult court, and were sentenced to be detained at Her Majesty's pleasure (Johnston, 1999). They became Britain's youngest convicted murderers when they were sentenced (by then aged 11 years) in 1993.

A video security camera gave us pictures of the infant being led away by the boys who killed him, and this footage was shown over and over again on television (see Freeman, 1997).

Colour pieces in the newspapers attempted to fill in the boys' backgrounds:

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Two boys. Born 10 days apart in August 1982 in Liverpool. Two boys who forged a friendship out of breaking the rules. They played truant, they pinched sweets, they terrorised old ladies. Then, one Friday in February, they discovered a new rule to break: they murdered a two-year-old. (Sharrock, O'Kane & Pilkington, 1993:10)

Such writing cleverly leads the reader's perceptions from the ordinary innocence of childhood to the terrible crime, in a manner reminiscent of an announcer advertising a forthcoming film on television, an ironic observation given the allegations about the role of violent videos in the killing. *The Herald Sun*, for example, ran three pages entitled 'Did video kill James Bulger?' (27 November 1993: 13-15).

In such cases two questions tend to dominate the media coverage. The first is always about causation: *Why did this happen?* In sentencing the boys, the judge described the murder as 'an act of 'unparalleled evil and barbarity'' (Pilkington, 1993).

Editorials around the world followed similar paths:

... these past weeks have been a haunting reminder to all in our increasingly secular age of the abiding power of evil ...

Where such evil comes from or why is a question for those who peer into souls or psyches ...

Children need love and discipline within a stable family. They have to be watched, trained and corrected ... if need be, chastised... (*UK Mail 'Comment'*, 5 December, 1993:22)

After reviewing factors in the boys' backgrounds, homes described as 'broken', families as 'fractured', truancy as 'blatantly addictive', the editorial is not satisfied with the answers:

Crime more rampant when the streets are the nursery of delinquency.

Violence more wicked when video nasties are the regular diet for impressionable minds.

Although all of these factors are observable to a greater or lesser extent in the [boys'] backgrounds ...

There has to be something deeper and darker in the very being of these boys and in the bond between them. (*UK Mail 'Comment'*, 5 December, 1993:22)

One of the police investigating the crime described one of the boys as an 'evil freak' (Holland, 1993). Local gossip had reporters writing stories of the boy known as 'Damien' after the movie where a child becomes the anti-christ.

The previous day (26 November, 1993) the entire front page of Melbourne's *Herald Sun* was taken up with the case, with the huge headline 'FACE OF EVIL' and an almost half-page photograph of one of the boys. Another quote from a policeman followed:

I believe human nature spurts out freaks. These two were freaks who just found each other. You should not compare these two boys with other boys – they were evil. (*Herald Sun*, 26 November, 1993:1)

Further reports followed on pages 2, 3, 4, 5, 14 and 15.

The Guardian Weekly editorial at the time took a slightly more reflective tone, as one would hope, arguing that a sense of perspective was being lost:

On average there is one child under five murdered by a stranger every year. That is one child too many, but it is not an epidemic. Nor were these the first children to be accused of killing since 1950. Killings were committed by children in six of the last 25 years, but on five occasions the killers were under 10 and could not be prosecuted. (*Guardian Weekly 'Comment'*, 5 December, 1993:12)

The Guardian Weekly editorial, commendably in my view, failed to name the killers. The judge in the murder trial, however, had decided that the public needed to know the identities of the children. He ruled that the boys' names could be revealed, although during the trial itself they were known only as Child A and Child B. *The Guardian Weekly* editorial, however, did name another infamous child, now an adult, who was prosecuted and convicted of manslaughter. The editorial did this as part of an argument that rehabilitation in such cases is possible.

The editorial also turned its attention to the failures to act earlier in the case. This is the second theme that almost invariably occurs in the media coverage of such cases: *Why was this crime not prevented?*

One of the boys found guilty in the murder of James Bulger was reported to have pulled the heads off live pigeons, while the other had been suspended from school for trying to throttle another boy with a ruler and having to be dragged away by the teacher. When this boy was removed from the school and sent to another, the old school did not pass on this information about extreme violence to the new one.

At the time of the abduction itself, the media identified other opportunities to intervene. The boys apparently spent some six hours hanging around the shops pestering people. A total of 38 people saw the victim being dragged along his final two-mile journey but no-one intervened (*Guardian Weekly*, 1993).

Helen Verlander wrote of this in her piece for *The Sunday Age*:

Another woman saw him being swung violently in a bus. A man saw him sobbing in an alley but was fobbed off with the explanation that James was lost ... A 15-year-old girl was the last to see him being carried up the railway embankment ... (Verlander, 1993:14)

Of course, there have always been children and young people who offend, just as there has always been child abuse. Behaviour referred to as 'delinquent' is:

...at once as old as humankind and as new as the latest fad. (Short, 1990:21)

Russel and Rigby (1906) lived perhaps 30 miles from the scene of the Bulger killing but almost 100 years earlier. They describe attempts to deal with 'troublesome boys' in the mid-eighteenth century:

In spite of the alarming increase in juvenile crime ... it was long before the government made any attempt to deal with the problem. Pitt brought in a Bill in 1793 to provide a kind of industrial school but it did not pass. The treatment of young

offenders a century ago in its cruelty and folly almost surpasses belief, it is perhaps not improbable that our present methods may seem nearly as incredible a hundred years hence. The children, as was natural, richly revenged themselves on society for its treatment of them. (Russel & Rigby, 1906:204-205)

Boys of six or seven were committed to prison, not only for proved offences, but, often innocent, to await trial, and after associating with scoundrels of every age were discharged, almost inevitably to return. Parliamentary inquiries held in 1811 and 1819, condemned the imprisonment of young children, but to no purpose ... in 1833 a boy of nine was sentenced to death, though not executed, for stealing twopennyworth of paint ... two boys of fifteen, after fifty-one days in gaol before trial, were transported for seven years for stealing a pair of boots. (1906: 205-206)

The work of researchers such as Fishman (1978) and Hall, Critcher, Jefferson and Roberts (1978) has shown that today's 'crime waves' may in fact be 'media waves' (Bortner, 1988).

Because the news media usually do not have direct access to crime or delinquency, they tend to rely upon authoritative sources such as politicians, police spokespersons, or welfare workers. Their reports thus overwhelmingly favour the 'official' version ... (West, 1984:4)

We do not appear to pay much attention to what Sampson and Laub (1993:6) call 'desistance from crime' and the 'transitions from criminal to noncriminal behaviour in adulthood'. It is my strong suspicion (based, in part at least, on personal experience that will, I hope, remain private) that most children and young people are involved in some minor criminal activity at some stage. A few coins stolen here, some food stolen there, some minor damage or trespass, such crimes are commonplace. Yet our efforts at prevention appear to be built upon the suspected inevitability of progression from young offender to old lag.

Bernard (1992: 21-41) argues that there are at least five aspects of juvenile justice that have remained the same for at least two hundred years:

1. Juveniles, especially young adults, commit more crime than other groups.
2. There are special laws that only juveniles are required to obey.
3. Juveniles are punished less severely than adults who commit the same offenses.
4. Many people believe that ... there is a 'juvenile crime wave' at the present time.
5. Many people blame juvenile justice policies for the supposed 'juvenile crime wave' arguing that they are too lenient ... or that they are too harsh ... (Bernard, 1992:21)

The last point is borne out by Sprott's (1998) recent work in Canada.

The media, in Britain at least, love to glorify the young offender. They give names to those who outperform their partners in crime. Gillan (1999) provided a summary of some of the better-known. 'Rat-boy' gained his name because he was reported to be living in heating ducts in flats. He was

reported to have run away from local authority care on 36 occasions. 'Blip Boy' was the 11-year-old young offender who was responsible for so many offences that he dramatically changed the crime figures in the area where he lived. His previous convictions cover 17 pages. Then there is 'Spider Boy' and the 'Singing Detective'... (Gillan, 1999).

This summary appeared as a break out piece alongside Gillan's main story about 'Boomerang Boy': 'He's been arrested 80 times, he's blamed for 1,000 offences. Can anyone save him?' the headline ran. The parent or parents of such young offenders often blame the authorities or society in general when interviewed. 'Boomerang Boy's' mother (according to Gillan, there is no father figure) is no exception:

She says her son needs 'some sort of counselling' and that he keeps reoffending means he is not getting what he needs when he is inside. (Gillan, 1999:6)

Just as crime committed by young people has always been with us, so sadly have killings.

David Smith (1995), in his book on the killing of James Bulger, *The sleep of reason*, explains why the crime was *not* unique. In order to gain perspective, Smith sets out a catalogue of all the British cases that he was able to discover that involved killings, or alleged killings, by children and young people. He briefly describes more than 30 cases in the last 200 or so years. One or two of the killings are very similar to the Bulger case.

In Australia, it appears that there may soon be a trial of a child for the killing of another child. With this in mind, it is useful to review Levy's (1999) concerns about the justice dealt out to young offenders. He reports that there are increasing and disturbing trends for younger children to be treated as adults in parts of the criminal justice system. He refers to the removal in the UK of the protection of *doli incapax* for children between 10 and 14 years. Under this doctrine, the prosecution formerly had to prove the alleged offence and also had to prove that the child understood that he or she had done wrong.

Levy (1999) also cites the recommendations of the 1996 Justice Report entitled *Children and homicide*. These included that children under the age of 14 years who were accused of murder or manslaughter should be tried in private to protect their identities. Only the facts of the case and any sentence should be reported. Such cases should be heard by a specially concerned court presided over by a judge and two magistrates who have had relevant training. The court should also be granted a wide discretion in the matter of sentencing. Sadly, the traffic appears to be all the other way, not just in the UK and Australia but also in the USA (see, for example, Schiraldi & Soler (1998) on the increasing use of adult prisons for young offenders).

According to Levy (1999) the boys' trial in the James Bulger case was judged to be unfair by the European Commission on Human Rights because they were subjected to a 'severely intimidating procedure' in a public trial which gained enormous publicity. These factors severely affected their ability to participate in the trial. The Home Secretary was

also criticised for fixing the minimum sentence after the trial (Levy, 1999:39).

Smith (1995:vii) starts his book on the killing of James Bulger with a page of acknowledgements. After the expected list of police officers, solicitors, editors and others, he concluded with the following sentences:

I wanted to acknowledge the anguish of the parents and wider family of James Bulger. I hope they will appreciate the spirit in which this book was written, and forgive me when I also acknowledge the suffering of the two boys who were responsible for the killing, and their families. (1995:vii)

I have written this piece with similar intent. It is not intended to diminish the grief of James Bulger's family, nor is it intended to detract from the horror of the crime.

The two boys who brutally assaulted and murdered James Bulger were clearly grossly disturbed. Freeman (1997), while acknowledging that we even now know very little about the perpetrators (which is itself surprising), confirms that both were terribly damaged and suspects that at least one had been sexually abused. While neither child gave evidence, both gave clear indications that they did not appear to fully comprehend the seriousness and finality of what they had done: one expressed the hope that James Bulger could be 'mended' while the other thought that it was possible to bring him back to life (Freeman, 1997:120).

Freeman also highlights the contrast with a recent case in Norway where a five-year-old girl died, circumstances which 'made headlines one day and disappeared the next...' (1997:129). He also outlines the remarkably similar case, researched and written up by Gitta Sereny, that occurred in the UK in 1861. In that case, where two eight-year-olds were convicted of killing a two-year-old, the conviction was for manslaughter and the judge expressed concern for the welfare of the two boys.

Hendrick (1994:8) reminds us that if we are to fully understand social policy as it affects children and young people, we have to recognise that much of the legislation has been concerned with children as 'threats' rather than as 'victims'.

Similarly, writing of 'three strikes' and 'get tough' legislation in the States, Hatchett writes:

We have allowed reactionary politics to control the destiny of our country. Hoping to be safe from the wrath of children who have been ignored and neglected from birth, states are trying children as adults in escalating numbers (Hatchett, 1998:85).

Research published by a number of authors demonstrates that such policies do not appear to work (for example, Bishop et al. 1996).

It is now clear that the murder of James Bulger marked a turning-point in UK youth justice, as a number of writers have pointed out (see, for example, Hunter 1999). There are very real dangers that something similar will happen here in Australia. When prisons and youth training and detention centres become private, profit-generating enterprises there will be pressures to build more and fill them as full as possible. Whatever happens we must not lose sight of the

basic rule: even when children commit terrible wrongs they still have rights. □

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