

Extreme Violence and young children: detention or redemption?

Rob Allen argues that the Lord Chief Justice was correct to take extreme remorse and young age into account when deciding the remaining period of detention for the two boys convicted in the Bulger case.

Extrême violence committed by young children will always be a shocking phenomenon, giving rise to strong and conflicting emotions. The horrific murder of two year old James Bulger in 1993 by two ten year olds sent tremors throughout the country and beyond. Among the many questions begged by the case, two stand out. The first - how can we have created a society in which such an awful event can happen? - has a contemporary echo in the reaction to the fatal stabbing of Damilola Taylor in South London. The second question - how possibly to deal fairly with very young people accused and subsequently convicted of the worst of crimes? - continues to generate enormous controversy.

The careful and dispassionate judgement by the Lord Chief Justice in deciding the tariffs or minimum periods to be served by Robert Thompson and Jon Venables stands in marked contrast

to the florid reporting of the case and its aftermath in the tabloid press.

Following conviction in 1993, the two boys were given the automatic sentence of 'Detention at her Majesty's Pleasure', effectively a life sentence. The trial judge recommended a tariff of eight years, the then Lord Chief Justice (whose role has been to ensure consistency in these sort of cases) increased it to ten and the Home Secretary, who had the final say at the time, set the tariff at 15 years. Following legal action, the tariff was quashed by the House of Lords on the basis that the Home Secretary should not have taken into account petitions and letters from the public demanding the boys should never be released. Following a European court ruling, tariffs will in future cases be set by the trial judge. In the meantime, Lord Chief Justice Woolf was left with the unenviable task of setting a final tariff in one of the most talked about cases of recent times.

The judgement has at least four key implications for the way in which these most difficult of cases should be dealt with.

First, for the Lord Chief Justice the "one overriding mitigating feature of the offence is the age of the two boys when the crime was committed". While some recent Court of Appeal judgements have upheld the orthodoxy that "youth and immaturity while offering no defence will often justify a less rigorous penalty than would be appropriate for an adult", there appears a growing lack of tolerance in other judgements which stress the need to deter young people from violent and serious crime. In the Attorney General's reference 61 of 1999 the Court of Appeal states that wholly unacceptable behaviour "did not become less unacceptable by virtue of the offender's age".

Although Venables and Thompson were very young indeed - a few months over our exceptionally low age of criminal responsibility - Lord Woolf reminds sentences not only of the mitigating effect of youth but the need to take into account the requirement of the 1933 Children and Young Persons Act to have regard to the welfare of the child or young person.

Second, the judgement is pragmatic in so far as it takes account of the exceptional progress that the two boys have made during their time in detention, showing extreme remorse and "doing all that is open to them to redeem themselves". This is in line with the House of Lords' judgement quashing the original tariff, which held that an inflexible tariff which could not be varied by reason of the progress and development of a child was unlawful. Moreover the latest judgement is realistic about the impact which a move to a prison service young offender institution would have on the two boys. "They are unlikely to be able to cope at least at first with the corrosive atmosphere with which they could be faced if transferred. There is also the danger of their being exposed to drugs, of which they are at present free". Lord Woolf considers that it would not be in the public interest to squander the resources spent on treating the boys thus far.

This part of the judgement infuriated the conservative press yet seems eminently sensible in the light of what is known about what happens in YOIs. The murder of Zahid Mubarak in Feltham appears the tip of an iceberg of bullying and intimidation; the government's current policy initiatives to stem what they see as a growing tide of violence in society would do well to address head-on the culture within penal institutions.

Third, the judgement recognises the need to hear from the families of victims in cases like this but makes it clear that this is "not an invitation for the family to indicate their views as to what they would regard as an appropriate tariff". This kind of distinction is

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likely to be an important one to hold on to in a wide variety of cases, with the introduction of the victim personal statements and increased information going to victims about release dates.

Finally, the judgement makes it clear that the key question in determining release is that of risk. The decision to release is of course for the Parole Board and not for a Court setting a tariff, yet the judgement makes it clear that from a sentencing point of view "further detention would not serve any constructive purpose". Lord Woolf also lets it be known that all those who have reported on the boys regard the risk of their re-offending as being low.

Overall the judgement points the way to a more rational and humane way of responding to tragic cases like these, which recognises the limitations of detention and the importance of preparing young offenders for their return to society. For Lord Woolf, successful reintegration is not only in the interests of the boys themselves but in the interests of society too. However shocking the crime, young offenders should be given a second chance and the opportunity to lead full and useful lives.

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